



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION

January 29, 2015

Mr. Alan Kessler, Esq.  
Duane Morris LLP  
Insight PA Cyber Charter School  
30 North 17<sup>th</sup> Street  
Philadelphia, PA 19103-4196

SENT VIA CERTIFIED MAIL AND E-MAIL

Dear Mr. Kessler:

Thank you for your interest in opening a cyber charter school in Pennsylvania. After reviewing the Insight PA Cyber Charter School application, it is the decision of the Pennsylvania Department of Education to deny your application. Please review the pages that follow for more information.

If you have any questions, please contact Steven Carney at (717) 214-5708 or [stevcarney@pa.gov](mailto:stevcarney@pa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Pedro A. Rivera".

Pedro A. Rivera  
Acting Secretary of Education

Enclosure

## **Insight PA Cyber Charter School 2014 Cyber Charter School Application**

### **Background**

Pursuant to the Charter School Law (CSL), 24 P.S. §§ 17-1701-A – 17-1751-A, the Pennsylvania Department of Education (Department) has the authority and responsibility to receive, review and act on applications for the establishment of a cyber charter school. A cyber charter school applicant must submit its application to the Department by October 1 of the school year preceding the school year in which the applicant 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.

The Insight PA Cyber Charter School (Insight PA) timely submitted an application to establish a cyber charter school. The Department provided 30 days notice of a public hearing held on November 14, 2014.

### **Decision**

Based on a thorough review of the written application<sup>1</sup> as well as questions and responses recorded at the November 14, 2014 public hearing, the Department denies Insight PA's application. Deficiencies in the application were identified in the following areas:

- Governance
- Technology
- Special Education
- English as a Second Language
- Assessment and Accountability/School Improvement
- Finance

**I. The applicant failed to submit sufficient evidence of proper governance and of the necessary support and planning to provide a comprehensive learning experience to students.**

A cyber charter applicant must demonstrate that it has the capability, in terms of support and planning, to provide comprehensive learning experiences to all its students as an independent public school operated through a nonprofit entity with an established and effective board of trustees. A cyber charter applicant must also demonstrate that its application meets the requirements of 24 P.S. § 17-1747-A, which includes the requirements of 24 P.S. § 17-1719-A.

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<sup>1</sup> The Department received additional information and materials from Insight PA to supplement their original application submitted on October 1, 2014. Because the additional information and materials were submitted after October 1, 2014, the Department has not considered the additional information and materials in issuing this decision on Insight PA's application. However, Insight PA can include the additional information and materials and any other revised information in a resubmission to the Department under section 1745-A(g) of the CSL, 24 P.S. s. 17-1745-A(g).

***(a) The applicant failed to provide sufficient evidence that it would operate as an independent public school.***

A cyber charter school is an independent public school established and operated under a charter issued by the Department. A cyber charter school must be organized as an independent, nonprofit corporation. The board of trustees of a cyber charter school shall have authority to decide matters related to the operation of the school. The board of trustees of a cyber charter school shall determine the level of compensation and all terms and conditions of employment of the school's staff. The board shall have the authority to employ, discharge and contract with necessary professional and nonprofessional employees subject to the school's charter and the CSL.

Insight PA has partnered with K12 Virtual Schools, LLC (K12), a for-profit, virtual educational products and services provider, for K12 to provide curriculum and management services to Insight PA. Insight PA included an executed copy of the Amended and Restated Educational Products and Services Agreement Between Insight PA and K12 ("K12 Services Agreement" or "Agreement") in its application.

The CSL does not prohibit a charter school from contracting out certain management and administrative responsibilities to for-profit entities; however, the charter school's board of trustees must have real and substantial authority and responsibility for educational decisions and the operation of the school, as well as having authority over the staff providing students services, including teachers, counselors and other administrators.

Some charter schools in Pennsylvania operate under management agreements with for-profit and non-profit entities. Under such an agreement, the entity provides the charter school with all or a majority of the educational products and services to operate the charter school. In addition, some charter schools contract only for specific products or services, such as curriculum or financial guidance, and handle other functions internally through their own staff.

Following the early interpretations of the CSL concerning the role of management companies in the operation of cyber charter schools and as the role of these companies has increased, several reports and actions have highlighted the need to review the relationships between the charter school and management company in detail to ensure proper independence of the public charter school and that appropriate oversight and governance is retained by the charter school's board of trustees. These include public reports of federal and state agencies, cases before the State Charter School Appeal Board and the Commonwealth Court, changes to the CSL made by the General Assembly, and ethics, civil and criminal actions against former charter school and management company administrators.

