

DEPARTMENT OF EDUCATION

In Re: Pennsylvania Distance & Electronic :
Learning Academy 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, Pennsylvania Distance & Electronic Learning Academy Charter School (“PA Distance”) 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, PA Distance presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to PA Distance’s representatives.

Findings of Fact

1. On October 1, 2002, PA Distance 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-A(f)(1).

3. In its application, PA Distance stated that it anticipated great acceptance within the community based on the success of a similar program in Ohio. (App., p. 22).¹

4. PA Distance did not provide any documentation, in its application or at the December 16 hearing, of support for its charter school plan.

5. White Hat Management, LLC is a private company with which PA Distance anticipates contracting the operations of the cyber charter school. (App., pp. 1, 23).

6. PA Distance failed to provide the Department with a finalized management agreement between PA Distance and White Hat Management.

7. In its application, PA Distance stated that it would file Articles of Incorporation upon approval of the charter. (App., p. 25).

8. PA Distance provided, in its application, academic goals that represent the broad outcomes students are expected to achieve. (App., pp. 2-3, 15-16).

¹ App. refers to the application submitted to the Department by PA Distance.

9. PA Distance stated, in its application, that elementary students should spend an average of five hours per day working in their online/offline coursework and secondary students should spend an average of five and one-half hours per day working in their online/offline coursework. (App., p. 7).

10. At the hearing, PA Distance's representative estimated that 30-35% of a student's work would be online. (N.T. at 12).²

11. PA Distance provides book-based and online curriculums, and a student's parent chooses the curriculum for the student when the curriculums are optional. (N.T. at 7, 12).

12. In its application, PA Distance identified standardized achievement tests that would be given to students but failed to describe how data collected from the tests would be used to improve instruction. (App., p. 9).

13. PA Distance stated, in its application, that it had procedures for administering the PSSA and the Iowa Test of Basic Skills but did not include these procedures in its application. (App., p. 10).

14. PA Distance stated, in its application, that the vast majority of final examinations require high school students to take the examinations in their own handwriting, that tests in the book-based curriculum must be submitted in the students' own handwriting, and that the parent/student contract obligates the submission of the students' own work. (App., p. 10).

15. PA Distance provided a very general description of its provision of educational and related services to students with disabilities. (App., pp. 10, 16).

16. PA Distance stated, in its application, that it would select a facility upon approval of the charter application. (App., pp. 5, 11, 26).

² N.T. refers to Notes of Testimony from the December 16, 2002 hearing regarding PA Distance.

17. PA Distance failed to describe, in its application, how it would make information under Section 1743-A(d) available to parents upon request and prior to the student's first day in the cyber charter school. (App., pp. 12-13).

18. In response to the request that PA Distance describe its system for maintaining school records and disseminating information as required under the Family Educational & Rights Privacy Act ("FERPA"), PA Distance stated, in its application, that it would comply with FERPA. (App., p. 18).

19. In response to the request that PA Distance describe how it will improve student achievement through effective uses of technology, PA Distance referenced an Attachment E - Sales Sheet. (App., p. 20).

20. In response to the request that PA Distance attach an official clearance statement regarding child injury or abuse for all individuals who shall have direct contact with students, PA Distance stated that this was not applicable to PA Distance. (App., p. 31).

Conclusions of Law

1. PA Distance failed to demonstrate sustainable support for the charter school plan by teachers, parents or guardians, and students. 24 P.S. §17-1745(f)(1)(i).

2. PA Distance failed to meet the requirements of the CSL as interpreted by the Pennsylvania Commonwealth Court because it failed to provide a finalized management agreement between PA Distance and White Hat Management, LLC. *See, School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045, 1050 (Commw. Ct. 2001).

3. PA Distance must provide a copy of its Articles of Incorporation to verify that it is an independent non-profit corporation and not a subsidiary of another entity. *See, e.g.*, 24 P.S. §17-1703-A (definition of "cyber charter school").

4. PA Distance's failure to provide measurable educational goals of the cyber charter school evidences its lack of capability, in terms of support and planning, to provide comprehensive learning experiences to students under the charter. 24 P.S. §17-1745-A(f)(1)(ii).

5. PA Distance's failure to clearly describe how teachers will deliver instruction to students evidences its lack of capability, in terms of support and planning, to provide comprehensive learning experiences to students under the charter. 24 P.S. §17-1745-A(f)(1)(ii).

6. Since parents can choose between a book-based or an online curriculum for certain grades, when a book-based curriculum is chosen, the delineation of online and offline time is not clear. 24 P.S. §17-1747-A(7).

7. PA Distance's failure to describe how data collected from standardized achievements tests would be used to improve instruction does not meet the requirements of Section 1747-A(8).

8. PA Distance failed to describe its procedures for administering the PSSA and the Iowa Test of Basic Skills, which fails to meet the requirements of Section 1747-A(12), which requires the cyber charter applicant to provide methods for the adequate proctoring of examinations.

