DEPARTMENT OF EDUCATION

In Re: Pennsylvania Leadership Charter School:

Cyber Charter School Application : 2002

Background

Amendments to the Charter School Law ("CSL"), 24 P.S. §§17-1701-A – 17-1732-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 Leadership Charter School ("PA Leadership") 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 Leadership presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to PA Leadership's representatives.

Findings of Fact

- 1. On October 1, 2002, PA Leadership 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 and at the hearing, PA Leadership provided copies of 13 emails and petitions with 145 signatures showing support for the school. However, petitions with 79 signatures identified the school as the International Leadership Charter School. The remaining petitions had the name International crossed out and replaced with the name Pennsylvania. (App., Appendix H).¹
- 4. PA Leadership failed to provide sufficient information regarding the curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment). 24 P.S. §17-1747-A(1).
- 5. PA Leadership failed to explain the amount of online time required for elementary and secondary students. 24 P.S. §17-1747-A(3).
- 6. PA Leadership failed to provide a specific explanation of any cooperative learning opportunities, meetings with students, parents and guardians, field trips or study sessions. 24 P.S. §17-1747-A(5).

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

- 7. PA Leadership failed to provide sufficient information regarding the technology, including types of hardware and software, equipment and other materials that will be provided by the cyber charter school to the students. 24 P.S. §17-1747-A(6).
- 8. PA Leadership failed to describe how the charter school will define and monitor a student's school day, including the delineation of online and offline time. 24 P.S. §17-1747-A(7).
- 9. PA Leadership failed to provide a description of commercially prepared achievement tests that will be used, including the grade levels that will be tested, and how the data collected from the tests will be used to improve instruction. 24 P.S. §17-1747-A(8).
- 10. PA Leadership failed to provide sufficient information regarding the delivery of education and related services to students with disabilities, including evaluation and the development and revision of individualized education programs. 24 P.S. §17-1747-A(13).
- 11. PA Leadership failed to provide procedures that will be used regarding the suspension or expulsion of students, including students with disabilities. 24 P.S. §17-1719-A(7).
- 12. PA Leadership provided the addresses of two facilities but did not provide information about ownership or leasing arrangements. 24 P.S. §17-1747-A(16). The Department ascertained from the addresses listed in the application that one of the facilities identified is the home of one of the founders. (App., pp. 7, 37).

Conclusions of Law

1. Because PA Leadership provided petitions that were signed with the incorrect name of the proposed cyber charter school on the petitions, this raises concerns about the credibility of the petitions and fails to demonstrate sustainable support for this school. 24 P.S. §17-1745(f)(1)(i).

- 2. From the information in the application and the information obtained during the hearing, PA Leadership has not demonstrated its capability, in terms of support and planning, to provide comprehensive learning experiences to students under the charter. 24 P.S. §17-1745(f)(1)(ii).
- 3. The programs outlined in the application do not demonstrate how they will enable students to meet the academic standards under 22 Pa. Code Ch. 4. 24 P.S. §17-1745(f)(1)(iii).
- 4. PA Leadership failed to meet the requirements of Section 17-1747-A(1), (3), (5),(6), (7), (8), (13) and (16). 24 P.S. §17-1745(f)(1)(iv).
- 5. PA Leadership would not serve as a model for other public schools. 24 P.S. §17-1745(f)(1)(v).

Discussion

As noted above, PA Leadership has failed to meet several requirements of the Charter School Law. We review these matters below.²

On December 30, 2002, PA Leadership provided additional documents to the Department. The submitted documents included a letter from a Board member addressing issues raised by the Pennsylvania State Education Association in its written comments to the Department, and copies of letters of support for Dr. Hanak.

Although not explicitly stated at the public hearing, the application process for cyber charter school applicants was completed at the end of the hearing. The Department had received the applications, held a public hearing and received written comments from the public. These documents and testimony constitute the certified record reviewed by the Department. Therefore, all that remained was for the Department to review and consider those materials and make its decision to grant or deny a charter.