Recently, the Department has received notice from some cyber charter schools that the schools are terminating or reducing the scope of management agreements and relationships in favor of increased internal control and operation of the school and determinations to contract only for specific products or services through public and competitive procurement processes.

The information provided by Insight PA demonstrates significant dependence by Insight PA on K12 and a lack of the independence and proper governance required of a cyber charter school.

The K12 Services Agreement allows Insight PA to terminate the agreement during the agreement term only “for cause.” A termination for cause requires that Insight PA demonstrate that K12 has breached a material term or provision of the Agreement or failed to fulfill a material condition, representation, warranty, covenant, or obligation of the K12 Services Agreement. Conversely, K12 is given broader discretion to terminate the Agreement, including for budgetary reasons that are not similarly available to Insight PA. The Agreement will automatically renew for successive terms equal to the length of any charter renewal, unless a party provides the other party with 12 months advanced notice of the desire not to renew the agreement. Should Insight PA determine that the services provided through K12 can be provided to the school directly by Insight PA staff or through contracting for less expensive or better products or services with another party, Insight PA would not be permitted to make changes to the products or services.

Insight PA included several academic achievement goals in its application. As a charter school operating in Pennsylvania, Insight PA will be required to meet or exceed certain academic benchmarks applicable to schools in Pennsylvania. The General Assembly intended that charter schools improve student learning and increase learning opportunities for all students and that charter schools be held accountable for meeting measurable academic standards. Academic achievement is a primary measure used by PDE to determine the success of all public schools, including the cyber charter schools it authorizes. K12 will provide virtually all educational products and services for the cyber charter school, as well as significant staff support critical to the delivery of education to students enrolled in the cyber charter school. K12 will also provide teacher and administrator support services, including professional development. There are no provisions in the Agreement which state that academic achievement will be used as a measure of K12’s performance. There are no provisions in the Agreement which authorize Insight PA to terminate the Agreement if Insight PA determines that K12’s products and services do not provide the necessary means for students to achieve and maintain academic performance benchmarks and goals applicable to the school’s operation. In fact, the Agreement expressly provides, “K12 AND ITS AFFILIATES MAKE NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS.” Although “guarantees” are not expected, a cyber charter school must provide educational opportunities to students that allow them to achieve and maintain academic performance benchmarks and goals and a management agreement for the scope of products and services similar to that set forth by the K12 Services Agreement should include academic achievement measures for the management company.

There are no provisions in the K12 Services Agreement that will permit Insight PA to seek educational products and services from another provider should Insight PA determine that K12’s products and services do not provide students and teachers with the educational opportunities needed to meet and exceed academic benchmarks and goals. Indeed, the Agreement grants K12 a first right of refusal on any additional educational products or services deemed appropriate by Insight PA. Insight PA is required to procure such services and products from K12 if K12 is willing and able to provide such services and products. The K12 Services Agreement does not clarify whether Insight PA is bound to this term regardless of cost proposed by K12 for the products or services. Furthermore, Insight PA is contractually bound to this provision even

though Insight PA's application indicates that the school will develop a procurement policy to ensure that the school receives the most favorable prices and terms for purchased services and goods received.

There are no provisions in the K12 Services Agreement that state Insight PA may terminate the agreement if Insight PA determines that it is not financially capable or prudent to continue to operate under the Agreement and/or that similar or better products and services can be provided by staff employed by Insight or by other contractors. By contrast, K12 has significant discretion to terminate the Agreement for adverse financial reasons. The pricing of some of the products and services provided by K12 is subject to negotiations on a yearly basis. Further, K12 may increase the prices of products and services for which pricing is initially set by the Agreement. Insight PA will be without real authority to reject pricing offered by K12 if Insight PA is unable to terminate the Agreement except for cause.

Insight PA has no oversight of K12 employees and virtually no means to evaluate or affect K12's performance under the Agreement, particularly in the area of academic achievement. Insight PA's current board of trustees includes several prominent, knowledgeable and experienced individuals that can assist with the oversight of K12 if sufficient time and resources are devoted to the function. However, to the extent Insight PA would exercise oversight of K12's performance under the Agreement, Insight PA failed to identify minimum qualifications and professional experience that future members of the Insight PA board would be required to possess or time and resources required from the board members in order to adequately oversee K12.

The K12 Services Agreement states that the "School Charter Application" is the intellectual property and proprietary material of K12. This is legally inapposite to the requirements of the CSL. Upon approval, a charter application is incorporated in and becomes a part of the approved charter. For a cyber charter school, the application will become the a substantial part of the conditions of the approved charter. The charter is an agreement between the authorizer – PDE in the case of a cyber charter school – and the school's board of trustees. K12 cannot own the intellectual property or proprietary rights of Insight PA's charter application as this document must be that of Insight PA because it will become a binding agreement between PDE and Insight PA if the charter were to be approved.