9. Reliance on the use of handwritten examinations and the parent/student contract is not sufficient to ensure authenticity of student work, and therefore, fails to meet the requirements of Section 1747-A(12).

10. PA Distance's general description of its provision of educational and related services to students with disabilities fails to meet the requirements of Section 1747-A(13).

11. PA Distance’s failure to provide the addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements does not meet the requirements of Section 1747-A(16).

12. Although PA Distance provided a list of the information that is to be made available to parents under Section 1743-A(d), upon request and prior to the student’s first day in the cyber charter school, PA Distance’s failure to describe how such information would be made available does not meet the requirements of Section 1743-A(d).

13. PA Distance’s statement that it would comply with Family Educational & Rights Privacy Act (“FERPA”), fails to adequately describe its system for maintaining school records and disseminating information as required by FERPA.

14. PA Distance failed to adequately describe how it would improve student achievement through effective uses of technology.

15. PA Distance must provide an official clearance statement regarding child injury or abuse for all individuals who shall have direct contact with students. 24 P.S. §17-1719-A(16).

16. PA Distance would not serve as a model for other public schools. 24 P.S. §17-1745-A(f)(v).

Discussion

As noted above, PA Distance 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. 18.³ PA Distance failed to demonstrate that there is sustainable support for its school. The only reference to support for its school is a statement that PA Distance anticipates great acceptance within the community based on the success of a similar program in Ohio. (App., p. 22). However, the fact a similar program in another state run by the same company PA Distance expects to contract with to operate its cyber charter school does not demonstrate sustainable support for PA Distance's cyber charter plan. 24 P.S. §17-1745-A(f)(i). PA Distance failed to provide any documentation, in its application or at the December hearing, to demonstrate any support for its charter school by teachers, parents or guardians and students. Therefore, the Department finds that PA Distance failed to meet the requirements of Section 1745-A(f)(1)(i).

Management Company

Section 1749-A of the CSL subjects cyber charter schools to specific provisions of the CSL and other acts and regulations. Pursuant to Section 1749-A, cyber charter schools are subject to Section 1716-A of the CSL. At issue here is the requirement, implicit in Section 1716-A(a) of the CSL, that a charter school's board of trustees must maintain ultimate control over the operation of the school. *See, West Chester Area School District v. Collegium Charter School*, 760 A.2d 452, 468-69 (Pa. Commw. Ct. 2000), *aff'd*, 2002 Pa. LEXIS 2836 (Pa. Dec. 20, 2002). The Commonwealth Court has interpreted this provision by requiring that a charter application must include a finalized version of a management agreement so that proper determination can be made whether the application comports with the requirements of the law. *School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045, 1050 (Commw. Ct. 2001). Proper review of the application cannot be made until the essential components, such as a

³ 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.

management agreement, are before the Department. *Id.* Therefore, since PA Distance expects to enter into a management agreement with White Hat Management, LLC, it must provide the Department with a copy of the finalized version of the agreement so that the Department can determine whether it comports with the CSL.⁴

Articles of Incorporation

Notwithstanding the fact that the board of trustees does not need to be appointed or elected prior to submission of the application, there must be a copy of the Articles of Incorporation 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. *Collegium*, 2002 Pa. LEXIS 2836 at *34. 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 (definition of "cyber charter school"). 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 PA Distance is an independent non-profit corporation.

⁴ During testimony by another cyber charter applicant at the December 16 hearing, a question arose about how a management agreement could be finalized when a Board of Trustees had not yet been appointed. The Pennsylvania Supreme Court recently affirmed the Commonwealth Court's decision in *Collegium*, in which a similar issue was raised. *See, West Chester Area School District v. Collegium Charter School, et al.*, 2002 Pa. LEXIS 2836 (Pa. Supreme Ct. December 20, 2002). In *Collegium*, the school district argued that Collegium's charter should have been denied because a for-profit entity had completed the application and obligated Collegium's Board of Trustees to contract with the for-profit company. The Court held that the "CSL implicitly acknowledges that the board of trustees will not be formed at the time the application is submitted" because the CSL requires that the application contain a description and method for appointment or election of the members of the board of trustees. *Id.* at 20. The Supreme Court agreed with the Commonwealth Court that all of the terms for inclusion in the application would be determined without input from the board of trustees. *Id.*

Comprehensive Learning Experiences

PA Distance provided, in its application, academic goals that represent the broad outcomes students are expected to achieve. (App., pp. 2-3, 15-16). However, PA Distance did not provide any information to evidence that these goals are measurable. Without having academic goals that are measurable, the Department is unable to discern whether students will be able to meet the goals through the curriculum to be offered and whether the methods of assessment will evidence whether students are meeting the goals. 24 P.S. §17-1719-A(5).

