

## DEPARTMENT OF EDUCATION

### **In Re: The Proposed Carolyn Walker Daniels Cyber Charter School: Cyber Charter School Application: 2006**

#### **Background**

Amendments to the Charter School Law (“CSL”), 24 P.S. §§17-1701-A – 17-1751-A, that became effective July 1, 2002, include new Subchapter (c), which sets forth new provisions for the establishment and oversight of cyber charter schools. *See*, Act of June 29, 2002, No. 88, §14, adding 24 P.S. §§17-1741-A to 17-1751-A (“Act 88”). Pursuant to Act 88, the Department of Education (the “Department”) has the authority and responsibility to receive, review and act on applications for the creation of a cyber charter school. Act 88 requires that cyber charter school applicants submit applications to the Department by October 1 of the school year preceding the school year in which the cyber charter school proposes to commence operation. After submission of an application, the Department is required to hold at least one public hearing and grant or deny the application within 120 days of its receipt.

- On October 2, 2006<sup>1</sup>, The Carolyn Walker Daniels Cyber Charter School (“CWDCCS”) submitted an application to operate as a cyber charter school.
- The Department provided 30 days notice of a public hearing that was held on December 4, 2006.

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<sup>1</sup> The application was timely filed on October 2, 2006 because October 1, 2006 was a Sunday.

- At the hearing, CWDCCS presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to CWDCCS' representatives.

### **Conclusions of Law**

#### *Background*

On October 2, 2006, CWDCCS submitted to the Department an application to operate a cyber charter school. The Department is to evaluate the application based on the following criteria:

- (i) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians and students.
- (ii) The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.
- (iii) The extent to which the programs outlined in the application will enable students to meet the academic standards under 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.
- (iv) The extent to which the application meets the requirements of section 1747-A.

#### *Conclusions*

- **CWDCCS failed to satisfactorily identify a curriculum framework and curriculum materials. 24 P.S. §17-1719-A(5); §17-1747-A(1).**

- **CWDCCS failed to adequately explain how curricula and resources meet the requirements of Chapter 4 and how it allows students to meet the academic standards of Chapter 4. 24 P.S. §17-1745-A(f)(iii), §17-1747-A(1).**
- **CWDCCS failed to meet the definition of a cyber charter school. 24 P.S. §17-1703-A.**
- **CWDCCS failed to explain how it would effectively provide appropriate curriculum and support to English Language Learners (“ELLs”).**
- **CWDCCS failed to state its academic goals in measurable terms. 24 P.S. §17-1719-A(5).**
- **The relationships of some of CWDCCS’s founders with companies with which CWDCCS intends to contract raise significant concerns.**
- **There are a number of discrepancies in the Bylaws of the proposed CWDCCS.**
- **CWDCCS failed to explain how it would provide health care benefits to its employees that are the same as the employees would be provided if they were employees of the local school district in which the charter school is located. Additionally, the application indicates that online instructors will not be employees of CWDCCS. 24 P.S. §17-1724-A(d).**
- **CWDCCS intends to offer a residential program. This goes beyond the authority of a cyber charter school.**
- **The application submitted by the CWDCCS failed to substantively detail how it will meet its obligation to provide special education programs and services to students with disabilities and failed to address key areas of special education policy and procedure. 24 P.S. §17-1747-A(13).**
- **CWDCCS’s measurable goal for participation rate on the state assessment falls short of the No Child Left Behind Act’s requirement.**
- **CWDCCS failed to meet the requirements that it provide a financial plan for the proposed cyber charter school. 24 P.S. §17-1719-A(9).**
- **CWDCCS failed to submit compelling evidence of its viability.**
- **CWDCCS failed to meet the requirements of section 1747-A when it failed to provide an adequate description of the technical support that would be available to students and parents, failed to demonstrate comprehensive training in technology proficiency for staff, and failed to describe in its**