The K12 Services Agreement states the "Insight" name, mark and logo are proprietary marks of K12. Should the Agreement be terminated or not renewed, Insight PA would be unable to retain its identifying name, marks and logos by which it is recognized.

The K12 Services Agreement states that the Insight PA Board is responsible for the adoption of policies and procedures for the school. Insight PA's charter application contains policies and procedures of the school. As noted above, the K12 Services Agreement states that the School Charter Application is the intellectual property and proprietary material of K12. Insight PA did not demonstrate that the policies and procedures it has adopted are the property of the cyber charter school and Insight PA may be required to relinquish those policies and procedures to K12. The policies and procedures, once adopted by the cyber charter school's board of trustees, must be the property of the cyber charter school and not a separate entity.

The K12 Services Agreement includes a section titled “Start-Up Financing” whereby K12 will provide Insight PA with an interest free loan upon request from the school. Insight PA’s application also includes a letter from K12 indicating that K12 will provide interest free start-up financing sufficient to cover all expenditures and capital outlays. During the hearing, an Insight PA representative opined that such arrangement was not customary.

Insight PA’s application included two versions of a proposed school budget – one of which constitutes a proposed 5-year budget and was identified as “Appendix B. P&L and Supplemental Information” and has a heading of “Five Year Board Budget” (5 Year Budget) and another which constituted a one-year budget for the 2015-2016 school year and was identified as “Appendix IV.1 Proposed Budget” and has a heading of “Insight PA Cyber Charter School, 2015-2016, Proposed Budget, Appendix 15” (1 Year Budget). The K12 Services Agreement provides for K12 to staff multiple positions, such as the Executive Director, Principals, Operations Manager, Attendance and Truancy Elimination Coordinators, Director of Special Education, and Director of Student Services. Fees for the individual positions staffed by K12 employees are not included on the price list included as part of the K12 Services Agreement (K12 Price List), but the K12 Price List includes various flat percentage fees, per-student fees, and per-staff fees that provide payment from Insight PA to K12 for the products and services provided by K12 to Insight PA through the K12 employees. The 5 Year Budget and 1 Year Budget include expenditures to represent these fees. In addition to including these amounts, the 1 Year Budget specifically identifies expenditures by Insight PA for salaries for staff identified as “Advisors, Counselors, Attendance/Truancy, and Student Records Admin.,” “Special Ed. Admin.,” “Student Records Admin.,” and other positions that are employees of K12 and paid directly by K12. The K12 Services Agreement provides that Insight PA is responsible for paying salaries for some of these staff, even though employed by K12. The full scope of Insight PA’s financial obligations under the Agreement is unclear. Insight PA may be budgeting to pay for staff and services which are to be provided under fees otherwise due to K12 under the K12 Price List. Insight PA has not demonstrated that staffing and fees for management of the school are not redundant.

Amounts paid to a service provider are typically itemized in a budget as “professional services.” However, Insight PA’s budget includes amounts that are to be paid to K12 in several categories. For example, some amounts are identified as fees for K12, such as line item 2300-300 Support Services – Administration – Professional Services for \$2.2 million. Other line items include amounts for K12 services or products, such as line item 1100-600 Regular Programs – Supplies for \$3,478,000, which a K12 representative testified refers to instructional materials, curriculum, and curriculum delivery. Other line items include salaries for K12 employees and Insight employees, such as line item 2100 - 100 Support Services – Pupil Personnel, which a K12 representative testified refers to positions such as counselors employed by Insight and Attendance/Truancy Offices employed by K12. Other amounts for K12 items do not have stated prices in the K12 Price List, such as SMIS program integration and network security and monitoring, which are listed in the K12 Price List as a flat fee to be determined annually. The Department supports Insight PA’s efforts to more clearly identify the budgeted expenses expected to be associated with operating the school, including by delineation of individual pricing in the Agreement and expenses in the budget documents; however, Insight PA did not

present sufficient evidence to support a conclusion that Insight PA understands the full cost of the Agreement, how the costs are itemized in its budget, and how Insight PA will ensure that amounts paid to K12 are correct.

At a minimum, the contradictory and incomplete information in the application, particularly the K12 Services Agreement, K12 Price List, 5 Year Budget, and 1 Year Budget prohibits the Department from evaluating the sufficiency of the budget.

***(b) The applicant failed to demonstrate that it has proper authority over school staff.***

The board of trustees of a cyber charter school shall determine the level of compensation and all terms and conditions of employment of the school's staff. The board shall have the authority to employ, discharge and contract with necessary professional and nonprofessional employees subject to the school's charter and the CSL.