Permitting applicants to submit additional documents to the Department at any time after the hearing, but prior to a decision being issued, would needlessly delay the Department's hearing process. In fact, if PA Leadership were permitted to submit these documents, it would signal to applicants that they could continue submitting supplemental materials at any time prior to the issuance of a decision. This would deprive the Department of control of the application proceedings, because it would mean that decisions would have to be delayed until all supplemental materials were received and considered. Of course, during the process of reviewing and assessing one set of supplemental documents, the applicant might then submit another, thereby causing unacceptable delays in the hearing process.

The Charter School Law ("CSL") provides that: (1) cyber charter school applications are to be submitted by October 1 of the school year preceding the school year in which the cyber charter school proposes to commence operation; (2) the Department must hold a public hearing, and, (3) the Department must make a decision to grant or deny the charter within 120 days of receipt of the application. 24 P.S. §17-1745-A(d) and (e). There are no provisions in the CSL that require the Department to allow the submission of additional documents, either after the application is submitted or after the public hearing, and, therefore, we have declined to accept them into the record in this matter.

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 Leadership attempted to demonstrate that it had sustainable support for its cyber charter plan by submitting petitions signed by approximately 145 people and emails from 13 people. However, the petitions submitted with the application, which included 79 names, identified the school being supported as the International Leadership Charter School. (App., Appendix H). The other petitions submitted at the hearing had the name International crossedout and the name Pennsylvania written on the petitions. (App., Appendix H). The petitions submitted at the hearing were originally signed petitions rather than copies. Interestingly, one of the originally signed petitions presented at the December 16 hearing was the original of a copy of a petition that had been submitted with the application. The originally signed petition had International crossed-out and Pennsylvania written at the top of the petition. However, the copy of this same petition, which was submitted with the application on October 1, did not have the name International crossed-out. Therefore, it is clear that the name International Academy Charter School, rather than Pennsylvania Academy Charter School, was on the petition when

As a result, the Department's decision in this matter is based on documents received in the application, documents and information received at the public hearing, and written comments received from the public within the time period identified in the notice of the public hearing. Pursuant to the CSL, if the Department denies the grant of a charter, a cyber charter applicant may revise and resubmit its application to the Department. 24 P.S. 17-1745A(g). Under this provision, PA Leadership may revise and resubmit its application to the Department.

As a final note, PA Leadership has not been prejudiced by the Department's failure to accept into the record and consider the additional documents that it submitted on December 30, 2002. These documents do not correct all of the deficiencies in PA Leadership's application as identified by the Department in this decision. Therefore, even if the Department had accepted the additional documents into the record and considered them as part of the application, the Department still would have denied the grant of a charter to PA Leadership.

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.

people signed the petition but that International was crossed-out after the signatures had been obtained. This certainly raises questions about the credibility of the petitions and whether persons signing the petitions knew what charter applicant they were supporting.

Therefore, the Department finds that PA Leadership failed to demonstrate sustainable support for its charter plan. 24 P.S. §17-1745(f)(1)(i). It might be suggested that the Department should overlook the fact that the wrong name of the charter applicant was on the petitions and find that the petitions demonstrated sustainable support for PA Leadership. However, evidence of sustainable support requires that the support be for the particular cyber charter school that submitted the application. Providing signatures on petitions that identify the wrong cyber charter school does not show support for PA Leadership. In addition, this lack of attention to detail by PA Leadership regarding a reasonably simple procedure causes the Department to question PA Leadership's ability to attend to the more significant details of operating a cyber charter school.

Comprehensive Learning Experiences

Based on the information provided in the application and at the public hearing, PA
Leadership did not demonstrate its capability, in terms of support and planning, to provide
comprehensive learning experiences to students under the charter. 24 P.S. §17-1745(f)(1)(ii).

PA Leadership failed to provide sufficiently identifiable academic goals and provided no
evidence of how goals would be measured. (App., pp. 11-12). PA Leadership also failed to
identify measurable non-academic goals to promote student performance. (App., p. 12). In
addition, the curriculum was not clearly defined and there was no scope or sequence provided,
which makes it difficult to understand the curriculum. During the hearing, there was testimony
that PA Leadership wanted to partner with curriculum companies to provide the best curriculum.

