### **DEPARTMENT OF EDUCATION**

In Re: Millennium Cyber Charter School : 2002

Cyber Charter School Application :

# **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 1, 2002, Millennium Cyber Charter School ("Millennium") submitted an application to operate as a cyber charter school. The Department provided 30 days notice of a public hearing to be held on December 16, 2002. At the hearing, Millennium presented the Department with information about its application. In addition, Department personnel who had reviewed the application posed questions to Millennium's representatives.

### **Findings of Fact**

- 1. On October 1, 2002, Millennium submitted to the Department an application to operate a cyber charter school.
  - 2. 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.
- (v) The extent to which the cyber charter school may serve as a model for other public schools.

24 P.S. §17-1745(f)(1).

- 3. In its application, Millennium stated that it was unable to obtain documentation to show support for its charter plan from teachers, parents or guardians and students. (App., Sec. II, p. 8).<sup>1</sup>
- 4. At the December 16 hearing, Millennium did not provide the Department with any documentation to demonstrate sustainable support for its charter plan.
- 5. Millennium did not provide evidence that its curriculum meets the academic standards under 22 Pa. Code Ch. 4 and its representatives could not provide information about any process used to align the courses to the standards. (N.T. at 56).<sup>2</sup>
- 6. Millennium failed to provide a description of how the school will define and monitor a student's school day, including delineation of online and offline time. 24 P.S. §17-1747-A(7).

<sup>&</sup>lt;sup>1</sup> App. refers to the application submitted to the Department by Millennium.

<sup>&</sup>lt;sup>2</sup> N.T. refers to Notes of Testimony from the December 16, 2002 hearing regarding Millennium.

- 7. Millennium failed to describe the grade levels that will be tested with commercially prepared standardized achievement tests and how the data collected from the tests will be used to improve instruction. 24 P.S. §17-1747-A(8).
- 8. Millennium failed to describe how it would provide enumerated information to school districts and students' parents or guardians. 24 P.S. §17-1743-A(c),(d).
- 9. Millennium failed to clearly articulate a plan for the identification of students with disabilities and failed to recognize that special education teachers must be properly certified and cannot be included in the 25% of teachers that do not have to be certified. (App., School Design, p. 17; Administration, p. 6).
- 10. Millennium failed to provide a copy of Articles of Incorporation that evidence it is an independent non-profit corporation.
- 11. Millennium has positioned itself as the successor entity to an existing charter school and Millennium's Board of Trustees are also members of the Board of Trustees of the existing charter school. (App., Section III, pp. 1-2).

## **Conclusions of Law**

- 1. Millennium's failure to demonstrate sustainable support for the cyber charter school plan by teachers, parents or guardians and students does not meet the requirements of 24 P.S. §17-1745-A(f)(1)(i).
- 2. Millennium's failure to demonstrate that the programs outlined in its application will enable students to meet the academic requirements under 22 Pa. Code Ch. 4 does not meet the requirements of 24 P.S. §17-1745(f)(1)(iii).

- 3. Millennium's failure to provide a description of how the school will define and monitor a student's school day, including delineation of online and offline time, does not meet the requirements of 24 P.S. §17-1747-A(7).
- 4. Millennium's failure to describe the grade levels that will be tested with commercially prepared standardized achievement tests and how the data collected from the tests will be used to improve instruction does not meet the requirements of 24 P.S. §17-1747-A(8).
- 5. Millennium's failure to describe how it will provide enumerated information to school districts and students' parents does not meet the requirements of the charter application pertaining to Section 1743-A(c),(d).
- 6. Millennium's failure to clearly articulate a plan for the identification of students with disabilities and failure to recognize that special education teachers must be properly certified and cannot be included in the 25% of teachers that do not have to be certified demonstrates Millennium's lack of understanding of rules and regulations relevant to students with disabilities.
- 7. Millennium must provide a copy of its Articles of Incorporation to verify that it is an independent non-profit corporation. *See*, 24 P.S. §17-1703-A (definition of cyber charter school).
- 8. Millennium cannot be the successor entity to a currently existing charter school, and if Millennium is considered to be separate from the existing school, this conflicted position of the board members would severely compromise Millennium's ability, in terms of support and planning, to provide comprehensive learning experiences to students. 24 P.S. §17-1745-A(f)(1)(ii).