Insight PA proposes to employ a Chief Executive Officer (CEO) to manage the day-to-day operations of the school and report directly to Insight PA's Board of Trustees. With the exception of the CEO and a Chief Financial Officer (CFO), which will also be an Insight PA employee, an organizational chart included with the application explains that K12 will have ultimate authority and responsibility for the oversight of the remainder of the staff, irrespective of whether the staff is employed by K12 or Insight PA. The K12 Services Agreement, which provides that "Student Support Staff," as defined in the K12 Services Agreement to include "Special Education Coordinators, Registrar, Nurse, Community Relations Coordinator, Truancy Officer, Related Services Coordinator or similar positions" will initially be employed by K12. The organizational chart shows the CEO reporting to Insight PA's board of trustees and CFO reporting to the CEO. All other positions, which include Student Support Staff, including the Director of Student Services, Director of Operations, Director of Academics, Director of Finance, and principals, fall under the reporting chain-of-command of the Executive Director, who is a K12 employee. Individual teachers, counselors, and Student Support Staff, report directly or indirectly to K12 employees and ultimately the Executive Director who is employed by K12 and reports to the Regional Vice President of K12. This is also supported by the Employee Manual included with the application. The staff must be employees of the cyber charter school.

The CEO and CFO, who reports to the CEO, will have a working relationship with the Executive Director and Director of Finance. K12 employs and has control of the Executive Director and Director of Finance. K12 has the authority to hire, supervise, compensate and determine compensation, evaluate, transfer, promote, discipline, and dismiss its employees. In addition, the organizational chart included in Insight PA's application shows three K12 employees — Senior Accountant, State Reporting & Federal Program Manager, and Child Accounting Coordinator — reporting to the K12 employee Director of Finance. The Director of Finance reports to the K12 Executive Director and may only consult with the CFO. The Executive Director reports to the Regional Vice President of K12 and may only consult with the CEO. Individuals performing financial management tasks, including budget development, budget monitoring, accounting, processing accounts receivable and accounts payable, overseeing vendors, and supporting

financial audits, report to the K12 Director of Finance and not to the CFO. In addition, K12 is responsible for the preparation of the school's financial reports—a key financial management function. Based on this information, the CFO does not have authority or responsibility for the financial operations of the school which are associated with this position.

The K12 Services Agreement provides that K12 may initially employ and be responsible for Student Support Staff, but provides no time limit for these temporary assignments. To the extent K12 provides Insight PA with Student Support Staff, as employees of K12, Insight PA will have no direct or indirect oversight and control of the individuals responsible for these critical job functions.

The K12 Services Agreement allows Insight PA to bring staffing concerns to the attention of K12; however, in the absence of a violation of applicable law that threatens the immediate health or well-being of a student, Insight PA's staffing concerns are required to be addressed through a lengthy and complicated process under the direction of K12 and overseen by K12 employees. If Insight PA is not satisfied with the results of the review of the staffing concern, Insight PA must use the dispute resolution terms of the Agreement to address complaints about or requests for the removal of K12 staff. The provisions of the Agreement significantly restrain Insight PA's ability to seek changes in the K12 staff assigned to the school in situations where Insight PA determines changes are necessary to ensure compliance with requirements applicable to the operation of the cyber charter school or to effect improvements to the operation of the school.

A person who serves as an administrator of a charter school shall not receive compensation from any other charter school or from a company that provides management or other services to another charter school. An administrator of a charter school is a public official under state and federal law and is specifically subject to the Pennsylvania Public Official and Employee Ethics Act. Administrators include the chief executive officer of the charter school and all other employees of the charter school who by virtue of their positions exercise management or operational oversight responsibilities. As explained above, the K12 Services Agreement provides for K12 to employ and determine the employment terms of the Executive Director and other Student Support Staff who provide services to Insight PA, including directors of several administrative and management areas of the cyber charter school, principals, and other administrative staff positions. K12 retains the sole authority to select, supervise, compensate and determine compensation, evaluate, transfer, promote, discipline and dismiss K12 staff, including administrative staff providing services to Insight PA. The K12 Services Agreement expressly states that K12 and its affiliates have the right to render similar services to other persons or entities including other public or private schools within and outside of Pennsylvania. K12 currently provides services to at least two other cyber charter schools operating in Pennsylvania. The CSL expressly prohibits administrators from receiving compensation from a company that provides management or other services to another charter school.