(N.T. at 29).⁴ PA Leadership also stated in its application that teachers would be encouraged to develop their own curriculum. (App., p. 10). The fact PA Leadership is still trying to partner with curriculum companies and that it expects its teachers to develop some of its curriculum, demonstrates that PA Leadership does not have a comprehensive curriculum in place for its students. Therefore, the Department finds that PA Leadership has not demonstrated, in terms of support and planning, that it can provide comprehensive learning experiences for its students. 24 P.S. §17-1745(f)(1)(ii).

Academic Standards

Related to PA Leadership's inability to provide comprehensive learning experiences for its students is its inability to demonstrate that the programs outlined in the application will enable students to meet the academic standards of Chapter 4. 24 P.S. §17-1745-A(f)(1)(iii). It is not clear that the curriculum PA Leadership outlined in its application was aligned with Pennsylvania standards. PA Leadership was also not able to demonstrate that it had the ability to adapt online curriculum to meet Pennsylvania standards. In addition, there is no connection between the standards, the assessments PA Leadership expects to use, and how PA Leadership will use assessment information to drive the delivery of instruction. Because the curriculum is not clearly defined, because there is no scope or sequence for the curriculum and because there is no clear evidence of alignment with Pennsylvania standards, there is no evidence in the application or from testimony at the public hearing that the programs outlined by PA Leadership would enable students to meet the academic standards of Chapter 4. Therefore, the Department finds that PA Leadership failed to meet the requirements of Section 1745-A(f)(1)(iii).

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⁴ N.T. refers to Notes of Testimony from the December 16, 2002 hearing regarding PA Leadership.

Section 1747-A(1)

PA Leadership has also failed to meet all the requirements of Section 17-1747-A. As stated above, PA Leadership failed to provide sufficient information about the curriculum to be offered and how the programs outlined in the application would enable students to meet the academic standards under 22 Pa. Code Ch. 4. 24 P.S. §17-1745-A(f)(1)(iii). Section 1747-A(1) required PA Leadership to include, in its application, how the curriculum to be offered meets the requirements of 22 Pa. Code Ch. 4. Simply stating that PA Leadership will use a software company that meets standards does not provide sufficient information evidencing that the curriculum meets the requirements of 22 Pa. Code Ch. 4. (N.T., p. 42). Therefore, the Department finds that PA Leadership failed to meet the requirements of Section 1747-A(1).

Section 1747-A(3)

PA Leadership also failed to explain the amount of online time required for elementary and secondary students. 24 P.S. §17-1747-A(3). Although there may be variations of time that individual students may be online, there must be some information regarding, at least, the minimum amount of online time that will be required. Without explaining the amount of online time that will be required of elementary and secondary students, the Department is unable to adequately evaluate the appropriateness of the program.

The failure to explain the amount of online time required for students prevents the Department from determining whether the applicant falls within the definition of a cyber charter school. PA Leadership stated during the hearing that for the younger grades, a lot of work will be done off-computer and will be very much student/parent involved. (N.T., p. 42). Pursuant to the CSL, a cyber charter school "uses technology in order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet

or other electronic means." 24 P.S. §17-1703-A. This failure to explain the amount of online time required for students again evidences PA Leadership's inability to provide information to the Department that is required by the CSL. Failure to provide this information prevents the Department from determining whether PA Leadership constitutes a cyber charter school as defined in the law. In addition, the failure to explain the amount of online time required, together with PA Leadership's failure to provide a clear description of its curriculum, as discussed previously, further evidences PA Leadership's inability to provide comprehensive learning experiences to its students. Therefore, the Department finds that PA Leadership failed to meet the requirements of Section 1747-A(3).