**application the basic framework and organization of a cyber charter school. 24 P.S. §17-1747-A(9); §17-1703-A.**

- **CWDCCS failed to satisfy the requirements of section -1743-A (e)(2) because it did not identify that a printer would be provided to each student. 24 P.S. §17-1743-A(e)(2).**

### Discussion

#### Summary of the Proposed Carolyn Walker Daniels Charter School, (CWDCCS)

- CWDCCS proposes to enroll students from all 501 school districts.
- The proposed cyber charter school will have its primary administrative office in Philadelphia.
- CWDCCS proposes to enroll students in grades 9-12 only.
- CWDCCS proposes to enroll 200 students in the first year of operation and 2,000 by the fifth year.
- CWDCCS proposes to feature year-round, standards-based instruction, with a service learning/residential component.

The Carolyn Walker Daniels Charter School's application is available in its entirety at:

[http://www.pde.state.pa.us/charter\\_schools/cwp/view.asp?a=147&Q=60553&charter\\_schoolsNav=|567|&charter\\_schoolsNav=](http://www.pde.state.pa.us/charter_schools/cwp/view.asp?a=147&Q=60553&charter_schoolsNav=|567|&charter_schoolsNav=)

#### Curriculum

The application does not present a curriculum framework or specific curriculum materials. It identifies *Class.com* as the curriculum to be utilized with additional supplemental materials and programs. It states that this curriculum is aligned with PA Academic Standards but presents no documentation of that alignment. It does not document how the various programs mentioned (Class.com, Odyssey Ware, Kapan, Inc., PLATO Learning, EDMARK, Scientific Learnings Fast Forward, and AP courses- page 14) will be integrated to provide a curriculum that is fully aligned with PA Academic Standards.

Service learning is a very strong component of the proposal. However, it may be implemented to an extent to minimize actual instructional time in the content areas of the PA Academic Standards. With the year-round schedule, 45 days on and 15 days off, it was explained that students would participate in service learning during those 15 days off. It was also expressed that during the 45 days on, the students might participate in the cyber pod in the morning and go out for service learning in the afternoon. The amount of instructional time might be in question with this schedule.

The application is identified as a cyber school. However, much of the program is conducted on a face-to-face basis in "cyber pods". There are plans for residential services as well. It is not clear that this program falls within the definition of a cyber school, which is defined as an independent public school that uses technology to provide a significant portion of its curriculum and to deliver a significant portion of its instruction through the Internet or other electronic means. 24 P.S. §17-1703-A.

The proposal does not adequately plan to meet the special needs of English Language Learners. There are many requirements under NCLB. These include the home language survey, planning for the program, selecting a core ESL curriculum, identification and assessment of students, programming for students, tracking of student proficiency levels, exiting students from the program, and maintenance of the database of Primary Home Language Other Than English (PHLOTE) students. Generally speaking, they are unprepared to meet the needs or legal requirements of this population.

The academic goals and objectives (pages 7-10) are not all stated in measurable terms. For example: "School personnel will be committed, effective and successful." Goals should be rewritten in measurable terms with specific data collection strategies identified to determine success rates.

#### Founders' Relationships to Intended Contracts

Ronald Daniels is the President and Chief Executive Officer ("CEO") of Data Friendly, Inc. Data Friendly, Inc. is an educational software company that will provide educational software to CWDCCS. In addition, Data Friendly, Inc. owns and operates the facilities to be used by CWDCCS, which are Data Friendly, Inc.'s corporate facility and the Carolyn Walker Daniels Center.

Mr. Daniels also is the President and CEO of CWD Management Corporation, which own a Subway restaurant that is to be used by CWDCCS for food service. In addition, CWDCCS expects to contract with Foundations, Inc. for a variety of business services, including a Business Manager. A founder of CWDCCS, James

Jerry Clark, is currently a consultant, a charter school application writer, a curriculum writer, a grant writer, and a school and extended day program assessor for Foundations, Inc. Another founder of CWDCCS, Jan Gillespie-Walton, is, or was, a consultant and presenter/staff developer for Foundations, Inc.