**II. The applicant failed to provide sufficient information to demonstrate compliance with technology requirements applicable to and necessarily part of the operation of a cyber charter school.**

A cyber charter applicant must demonstrate that it has the capability, in terms of support and planning, to provide comprehensive learning experiences to all its students, including in areas relating to technology requirements applicable to and necessarily part of the operation of a cyber charter school. A cyber charter applicant must also demonstrate that its application meets the requirements of 24 P.S. § 17-1747-A, which includes the requirements of 24 P.S. § 17-1719-A. A cyber charter school is required to provide or reimburse each student enrolled for all technology and services necessary for the on-line delivery of the school's curriculum and instruction.

***(a) The applicant failed to demonstrate planning for the necessary level of internet connectivity.***

In order to ensure a continued, comprehensive learning experience for its students, a cyber charter school must ensure access to broadband connectivity in the home or regular place of instruction for every student to have the same level and quality of access to all instructional materials and collaboration tools within a cyber environment. Some students in Pennsylvania may live in areas not serviced with broadband connectivity delivered directly to the home. Regardless of the connectivity available, no student's cyber education should be limited based on where he or she lives. Formalized policies and procedures must be established defining the specific broadband requirements for students, including the options that will be offered to get high-speed access to cyber charter school students who may currently have only dial-up available to the home. Although Insight PA discussed options for providing adequate connectivity, Insight PA did not provide evidence that it has developed or formalized policies and procedures to ensure adequate access for every student or made proper investigation of all the avenues available to ensure adequate access.

***(b) The applicant failed to demonstrate compliance with requirements for reimbursement for internet and related services.***

In order to ensure a continued, comprehensive learning experience for its students, a cyber charter school must ensure that families are regularly reimbursed for internet access services.

Insight PA's budget in its application includes a \$168,993 expenditure for internet reimbursement in FY2016. Based on Insight PA's projected enrolled for the 2015-2016 school year, the budgeted amount would enable Insight PA to reimburse students \$10.20 per month for internet access. Insight PA and K12 provided information to state the school anticipates as much as 70% of its students qualifying for a \$35 per month internet reimbursement for a period of 10 months and that only 50% of those students would actually request reimbursement. The school's board of trustees has yet to decide whether internet reimbursement will be provided to all students or just those students who are in need of such reimbursement. However, the CSL provides no exceptions to allow the school to refuse to pay the statutorily required reimbursement.

- (c) ***The applicant failed to provide sufficient information to demonstrate preparation and education of students in the area of appropriate online behavior.***

In order to ensure a continued, comprehensive learning experience for its students, a cyber charter school must provide for the education of minors regarding appropriate online behavior. This includes education that addresses interacting with others on social networking websites and in chat rooms, as well as cyberbullying awareness and response. The curriculum must be age/grade appropriate since education must be provided to students of all ages.

Insight PA explained that it will teach its students how to use its virtual tools, but failed to provide any information as to the education it will provide its students regarding appropriate online behavior.

- (d) ***The applicant failed to explain policies, procedures and software that the school will use to ensure internet safety for all students.***

In order to ensure a continued, comprehensive learning experience for its students, a cyber charter school must create and implement an Acceptable Use Policy (AUP)/Internet Safety Policy that includes requirements for compliance with the Children's Internet Protection Act (CIPA) and the Child Internet Protection Act (Act 197 of 2004). A cyber charter school must create and implement procedures to ensure internet safety for all students and staff, including the monitoring of online activities for minors. Cyber charter schools must enable protection measures, or internet filtering software, that will block or filter access to inappropriate materials.

Insight PA failed to provide an AUP. Insight PA also failed to provide specific information regarding how the school will create and implement policies and procedures to ensure Internet safety for all students and staff. In addition, Insight PA did not discuss the specific Internet content filtering software that will be used to block or filter access to inappropriate materials.

### **III. The applicant failed to demonstrate that it was prepared to meet the needs of students with disabilities.**

A cyber charter applicant must demonstrate that its application meets the requirements of 24 P.S. § 17-1747-A, which includes the requirements of 24 P.S. § 17-1719-A. A cyber charter applicant must also demonstrate that it has the capability, in terms of support and planning, to provide comprehensive learning experiences to all its students, including those with disabilities. A cyber charter school must comply with federal and state requirements applicable to educating students with disabilities. A cyber charter applicant must describe the provision of education and related services to students with disabilities, including evaluation and the development and revision of individualized education programs (IEP).

**(a) *The applicant failed to demonstrate that it has sufficient resources established across the state to meet the needs of students with disabilities.***

A cyber charter applicant must be prepared to accept students who reside anywhere within the Commonwealth and provide all necessary services to those students. A cyber charter applicant is required to demonstrate that it can comply with federal and state special education requirements within the appropriate operation of a cyber charter school. A cyber charter applicant must identify all actual or potential service providers that will or may provide special education or related services to children with disabilities along with the services to be provided, pricing, location, transportation, and qualifications. A cyber charter applicant must demonstrate that a continuum of alternative placements will be available to meet the needs of children with disabilities for special education and related services.