9. Millennium would not serve as a model for other public schools. 24 P.S. §17-1745-A(f)(1)(v).

#### Discussion

As noted above, Millennium has failed to meet several requirements of the Charter School Law. We review these matters below.

# **Demonstrated Sustainable Support**

"[S]ustainable support means support sufficient to sustain and maintain the proposed charter school as an on-going entity." *See, In re: Ronald H. Brown Charter School,* No. CAB 1999-1, p. 18.<sup>3</sup> Millennium failed to demonstrate that there is sustainable support for its school. Millennium stated in its application that it was unable to provide documentation of support for its school because the Department only published the cyber charter school application on its website on September 16, 2002. (App., Section II, p. 8). However, Millennium knew that amendments to the CSL that became effective July 1, 2002, included a new subdivision (c), which set forth new provisions for the establishment and oversight of cyber charter schools. (App., Section II, p. 8). These amendments included Section 1745-A(f)(1), which set forth the criteria to be used by the Department in evaluating cyber charter school applications. Section 1745-A(f)(1)(i) states that an applicant should be evaluated on the "demonstrated, sustainable support for the cyber charter school plan . . . . ." Therefore, Millennium was, or should have been, well aware in July 2002, that it had to demonstrate sustainable support for its charter plan.

In addition, a public hearing was held on December 16, 2002 and Millennium presented testimony about its planned cyber charter school. However, at the hearing, Millennium never

<sup>&</sup>lt;sup>3</sup> In making decisions on cyber charter school applications, the Department is guided by prior interpretations of the CSL from the State Charter School Appeal Board and the courts. Such decisions are particularly relevant where, as here, the provisions of the CSL that apply to traditional charter schools are so similar to the provisions of subdivision (c) of the CSL that are applicable to cyber charter schools.

presented the Department with documentation of sustainable support by teachers, parents or guardians, and students. The hearing was held 2½ months after Millennium submitted its application to the Department and provided Millennium with sufficient time to obtain documentation of sustainable support. Therefore, the Department finds that Millennium failed to demonstrate sustainable support for its cyber charter plan. 24 P.S. §17-1745-A(f)(1)(i).

## **Academic Standards**

Although Millennium provided, in its application, a description of its core curriculum and a summary of the courses, it failed to provide any evidence that the curriculum is aligned with the academic standards under 22 Pa. Code Ch. 4. (App., Appendices 1 and 2). In addition, when asked who aligned the curriculum to the standards, Millennium's representative at the hearing could not provide information about any process used to align the curriculum to the academic standards. (N.T. at 56). Since there is no evidence that the curriculum has been aligned to Pennsylvania's academic standards, Millennium has not demonstrated that the programs outlined in its application will enable students to meet the academic standards under 22 Pa. Code Ch. 4. 24 P.S. §1745-A(f)(1)(iii). Therefore, the Department finds that Millennium has not met the requirements of Section 1745-A(f)(1)(iii).

# **Section 1747-A(7)**

Millennium provided, in its application, that the instructional program would be accessible 24 hours per day but that teachers would not provide instruction on Sundays or legal holidays. (App., Appendix 6). Millennium also provided, in its application, that the administration and Board would adopt daily minimum/maximum time requirements for a student's access of the instruction program through the Internet and that the number of hours would vary based on the student's grade level. (App., Section IV, pp. 6-7). At the hearing,

Millennium stated that students would only be permitted to be online a maximum of six to eight hours per day. (N.T. at 37). Millennium also stated at the hearing that there are 900 hours for elementary and 990 hours for secondary students and Millennium would divide that over the course of the year and set a minimum. (N.T. at 35). If Millennium meant to divide these hours by the 181 student school days, elementary students would be required to be online a minimum of 4.97 hours per day and secondary students a minimum of 5.46 hours per day. Millennium subsequently stated that the students were not going to have certain hours per day online but would have a certain number of hours per week that they would have to be on the computer to do work. (N.T. at 37-38). In addition, Millennium students do not need to be online everyday. (N.T. at 37).