In addition, PA Distance failed to provide a clear understanding of the manner in which teachers will deliver instruction. 24 P.S. §17-1747-A(4). With the book-based curriculum being used by PA Distance, it appears that the teachers simply assist the parent in delivering the lessons, discuss a topic with the student, review tests and provide resources to aid the student. (App., pp. 16-17). There is nothing to indicate that the teachers will actually be involved in the delivery of instruction to students who are using the book-based curriculum.

For students using an electronic curriculum, it appears that the teachers are also not involved in the delivery of instruction to students. The teacher, parent and student communicate after every test to evaluate student progress, and the teacher supplements the curriculum, as necessary, and provides resources that can aid the student. (App., p. 17). Therefore, it appears that teachers are only involved with the students who use an electronic curriculum after student assessments.

PA Distance's failure to provide measurable educational goals of the cyber charter school and the lack of clarity in how teachers will deliver instruction evidences PA Distance's lack of capability, in terms of support and planning, to provide comprehensive learning experiences to students under the charter. 24 P.S. §17-1745-A(f)(1)(ii).

Section 1747-A(7)

Section 1747-A(7) requires a description of how the cyber charter school will define and monitor a student's school day, including the delineation of online and offline time. PA Distance provides both book-based and online curriculums. (App., pp. 16-17). Parents choose the curriculum that their child will use at PA Distance. The book-based curriculum is the only curriculum available for kindergarten students and can be chosen by parents for students in grades one through six. (N.T. at 7). This curriculum is book-based, and PA Distance has not provided any information that technology is used to provide any of the curriculum or the delivery of any of the instruction for this curriculum.

PA Distance stated, in its application, that elementary students should spend an average of five hours per day working in their online/offline coursework and secondary students should spend an average of five and one-half hours per day working in their online/offline coursework. (App., p. 7). In testimony provided at the hearing, PA Distance's representative estimated that thirty to thirty-five percent of a student's work was online. (N.T. at 12). However, even though this identifying five to five and one-half hours per day on coursework may define a student's school day, it is not clear that this delineation of online time applies to the book-based curriculum. Therefore, the Department finds that PA Distance failed to meet the requirements of Section 1747-A(7) in providing the delineation of online and offline time.

Section 1747-A(8)

In its application, PA Distance identified standardized achievement tests that would be given to students but failed to describe how data collected from the tests would be used to improve instruction. (App., p. 9). PA Distance simply provided statements about what information the tests would yield for the students. However, PA Distance did not provide any

description of how this information would be used to improve instruction. A statement that PA Distance will implement remedial and additional education as necessary, based on the student's performance on various assessments, is not a sufficient description of how the data from standardized tests will be used to improve instruction. (App., p. 16).

The Department finds that PA Distance's failure to describe how data collected from standardized achievements tests would be used to improve instruction does not meet the requirements of Section 1747-A(8).

Section 1747-A(12)

PA Distance stated, in its application, that it had procedures for administering the PSSA and the Iowa Test of Basic Skills but did not include these procedures in its application. (App., p. 10). Section 1747-A(12) requires cyber charter school applicants to provide the methods that will be used to adequately proctor examinations. Without information about how examinations will be administered, the Department cannot determine that the methods are adequate to properly proctor the examinations.

In addition, PA Distance stated, in its application, that many tests must be submitted in the student's own handwriting. (App., p. 10). PA Distance identifies this as the method it will use for insuring the authenticity of the student's work, together with the parent/student contract that requires submission of the student's own work. (App., p. 10). This method of ensuring the authenticity of the student's work, together with the lack of information regarding the proctoring of examinations, does not provide the Department with sufficient assurances that students' work can be authenticated or that examinations will be adequately proctored. Therefore, the Department finds that PA Distance's failure to describe its procedures for administering the

PSSA and the Iowa Test of Basic Skills and its method of ensuring the authenticity of student work does not meet the requirement of Section 1747-A(12).

Section 1747-A(13)

PA Distance provided only a very general description of its provision of educational and related services to students with disabilities. (App., pp. 10, 16). The cyber charter school application required PA Distance to provide a projection of the number and type of special education programs that would be operated by the charter school or through contracts. The application further required PA Distance to provide a projection of the number and type of related services that would be provided directly by the charter school or through contracts. In response, PA Distance provided a generic response that it would comply with all state, federal and local laws regarding students with disabilities. (App., pp. 10, 16). This response failed to provide projections of the educational programs and related services that would be operated by the charter school or through contracts.

The application also required PA Distance to describe the school's policies regarding student expulsion and suspension, including students with disabilities. PA Distance provided some information about expulsion and suspension of students. (App., pp. 3-4, 32-33). However, PA Distance did not provide any distinction between suspension and expulsion policies for students with disabilities as compared to students without disabilities. This evidences PA Distance's lack of knowledge regarding rules and regulations for students with disabilities.