The relationships of some of CWDCCS's founders with companies with which CWDCCS intends to contract raise significant concerns. The draft bylaws for CWDCCS state that at least three members of the founding coalition shall be members of the Board of Trustees for the first five years. However, these members are not identified and there may be a conflict of interest if members of the Board of Trustees have relationships with entities with which CWDCCS intends to contract.

In addition, it is not clear whether any of the founding members would be employed by CWDCCS. Again, there may be a conflict of interest if any of the founding members who have a relationship with entities with which CWDCCS intends to contract are also employed by CWDCCS.

Thus, the Department needs additional information and clarification about these relationships and how any conflict of interest would be avoided.

### Bylaws

The draft Bylaws for CWDCCS state that “[I]n its advisory capacity, the Board may make recommendations regarding but not limited to: budget, training, staffing, operations, legal, School policy, and expansion progress.” However, the

Board of Trustees is the ultimate decision-making body for CWDCSS and cannot be limited to merely an advisory body. Thus, CWDCSS must revise its Bylaws to reflect the authority of the Board.

The Bylaws also state that CWDCSS is to become a prominent distance learning K-12 institution in the Commonwealth. However the application states, and it was confirmed by CWDCSS at the hearing, that the school is to include only grades 9-12. Thus, the Bylaws must be corrected.

#### Health Care Benefits

In its application, CWDCSS states that it will provide a staff benefits package that is comparable to that available to employees of the School District of Philadelphia and other comparable sending school districts. The Charter School Law requires that “[e]very employee of a charter school shall be provided the same health care benefits as the employe would be provided if he or she were an employe of the local district.” 24 P.S. §17-1724-A (d). The local school district is the district in which the charter school is located, which in the case of a cyber charter school is where its administrative office is located. Thus, CWDCSS must provide its employees with the same health care benefits that the employees would receive if they were employees of the School District of Philadelphia.

#### Online Teachers are employees of Data Friendly, Inc.

CWDCSS’s application provides information about Data Friendly’s distance learning program, which it will replicate at CWDCSS. It is stated in the

application that online instructors are employees of Data Friendly. However, the Charter School Appeal Board and Commonwealth Court have issued opinions that charter school teachers must be employees of the charter school. *See, West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 468 (Pa. Commw. Ct. 2000), *aff'd*, 571 Pa. 503, 812 A.2d 1172 (2002); *see also School District of the City of York v. Lincoln-Edison Charter School*, 798 A.2d 295 (Pa. Commw. Ct. 2002).

#### Residential Services

CWDCCS states that one of its essential characteristics is to provide residential services to students, including enrolling them in CWDCCS. It is not within the authority of a cyber charter school to provide residential services to students. In addition, the decision to enroll in a cyber charter school is the choice made by a student's parent or guardian, not by a residential facility. Thus, CWDCCS cannot operate a residential facility. In addition, a residential facility must comply with provisions of the Public School Code regarding the educational services to be provided to its residents.

#### Special Education

The application submitted by CWSCCS provides information on the overview of its special education program; however, it fails, in some instances, to adequately address the programmatic detail necessary to execute the program in a cyber environment. For example, the applicant states on pg. 18, that based on the student population it anticipates serving, it estimates a special education enrollment of 30% (corrected on testimony at the hearing of 50%). The application projects a first year

enrollment of approximately 200 students, yet the projected special education teacher allotment is 2 FTE. This number would seem to place a heavy burden on two special education teachers to service half of the projected student population. In addition, the applicant does not address how their cyber pods will be staffed throughout the state with just two special education teachers (continuum of placement options).

On pg 21-23, CWDCSS outlines its Comprehensive Support System (CSS) for students who may be in need of special services. This section discusses using the CCS as a first step, but fails to provide any provisions for students who, because of their degree of needs may need to go straight to the IEP referral process, without first going through the CCS. During the hearing the school answered questions related to transition services; however, the application does not contain any details of how transition programs and services will be planned and executed in accordance with IDEA.