Section 1747-A(5)

PA Leadership failed to provide a specific explanation of any cooperative learning opportunities, meetings with students, parents and guardians, field trips or study sessions. 24 P.S. §17-1747-A(5). PA Leadership provided a general reference to conducting museum/field trips throughout the year, providing conferences allowing students to perform/display their talents/art work and providing museum/field trips in conjunction with courses/teachers' schedules. (App., pp. 26-27). The Department finds that this does not meet the requirements of Section 1747-A(5) that requires a specific explanation of cooperative learning opportunities, meetings with students, parents and guardians.

Section 1747-A(6)

PA Leadership failed to provide sufficient information regarding the technology, including types of hardware and software, equipment and other materials that will be provided by the cyber charter school to the students. 24 P.S. §17-1747-A(6). PA Leadership stated in its application that it would provide one computer for each student and one ISP connection. (App.,

pp. 12, 27). However, PA Leadership did not provide further information as required by this subsection and is unable to do so because it has not yet determined a technology provider, or a software provider, or a curriculum provider. Once again the information provided is very limited and the Department finds that it does not meet the requirements of Section 1747-A(6).

Section 1747-A(7)

PA Leadership failed to describe how the charter school will define and monitor a student's school day, including the delineation of online and offline time. 24 P.S. §17-1747-A(7). PA Leadership failed to identify the hours of operation of the school, attendance procedures and how student hours will be monitored. PA Leadership identified a school calendar but it failed to state the hours of operation of the school. (App., p. 22). Although students may be able to work online at any time, there must be designated times that the school is actually in operation when teachers and administrators can be contacted.

In describing school enrollment and attendance procedures, PA Leadership simply stated that students are required to attend a minimum of 990 hours per school year and 28 hours per week for secondary students, 900 hours per school year and 25 hours per week for elementary students, and 450 hours per school year and 12 ½ hours per week for kindergarten students. (App., p. 39). PA Leadership further stated that students must attend school (online or offline) an average of 5½ hours per day. (App., p. 45). If the student's schedule is modified with approval of the home facilitator and the modification causes the student to be in attendance less than 27 ½ hours per week, the student is to notify the teacher by email of the modification. (App., p. 45). However, there is nothing in the application that identifies how attendance is monitored, other than by the home facilitator, or how this attendance information is provided to the school and verified by the school.

In addition, PA Leadership was asked at the hearing what constituted a school day, a school week and how this would be monitored. (N.T. at 55). PA Leadership responded that software can track when the student is online, what the activity is and what is being accomplished. (N.T. at 55). However, PA Leadership did not identify any specific software that it will use, and therefore, the Department is not satisfied that PA Leadership provided sufficient information to show how it will define and monitor a student's school day, including the delineation of online and offline time. PA Leadership further stated that the student can receive online credit for work performed offline simply by the parent requesting that credit. (N.T. at 56). There was not sufficient identification of what information the parent would be required to prove that work for which the student was seeking credit was actually performed offline. There was also no specific information about how a student's time and work would be monitored by the school. Therefore, the Department finds that PA Leadership failed to meet the requirements of Section 1747-A(7).

Section 1747-A(8)

PA Leadership failed to provide a description of commercially prepared achievement tests that will be used, including the grade levels that will be tested, and how the data collected from the tests will be used to improve instruction. 24 P.S. §17-1747-A(8). PA Leadership provided, in its application, that its self-assessment and/or evaluation will include the Pennsylvania System of School Assessment (PSSA), the Iowa Test of Basic Skills in Reading/Language Arts, Mathematics, Science and Social Studies and/or California Achievement Test and/or Terra Nova. (App., p. 23). However, not only did PA Leadership simply list a number of tests that might be used, it did not provide what grade levels would be tested and how the data collected from the tests would be used to improve instruction. The

Department finds that simply listing tests that might be used without providing the grade levels that will be tested and how the data collected will be used to improve instruction does not meet the requirements of Section 1747-A(8).