This information is confusing and incomplete. Millennium did not provide specific information about how it would define and monitor a student's school day. Millennium also failed to provide specific information about the delineation of online and offline time. In addition, from the information provided there was no distinction of online and offline hours by grade levels. Without sufficient information about how Millennium will define and monitor a student's day, including the delineation of online and offline time, the Department is unable to discern the appropriateness of Millennium's program. Therefore, the Department finds that Millennium's failure to adequately describe how the school will define and monitor a student's school day, including delineation of online and offline time, does not meet the requirements of 24 P.S. §17-1747-A(7).

### **Section 1747-A(8)**

Millennium provided, in its application, that local assessments, such as Terra Nova, would be used in the upcoming year and that the Stanford 9 system of assessment would be used

where appropriate. (App., Section I, p. 16). However, Millennium failed to describe the grade levels that would be tested and how data from the tests would be used to improve instruction. At the hearing, Millennium stated that it would be the job of the CAO, CEO and others to determine how to use the data to run the school. (N.T. at 44). There is no indication, in the application or from the testimony at the hearing, that Millennium will use data from the assessments to analyze and improve instruction or modify the curriculum. Therefore, the Department finds that Millennium's failure to describe the grade levels that will be tested with commercially prepared standardized achievement tests and how the data collected from the tests will be used to improve instruction does not meet the requirements of 24 P.S. §17-1747-A(8).

## Sections 1743-A(c) and (d)

Pursuant to the CSL, Millennium is required to provide certain information to a student's school district of residence upon request of the school district. 24 P.S. §17-1743-A(c).

Millennium is also required, pursuant to the CSL, to provide certain information to a student's parent or guardian, upon request and prior to the student's first day of school. 24 P.S. §17-1743-A(d). The cyber charter school application requires the cyber charter applicant to describe how it will meet the requirements of these subsections. Millennium failed to provide any description of how it will meet the obligations set forth in Sections 1743-A(c) and (d). Therefore, the Department finds that Millennium's failure to describe how such information will be made available to school districts and parents does not meet the requirements set forth in the charter application with reference to Section 1743-A(c) and (d).

### **Special Education**

Millennium provided a special education plan in its application and described how it would meet the educational needs of students with disabilities. (App., Section I, p. 9; Appendix

3). Millennium also provided, in its application, that a "child find" would be sent to the parent or guardian when a student is enrolled. (App., Administration, p. 3). However, neither the description of how the educational needs of students with disabilities will be met nor the special education plan clearly articulate a plan for the identification of students with disabilities.

Although Millennium uses the term "child find", this mere reference to the term does not evidence that Millennium has a clear understanding of the entire child find process.

Millennium also failed to provide a clear plan for employing certified staff to provide special education services. Although Millennium acknowledged that a minimum of 75% of its teachers would be certified, it failed to acknowledge that <u>all</u> special education teachers must be properly certified in the area of special education. (App., Section I, p. 17; Administration, p. 6). Special education teachers in a charter school may not be included in the 25% of the teachers that do not have to have proper certification.

The Department finds that Millennium's failure to clearly articulate a plan for the identification of students with disabilities and its failure to recognize that special education teachers must be properly certified and cannot be included in the 25% of teachers that do not have to be certified demonstrates Millennium's lack of understanding of the rules and regulations relevant to students with disabilities. Therefore, even though Millennium provided information regarding the provision of education and related services to students with disabilities it was not sufficient to evidence that Millennium completely understood its requirements regarding students with disabilities.

### **Articles of Incorporation**

A cyber charter school must be an independent non-profit corporation. *See*, 24 P.S. §17-17403-A. In order for the Department to ascertain that the cyber charter school is an

submitted with the application. This is implicit in the *Collegium* decision when the Court denied one of the school district's claims because Collegium's articles of incorporation established that it was organized as a non-profit corporation under Pennsylvania law. *See, West Chester Area School District v. Collegium Charter School,* 760 A.2d 452 (Pa. Commw. Ct. 2000), *aff'd,* 2002 Pa. LEXIS 2836 (Pa. Dec. 20, 2002). Without being able to review the Articles of Incorporation, the Department simply cannot determine that the charter school is "an independent public school" and a "public, nonprofit corporation" as all cyber charter schools must be. *See,* 24 P.S. §17-1703-A. It is imperative that the Articles of Incorporation be included in the application so the Department is certain that the charter school is an independent non-profit corporation and that it is not the subsidiary of another entity. Articles of Incorporation is the only way the Department can verify that Millennium is an independent non-profit corporation. Therefore, Millennium must provide the Department with a copy of its Articles of Incorporation.