Insight PA projects approximately 20% of its student population to qualify as special education students. Insight PA also projects that 60% of these students could have related service needs, including transportation and other support services. Insight PA budgeted for these expenditures in line item 1200-300 Special Instruction Programs – Purchased Professional and Technical Services for \$497,242 and in line item Additional Family Support and Resources for \$22,073 in the five-year budget.

Although Insight PA included a list of service providers in its application that could provide related services, Insight PA failed to demonstrate sufficient contact with the related service providers to verify that they are available and willing to provide services to its students. More specifically, Insight PA did not include any information regarding the pricing, location, and transportation. In addition, Insight PA failed to demonstrate how such services will be equally accessible to all students in the Commonwealth.

Insight PA did not include sufficient evidence of at least some local capacity to provide services to students whose needs cannot be met in the general education environment. Insight PA provided a Related Services policy that states, “Contracts are secured with private clinics, therapists, hospitals and local districts throughout the state to provide therapy [for Insight PA students.]” Insight PA did not include necessary information concerning these providers, including pricing, location, qualifications and transportation. Insight PA stated it has contacted a service provider for students with disabilities, but does not provide sufficient information to demonstrate adequacy of the provider and services or other necessary information about the provider and services to be provided.

**(b) *The applicant failed to demonstrate that it has reasonable knowledge of the requirements for providing special education programs and services.***

A cyber charter applicant must demonstrate the ability to provide a free appropriate public education (FAPE) by having written policies and procedures or a narrative that reasonably address the implementation of federal and state special education requirements.

Insight PA did not include a narrative or other evidence of policies or procedures in several key areas of special education that would demonstrate a working knowledge of how special

education operates and how Insight PA will implement these requirements within its program, including: Restraint Reporting Requirements; Graduation and Dropout; Discipline, Suspensions, and Expulsions; Parent Training; Surrogate Parent; Data Collection and Reporting for Special Education; Intensive Interagency Approach; Disproportionate Representation; and Transition Services. Although Insight PA's Child Find policy discussed the process and resources that the school will use to identify and evaluate all children with disabilities, it fails to discuss the process and resources the school will use to locate children with disabilities, such as surveys, public education programs, or brochure mailings. Insight PA did not adequately address transition planning and the resources established to address post-secondary education, employment and independent living. For example, Insight PA did not explain how it will implement and monitor student internships and job shadowing or address college visits and career days statewide, and what resources it will dedicate to life skills and independent living transition.

### **VIII. The applicant failed to provide sufficient evidence of an English as a Second Language Program.**

A cyber charter applicant must demonstrate that it has the capability, in terms of support and planning, to provide comprehensive learning experiences to all its students, including those whose dominant language is not English. A cyber charter applicant must also demonstrate that the programs outlined in its application will enable students to meet the academic standards under 22 Pa. Code Chapter 4 or subsequent regulations. An effective English as a Second Language (ESL) Program is required to facilitate a student's achievement of English proficiency and the academic standards under 22 Pa. Code § 4.12. Programs under this section shall include appropriate bilingual-bicultural or ESL instruction. In addition, the Department's Basic Education Circular, *Educating Students with Limited English Proficiency (LEP) and English Language Learners (ELL)*, 22 Pa. Code § 4.26, states that each local education agency (LEA) must have a written Language Instructional Program that addresses key components, including: a process for identification, placement, exit, and post-exit monitoring; instructional model used; curriculum aligned to PA standards; and, administration of annual proficiency and academic assessments.

Insight PA failed to provide sufficient evidence of an ESL Program that is appropriate for the education of ELL students. Insight PA failed to provide a copy of its ESL curriculum to verify alignment to Pennsylvania academic and English language proficiency standards or provide a sufficiently detailed discussion to ensure proper alignment. Insight PA did not identify courses or on-line time for ESL instruction. Insight PA did not discuss the planned instruction that a qualified ESL teacher will use to educate ELL students. Insight PA failed to describe the instructional model that will be implemented to deliver English language acquisition instruction and to demonstrate an understanding that ESL is core instruction delivered through a standards-based curriculum. Insight PA did not discuss planned instruction for English language acquisition classes and demonstrate that instruction will not be delivered during other content classes. Insight PA did not discuss planned instruction for academic content classes and demonstrate that instruction in all content areas will be aligned to academic standards, PA Core Standards, and PA English Language Proficiency Standards. Finally, although Insight PA described a procedure to apply Pennsylvania's required exit criteria in order to exit ELLs from its ESL program, Insight PA did not reference the current criteria.