Sections 1747-A(13) and 1719-A(7)

PA Leadership failed to provide sufficient information regarding the delivery of education and related services to students with disabilities, including evaluation and the development and revision of individualized education programs. 24 P.S. §17-1747-A(13). The cyber charter school application required PA Leadership to provide a projection of the number and type of special education programs that would be operated by the charter school or through contracts. (App., p. 21). The application further required PA Leadership 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 Leadership provided a generic response that it would follow all guidelines issued by the Pennsylvania Department of Education and would develop, revise and implement IEPs in accordance with IDEA. (App., p. 21). This response failed to provide projections of the educational programs and related services that would be operated by the charter school or through contracts. In addition, it is not clear what was meant by PA Leadership's statement that evaluation and reevaluation processes would be implemented at the beginning of the school year. (App., p. 21). Such a statement demonstrates a lack of understanding of the requirements of performing evaluations and reevaluations.

PA Leadership also failed to provide a clear plan for employing certified staff to provide special education services. Although PA Leadership 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., p. 42). 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. There was also no identification in the Director of Special Education's job description acknowledging that this person must possess a supervisor's certification. (App., Appendix M).

The CSL requires a description of the school's procedures regarding suspension and expulsion of students. 24 P.S. §17-1719-A(7). The cyber charter application requires a description of the school's policies regarding expulsion and suspension of students, including students with disabilities. PA Leadership failed to provide procedures and policies that will be used regarding the suspension or expulsion of students, including students with disabilities. 24 P.S. §17-1719-A(7). PA Leadership's discussion in its application about school discipline policies that lead to expulsion and suspension was limited to a student's failure to progress as required by the Individual Program of Instruction. (App., pp. 44-45). There was no discussion of any other conduct or behavior that may result in suspension or expulsion. More particularly, there was no discussion of policies regarding suspension and expulsion of students with disabilities. This evidences the applicant's lack of knowledge about particular rules and regulations pertaining to the suspension and expulsion of students with disabilities. Therefore, the Department finds that PA Leadership failed to meet the requirements of Section 1719-A(7).

Overall, the application and the testimony presented at the hearing did not provide the Department with sufficient information regarding the provision of educational and related services to students with disabilities. The Department finds that PA Leadership failed to evidence that it understood the requirements of special education laws and regulations and that it could implement educational programs and services for students with disabilities.

Section 1747-A(16)

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." PA Leadership provided the addresses of two facilities but did not provide information about ownership or leasing arrangements. (App., pp. 37-38). Although an applicant is not required to provide a signed lease to meet the requirements of this subsection, the ownership and lease arrangements must be a described in at least a general way. *See, In re: Phoenix Academy Charter School*, No. CAB 1999-10 at p. 21.

Although PA Leadership did not provide information about the ownership of the locations listed, the Department was able to ascertain from the addresses listed in the application that one of the locations is the home of one of the founders. (App., pp. 7, 37). The founder stated at the hearing that she is the Treasurer of the Board of Trustees and records would be kept at her home until office space was able to be rented. (N.T., p. 33). No lease arrangements have been identified for the use of this home as the cyber charter school's facilities and offices. The Department is very concerned about the suitability of a person's home being used as the facilities and offices of the cyber charter school, particularly when the home is that of a board member. Therefore, the Department finds that the location of a cyber charter school's facilities and offices cannot be in an individual's home.

In addition, PA Leadership failed to provide, in its application, the ownership of the other location identified as a location of the cyber charter school's facilities and offices. There was also no information regarding any lease arrangements for this location. Therefore, the Department finds that PA Leadership failed to meet the requirements of Section 1747-A(16).

Model for Other Public Schools

Because PA Leadership failed to meet many of the requirements of the CSL, as set forth

above, the Department finds that PA Leadership would not serve as a model for other public

schools. PA Leadership failed to provide the Department with sufficient information that, *inter*

alia, it would be able to successfully operate a cyber charter school, or would provide

comprehensive learning experiences to students, or would provide programs that would enable

students to meet the required academic standards.

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

a charter, at this time, to Pennsylvania Leadership Charter School. Pursuant to the CSL,

Pennsylvania Leadership 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

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