This very limited description of how the cyber charter school will meet the educational needs of students with disabilities does not provide the Department with sufficient information to determine that this school can meet the needs of students with disabilities. Therefore, the Department finds that PA Distance's general description of its provision of educational and

related services to students with disabilities fails to meet the requirements of Section 1747-A(13).

Section 1747-A(16)

PA Distance stated, in its application, that it would select a facility upon approval of the charter application. (App., pp. 5, 11). Section 1747-A(16) requires a cyber charter applicant to provide in its application “[t]he addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements.” Since PA Distance had not located a facility for the cyber charter school, it could not provide the addresses of any facilities and offices of the school and could not provide information about ownership or leasing arrangements. (App., pp. 5, 11). Although an applicant is not required to provide a signed lease to meet the requirements of this subsection, it must identify a facility and the ownership and lease arrangements must be described in at least a general way. *See, In re: Phoenix Academy Charter School*, No. CAB 1999-10 at p. 21.

Therefore, the Department finds that PA Distance failed to meet the requirements of Section 1747-A(16).

Section 1743-A(d)

Section 1743-A(d) requires a cyber charter applicant to provide certain enumerated information to the parent or guardian of a student upon request and prior to the student’s first day in the cyber charter school. 24 P.S. §1743-A(d). The cyber charter school application requires the applicant to describe how it will provide such information to the parent or guardian.

Although PA Distance provided a list of the information that is to be made available to parents under Section 1743-A(d), it failed to describe how the information would be made available to

parents upon request and prior to the student's first day in the cyber charter school. (App., pp. 12-13).

Therefore, the Department finds that PA Distance's failure to describe how such information would be made available to parents or guardians does not meet the requirements set forth in the charter application with reference to Section 1743-A(d).

School Records

The cyber charter school application requires the applicant to describe its system for maintaining school records and disseminating information as required under the Family Educational & Privacy Rights Act ("FERPA"). In response, PA Distance simply stated that it would comply with FERPA. (App., p. 18). This response clearly does not provide the Department with sufficient information to determine how school records will be maintained and information disseminated. This response does not provide sufficient information to evidence to the Department that PA Distance understands and will effectively implement the requirements of FERPA.

Therefore, the Department finds that PA Distance has failed to sufficiently respond to this requirement of the application.

Effective Use of Technology

The cyber charter application required PA Distance to describe how it will improve student achievement through effective uses of technology. In response, PA Distance referenced Attachment E - Sales Sheet. (App., p. 20). Since the application failed to adequately delineate attachments to the application, the Department was unable to identify Attachment E – Sales Sheet. Without being able to identify Attachment E, the Department is unable to ascertain what information it provides and if it is an appropriate and adequate response to the requirement. PA

Distance provides no further description of how it will improve student achievement through effective uses of technology, and therefore, the Department finds it failed to meet this requirement of the application.

Child Abuse Clearance Statement

The CSL, and the cyber charter school application, require the cyber charter applicant to provide an official clearance statement regarding child injury or abuse for all individuals who shall have direct contact with students. 24 P.S. §17-1719-A(16). Since administrators, teachers and other staff generally have not been hired at the time the application is submitted to the Department for review, the clearance statements cannot be submitted with the application. However, in response to this requested information, PA Distance stated that all employees who come into direct contact with students would be required to obtain clearance statements. (App., p. 6). However, later in the application, PA Distance stated that this requirement was not applicable to PA Distance. (App., p. 31, subparagraph g). These statements create confusion about PA Distance's understanding of the persons for whom PA Distance must obtain clearance statements.

This requirement of the CSL is clearly applicable to cyber charter school applicants. Even though PA Distance may believe that direct contact with students requires a physical, in-person contact such as in a brick and mortar setting, direct contact means something different for a cyber charter school. The Department finds that any person who may have any contact with a student, regardless of whether contact is in-person, through the Internet, by telephone, or through other electronic or technological means, is considered to be a person who shall have direct contact with students for purposes of this provision of the CSL.

Therefore, the Department finds that PA Distance has not met the requirements of Section 1719-A(16) of the CSL when it stated this was not applicable to PA Distance. PA Distance must provide clearance statements in conformity with the Department's finding set forth above.

Model for Other Public Schools

Because PA Distance failed to meet many of the requirements of the CSL, as set forth above, the Department finds that PA Distance would not serve as a model for other public schools. PA Distance failed to provide the Department with sufficient information that it would, *inter alia*, be able to successfully operate a cyber charter school, or provide comprehensive learning experiences to students, or provide programs to meet the needs of students with disabilities.

Based on all of the above, the Pennsylvania Department of Education denies the grant of a charter, at this time, to Pennsylvania Distance & Electronic Learning Academy Charter School. Pursuant to the CSL, Pennsylvania Distance 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