**IX. The applicant failed to demonstrate a necessary understanding of the applicable academic assessment and accountability programs and of the resources available to schools and students.**

The Department must annually review a cyber charter school's performance on state assessment tests, standardized tests and other performance indicators to ensure compliance with federal and state academic standards. The Department must also annually assess whether a cyber charter school is meeting the goals of its charter and is in compliance with its charter. Accordingly, and pursuant to applicable laws, a cyber charter applicant must demonstrate that its programs will enable students to meet the academic standards under 22 Pa. Code Chapter 4 and that it has the capability, in terms of support and planning, to provide comprehensive learning experiences to all students. A cyber charter applicant must identify the educational goals of the cyber charter school and the methods of assessing whether all students are meeting the educational goals. A cyber charter applicant must include written policies and procedures that reasonably address the types of state assessment tests, standardized tests and other performance indicators that the cyber charter school will use, including those utilized by the Department, and how the cyber charter school will use the data collected from the tests and other indicators to measure students' academic performance and to improve instruction.

The federal Elementary and Secondary Education Act (ESEA) of 1965, as amended by No Child Left Behind (NCLB) of 2001, requires all LEAs to meet federal accountability standards and be assigned a designation that identifies their current status and overall progress in meeting federal accountability standards. NCLB requires all LEAs be designated as making or not making Adequate Yearly Progress (AYP) based upon their students' performance on state assessment exams and be declared in School Improvement or Corrective Action, if applicable. In August 2013, the Department received waivers from certain requirements of NCLB, which includes an allowance to use alternative accountability standards and designations to define achievement (ESEA Flexibility Waiver).

As of the 2013-2014 school year, the Department no longer uses AYP as the federal accountability standard and to determine the designation of LEAs. Instead, in accordance with the ESEA Flexibility Waiver, the Department uses four Annual Measurable Objectives (AMOs) as the federal accountability standard and designates those LEAs that receive Title I funds as Reward – High Achievement, Reward – High Progress, Priority, or Focus schools. The four AMOs include measuring Test Participation Rate, Graduation/Attendance Rate, Closing the Achievement Gap for All Students, and Closing the Achievement Gap for the Historically Underperforming Students. In addition, all LEAs, irrespective of whether the LEA receives Title I funding or is otherwise required to comply with federal accountability standards, will receive a School Performance Profile (SPP) score based on 100 points. This score is considered the school's academic performance score, and while not the criteria for determination of Reward, Priority or Focus status, it details student performance through scoring of multiple measures that define achievement. The SPP also includes supports to permit schools to access materials and resources to improve in defined areas related to achievement.

The Department uses the SPP score and supporting data to ensure uniformity in the review of whether a cyber charter school is meeting the goals of its charter and is in compliance with its

charter and the assessment of a cyber charter school's performance on state assessment tests, standardized tests and other performance indicators. Therefore, a cyber charter applicant must demonstrate a working knowledge of SPP, including its data components and information sheets.

Insight PA acknowledged it will seek Title I funds, if available. Accordingly, Insight PA anticipates it will be subject to federal accountability standards for Title I LEAs. Even if Insight PA does not seek or receive Title I funds, if approved to operate a cyber charter school, Insight PA will receive an SPP score and the Department will annually review Insight PA's performance based on the SPP.

***(a) The applicant failed to demonstrate an understanding of academic assessment and accountability for defined subgroups and content areas.***

A cyber charter applicant must set measurable academic goals and objectives for all its students, including specific goals and objectives for subgroups and content areas defined by federal and state requirements. In addition, a cyber charter applicant must explain strategies and plans to achieve the academic goals for the defined subgroups and contents.

Insight PA only recognized the general accountability requirements, but did not set goals which exceed the minimum benchmark requirements applicable to schools in Pennsylvania. Insight PA did not identify any measurable academic goals for defined subgroups and content areas. Insight PA did not provide an explanation of strategies and plans to achieve the goals that it did identify in its application; and, as a result, Insight PA did not sufficiently demonstrate an understanding of the goals and benchmarks that must be met and how they will be achieved.

***(b) The applicant failed to demonstrate a necessary understanding of school improvement programs and resources.***

The Department provides planning tools that schools are encouraged to utilize to ensure compliance with all federal requirements and to assist schools in efforts to meet or exceed academic achievement goals and benchmarks. An understanding of the ESEA Flexibility Waiver requires that a cyber charter school also demonstrate knowledge and an understanding of the Department's planning tools. A cyber charter applicant must demonstrate how it plans to use SPP to revise and/or adjust its school improvement plans if the school fails to meet the federal accountability measures in a given year and utilize school improvement tools, including the Department's planning tools, to improve academic achievement results.