### **Successor Entity**

In addition to all of the reasons stated above for denying a charter to Millennium, another factor counseling against the grant of a charter to Millennium is this applicant's choice to position itself as the successor entity to an existing charter school, Einstein Academy Charter School ("Einstein"), which has violated the law and whose charter has been revoked by the chartering school district.<sup>4</sup> This approach is fatally flawed. If the applicant is, in fact, the same entity as an existing charter school that provides online education, then it may not circumvent the requirements of subdivision (c) of the CSL by seeking to transform itself into a new cyber

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<sup>&</sup>lt;sup>4</sup> Although the fact that Einstein's charter has been revoked by the chartering school district is not a matter of record in this proceeding, it is within the knowledge of the Department and is of public record. Therefore, it is proper for the Department to take notice of, and make reference to, the revocation. That revocation is currently stayed pending Einstein's appeal to the State Charter School Appeal Board.

charter school. Alternatively, if the applicant is somehow considered to be separate from this existing school—despite the identity of their boards of trustees—this conflicted position of the board members would severely compromise the applicant's ability, in terms of support and planning, to provide comprehensive learning experiences to students.

The factual background on this issue is as follows. Millennium provided, in its application, information about the founding coalition and explained how the group came together. (App. Section III, pp. 1-2). Two of Millennium's board members were initial members of Einstein's Board of Trustees. (App., Section III, p. 2). The other three members of Millennium's board became members of Einstein's board in the spring of 2002. (App., Section III, p. 2). Millennium explained that *the five members of Einstein's current Board of Trustees* would be members of Millennium's Board of Trustees. (App., Section III, pp. 1-2).

During testimony at the December 16 hearing, one of Millennium's representatives, who is currently counsel to Einstein, stated that he did not believe Einstein could ever be turned around because of its systemic problems and that the only way to solve it was to start something new. (N.T. at 30). Another Millennium representative, who is currently Chairman of the Board for Einstein, stated at the hearing, that Einstein's governing by-laws are inadequate, that it "doesn't cut the mustard at all, and it never will, because you can't cure a cancer with a Band-Aid . . . ." (N.T. at 32). He further stated that they do not intend to start Millennium and run Einstein together. (N.T. at 32). He explained that if Millennium's application is granted, this is Einstein's last year, but if Millennium's application is denied, they will fight to keep Einstein going as long as possible. (N.T. at 32). This testimony makes it clear that the core group of

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<sup>&</sup>lt;sup>5</sup> At the December 16 hearing, Millennium's representative testified that there are now four Millennium board members because one has now decided not to serve. (N.T. at 4). However, the four remaining members are also members of Einstein's Board of Trustees.

individuals seeking a charter for Millennium is the same group that is guiding the ship of the now-revoked Einstein Academy Charter School. For purposes of this application process, therefore, the existing charter school and the applicant are virtually identical.

This approach is not permitted under the Charter School Law. With respect to the establishment and continuation of charter schools, the legislature's clear purpose in adding subdivision (c) to the Charter School Law was to allow the Department to take two actions: (1) authorize the *creation* of new cyber charter schools, and (2) *renew* the charters of existing schools. 24 P.S. §§17-1741-A(a)(1) & (2). With the present application, it is apparent that Millennium is seeking to circumvent this legislative structure by seeking to transform itself from an existing school into a new school under the law. The statute simply does not contemplate an application being made by an existing school—which has failed to operate in accordance with the law and already has had its charter revoked—that seeks to morph into a new cyber charter school. The application process under section 1745-A of the Charter School Law may not be used by a failing entity as a kind of bankruptcy process to cleanse it from its past history.

Einstein was in existence when subdivision (c) became effective, and therefore,

Einstein's charter is to remain in effect for the duration of the charter and then Einstein is to seek
renewal from the Department. However, based on the statements made at the hearing, the
Einstein board is clearly trying to obtain a new charter for Einstein but is using the name
Millennium and applying for a new charter pursuant to subdivision (c). Obtaining a new charter
as Millennium, the Einstein Board of Trustees would be able to operate a cyber charter school
without being burdened by the legal and educational damage that Einstein left in its wake.