CWDCSS talks in general about special education programs and services and gives an overview about the proposed school's vision; however, the application lacks any substantive detail or policies on how it plans to implement that vision. The application, at a minimum, fails to outline programmatic detail of the following: Assistive Technology, Child Find/Screening, Interagency Agreements, Staff and Parent Training Opportunities, Dispute Resolution, and Surrogate Parents recruitment. During the hearing the CWDCSS stated that they are aware of what is required and can meet the requirements, but in an effort to meet the application deadline, did not expound on these areas. It is not satisfactory to simply state you are aware of the requirements and can meet them.

### Participation Rate

CWDCCS states that in 2007-08 at least 90% of its students will participate in required testing, and in 2008-09 at least 93% of its students will participate in required testing, with the eventual goal of 95% participation to meet NCLB's goal of 95% by 2014. However, NCLB's requirement of 95% participation is in place now.

### Technology

The technology equipment described in the CWDCCS application is poorly limited in scope of the services it intends to deliver to students. The equipment is not truly compatible with today's technology. The technical requirements may not meet Class.com requirements for web-based instruction. The minimum specifications are too low and will create problems with student interaction of web-based resources and communications, and therefore impact their student work.

There was no evidence to determine how equipment was identified and how it will be selected, nor was the equipment acquired through a Request For Proposals (RFP) process, which is standard business practice.

CWDCCS did not demonstrate in the application that direct broadband access would be available outside of wireless access.

No evidence was presented on the type of training teachers would receive on the software applications, educational components and communications. In fact, no staff training was referenced beyond an initial two-day period.

There was no proof that an RFP was created to identify a Student Information System—rather, the selection was made by using services from the applicant's existing business. CWDCCS's application failed to mention academic goals it will

use to measure the technology proficiency of students. Nor was there a reference to the technology proficiency of staff and administrators.

There was no verification of a Network/Internet Acceptable Use Policy for staff—and the proposal didn't indicate if any local, state, or national technology standards will be included in staff review.

### Equipment

CWDCCS provides information about the technological equipment and services that will be provided to its students. That information does not include providing a printer (including printer ink) to each student. The Charter School Law requires that a cyber charter school provide each student with a computer, a computer monitor, and a printer. Thus, CWDCCS must understand and acknowledge that a printer and corresponding printer ink would be provided to each student.

### Finance and Budget:

The adequacy, reasonableness or necessity of the budgeted amounts projected cannot be fully assessed. The School's projected budget lacks sufficient detail and supporting documentation.

CWDCCS projects serving 200 students (9-12) in the first year, 300 students in the second year, 400 students in the third year, 500 students in the fourth and fifth years and proposes a 1/20 teacher / student ratio.

There is no salary scale. The application merely states, "Salaries should be commensurate with qualifications and benefits," and "Exemplary performance should be rewarded." The Department recommends the establishment of a salary scale based

on professional qualifications -- education and years of experience -- or CWDCCS may risk exposure for an EEO complaint or a lawsuit.

Teaching positions are budgeted at \$21,429 for regular education and \$20,000 for special education -- these amounts may not be comparable to the Philadelphia City School District pay scales (page 2 of 10). Although the pay scales are not required to be comparable to other school districts' pay scales, it evidences that the salary may be unrealistic.

Other salaries also appear to be unrealistic and illogical. CWDCCS proposes to pay the CEO and the clerical secretary the same salary, \$50,000 each. Proposed salary for classroom aides = \$20,000 (60,000/3), which is the same as for special education teachers. Also, the proposed salary for a school psychologist is \$30,000 and for a special education coordinator is \$20,000. These salaries appear unrealistic unless these are to be less than full-time positions (although there is no indication of that in the application).

In addition, the expense projections under Benefits and Related are not properly calculated: 2007-Budget = \$116,400 v. calculated = \$181,200; 2008-Budget = \$169,422 v. calculated = \$271,740; 2009 Budget = \$241,336 v. calculated = \$395,113; 2010-Budget = 342,030 v. calculated = \$568,605 (page 4 of 10).