Although there might be changes in the manner in which Millennium would operate, the Einstein

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<sup>&</sup>lt;sup>6</sup> This would not occur, of course, if the November 2002 revocation of Einstein's charter by the Morrisville Area School District were upheld.

Board of Trustees would be Millennium's Board of Trustees, and Einstein would cease to operate at the end of this school year, as acknowledged by Millennium's representative at the December hearing. In effect, Millennium would step into the shoes of Einstein and become its successor.

However, if Millennium is denied a charter, Einstein's Board of Trustees will fight to keep Einstein operating regardless of the fact that Einstein's solicitor and Chairman of the Board stated that Einstein could not be turned around. (N.T. at 30, 32). This evidence clearly demonstrates that the Einstein Board of Trustees is using the new subdivision (c) of the CSL to circumvent the CSL. The Board is, in effect, trying to obtain a new charter for what essentially is the Einstein charter school, even though the CSL provides that the charter of an existing cyber charter school is to remain in effect through the duration of the charter term and then renewal is to be sought from the Department. This is not legally permissible.

A second reason why this applicant's approach is not permissible is that all cyber charter school applicants must demonstrate that they are capable, "in terms of support and planning, to provide comprehensive learning experiences to students." 24 P.S. §17-1745-A(f)(1)(ii). The identity of the boards of trustees between Millennium and Einstein severely undermines this capability. If Millennium were to be granted a charter, Millennium's representative stated that this would be Einstein's last year. (N.T. at 32). Once Millennium received a charter, the Millennium Board of Trustees would be making decisions for Millennium. Since, according to Millennium's representative, Einstein would remain in operation for this school year, the Einstein Board of Trustees, which would also be Millennium's Board of Trustees, would be making decisions for Einstein.

When the same group of individuals serves on both the board of an existing (and failing) charter school and a start-up cyber charter school, those individuals' ability to properly plan for and support comprehensive learning experiences for students is compromised. If the Department were to ignore the facts and somehow conclude that Einstein and Millennium were indeed separate entities—as they must be in order for Millennium to obtain a charter as a new cyber charter school—they would actually be competitors in the field of cyber education. Under those circumstances, it is hard to imagine how the same core group of individuals could effectively direct the operations of two separate schools. One—or both—would suffer because of the inherent conflicts of interest. Therefore, the Department concludes that even if it were to assume that Millennium and Einstein should be treated as separate entities, under these circumstances Millennium's ability "in terms of support and planning, to provide comprehensive learning experiences to students" would be significantly compromised. 24 P.S. §17-1745-A(f)(1)(ii).

For the reasons set forth above, the Department concludes that it may not grant a charter to Millennium because to do so would violate the CSL's directive that the Department either grant charters for the *creation* of new cyber charter schools or *renew* existing charters, not extend the life of a failing (and revoked) charter school. Even if the applicant were somehow to be considered separate from Einstein, the Department concludes that it would not grant the charter because the identity of the two boards of trustees creates a conflict that undermines Millennium's capability to provide comprehensive learning experiences to students. These two reasons alone constitute an adequate basis to deny Millennium's application for a charter.

<sup>&</sup>lt;sup>7</sup> As this discussion suggests, it is clear that Einstein and Millennium should be treated as a single entity, and therefore prohibited from seeking a charter under the Charter School Law.

**Model for Other Public Schools** 

Because Millennium failed to meet requirements of the CSL, as set forth above, the

Department finds that Millennium would not serve as a model for other public schools.

Millennium failed to provide the Department with sufficient information that it would, *inter alia*,

provide programs that would enable students to meet the required academic standards, or that it

could define and monitor a student's school day, or that it would use data from standardized

achievement tests to analyze the instruction or modify the curriculum, or that it completely

understood its responsibilities to students with disabilities.

Based on all of the above, the Pennsylvania Department of Education denies the grant of

a charter, at this time, to Millennium Charter School. Pursuant to the CSL, Millennium may

revise and resubmit its application to the Department or it may appeal this decision to the Charter

School Appeal Board.

Pennsylvania Department of Education

Thomas R. Winters

**Acting Secretary** 

15