The cost assumption for Internet Service/Access is \$5/month per student. This again appears to be an unrealistic projection because CWDCCS did not indicate that it intended to apply for an E-Rate discount for telecommunications and Internet costs. Even if CWDCCS applied for the E-Rate discount, it is not a guarantee, so CWDCCS should not be anticipating an e-rate discount for budget purposes.

In a cyber school environment, the basis for furnishing transportation and student lunches is not clear. If Subway Restaurants are providing the student lunches, this gives another appearance of a conflict of interest vis-à-vis Ronald Daniels & CWD.

Revenue is projected at \$7,000 for regular education population and \$12,000 for special education population and this amount is held constant for a 5- year projection. The budget reflects the student population equally divided between regular education (at 50%) and special education (at 50%). However, as stated previously, the application projects a special education incidence rate at 30% (p.18) (page 1 of 10).

The proposed cyber school must become familiar with and use the Pennsylvania Manual of Accounting, State Chart of Accounts, for the correct functions and objects to present its budgets and other financial information.

Note: An inconsistency currently exists in the application - The Budget indicates the Technology Coordinator is part time while the narrative in the Technology Support section under School Design states that Technology Coordinator will be full time.

#### Purchasing Procedures

There are material gaps evident in the accountability & internal control systems. For example, “Expenditures in excess of \$10,000 will require prior approval of the Board of Trustees.” This appears to be an unreasonably high threshold before requiring Board approval and would allow an unlimited number of potentially significant expenditures to be made without Board approval. (page 74).

The CEO is to establish a \$2,500 revolving checking account and would be authorized to spend up to \$500 on any single transaction for purchase of supplies,

materials, instructional aids, educational software (Data Friendly, Inc.), which can create a potential conflict of interest.

The school anticipates engaging a contracted Business Manager from Foundations, Inc. at the estimated cost of \$5,000 per month. The Business Manager would provide the school with “back-office” and financial management services. No contract is provided with the application and no details on the number of days the business manager will be in the office and/or the number of support staff he or she would have on a daily basis.

There is no detailed information about lease arrangements for the facility but the Proposed Budget (p. 8 of 10) reflects a combined rental estimated at \$61,000 for 2007 and \$177,318 for 2010. CWDCCS plans to expand the Carolyn Daniels Center over the next 4 years to meet its needs. Currently, the Carolyn Daniels Center’s proposed facility is 27,000 square feet. CWDCCS does not say how much more space would be added or how many square feet the proposed cyber charter school would occupy.

### Viability

No compelling evidence was presented supporting CWDCCS’s viability. Community support is to be evidenced from letters from Drexel University and a local Subway Restaurant franchisee.

The letter from Drexel University School of Education supports a partnership between Drexel & the School, including providing professional development & using CWDCCS as a site for Drexel’s students to fulfill their school visits required for certification, is signed by Ellen Scales, Ph. D. – Assistant Professor, School of Education & Coordinator of Drexel’s on-line

undergraduate education program. This proposed arrangement appears more beneficial to Drexel than to CWDCCS. There is, however, no documentation that Dr. Scales is legally authorized to commit the University to this venture. Additionally, Dr. Scales is a member of the Founding Coalition and her support must be viewed within this context.

Similarly, the letter from Subway Restaurants also gives the appearance that CWDCCS would generate business for Subway. Ronald Daniels, member of the Founding Coalition, is President & CEO of CWD Management Corporation, a holding company established solely to acquire franchise stores, including several Subway Restaurants in Philadelphia. He is also President & CEO of Data Friendly, Inc. the organization that is forming this proposed cyber charter school. The 42 additional people offering support are not compelling.

**Therefore, for the reasons stated above, the cyber charter school application for the Carolyn Walker Daniels Cyber Charter School is denied.**

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Gerald L. Zahorchak, D. Ed  
Secretary of Education

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Date