Insight PA included assurances that it will demonstrate academic growth. Insight PA stated that it will observe Pennsylvania requirements relating to the ESEA Flexibility Waiver, close the achievement gap by 42% over the term of the charter, and have a student participation rate of 95% and a student attendance rate of 90%. Insight PA failed to provide a specific explanation as to how it will meet these goals during the term of its charter on a year-to-year basis. In addition, Insight PA did not explain how it will revise and/or adjust school improvement plans if it fails to meet these goals in a given year. Insight PA failed to demonstrate an understanding that the Department will hold it accountable for these goals.

- (c) *The applicant failed to demonstrate how academic performance and accountability will be a measure of the educational products and services it utilizes.*

Insight PA included several academic achievement goals in its application. As a charter school operating in Pennsylvania, Insight PA will be required to meet or exceed certain academic benchmarks applicable to schools in Pennsylvania. The General Assembly intended that charter schools improve student learning and increase learning opportunities for all students and that charter schools be held accountable for meeting measurable academic standards. Academic achievement is a primary measure used by PDE to determine the success of all public schools, including the cyber charter schools it authorizes. K12 will provide virtually all educational products and services for the cyber charter school, as well as significant staff support critical to the delivery of education to students enrolled in the cyber charter school. K12 will also provide teacher and administrator support services, including professional development. There are no provisions in the Agreement which state that academic achievement will be used as a measure of K12's performance. There are no provisions in the Agreement which authorize Insight PA to terminate the Agreement if Insight PA determines that K12's products and services do not provide the necessary means for students to achieve and maintain academic performance benchmarks and goals applicable to the school's operation. In fact, the Agreement expressly provides, "K12 AND ITS AFFILIATES MAKE NO GUARANTEES AS TO THE RESULTS OR ACHIEVEMENTS OF THE STUDENTS." Although "guarantees" are not expected, a cyber charter school must provide educational opportunities to students that allow them to achieve and maintain academic performance benchmarks and goals and a management agreement for the scope of products and services similar to that set forth by the K12 Services Agreement should include academic achievement measures for the management company.

There are no provisions in the K12 Services Agreement that will permit Insight PA to seek educational products and services from another provider should Insight PA determine that K12's products and services do not provide students and teachers with the educational opportunities needed to meet and exceed academic benchmarks and goals. Indeed, the Agreement grants K12 a first right of refusal on any additional educational products or services deemed appropriate by Insight PA.

**X. The applicant failed to demonstrate necessary financial support and planning.**

A cyber charter applicant must demonstrate that its application meets the requirements of 24 P.S. § 17-1747-A, which includes the requirements of 24 P.S. § 17-1719-A. A cyber charter applicant must demonstrate the capability, in terms of financial support and planning, to provide a comprehensive learning experience for its students.

- (a) *The applicant failed to provide information regarding start-up funding and expenditures that is sufficient, reasonable, and consistent with the rest its application.*

Insight PA provided a start-up budget with its application that indicates K12 providing Insight PA with a \$237,376 loan for \$232,376 of start-up expenditures from April through June 2015.

Insight PA indicated that its start-up expenses during this period include salary and benefits for the CEO and CFO, legal fees, furniture and equipment for the school office, and lease and property expenses. Although each of these expenses should be separated into designated expenditures, the budget document submitted by Insight PA failed to itemize these expenditures. Therefore, the Department is unable to evaluate the sufficiency of the loan to cover the start-up expenditures and the consistency of these expenditures with other budget information.

Insight PA provided a Summary of Key Assumptions with its budget, indicating that advances will be repaid in the first fiscal year from operating surplus. However, the 5 Year Budget document does not show any reduction of the net operating result—line item labeled as Contingency Fund—or any line item identified for repayment of the loan. In addition, the net operating result in FY2016, the first fiscal year, is \$106,294, which is an insufficient amount to repay the loan. The K12 Services Agreement provides for Insight PA to repay loan advances prior to K12 fees, suggesting that Insight PA would end its first year of operation owing K12 fees incurred during the year.

At the same time, line item 2500-300 Support Services – Business, Professional Services is identified as being for a financial guarantee. As presented, the budget assumes that K12 will also guarantee a working capital loan from another entity. A K12 representative confirmed this during the hearing. However, Insight PA did not provide a letter of intent or any other evidence to demonstrate that the process of obtaining a working capital loan has been initiated or that obtaining such would be feasible. Without this information, the Department is unable to conclude that Insight PA has developed reasonable budget projections.

***(b) The applicant failed to provide expenditure estimates that are sufficient, reasonable and consistent with the rest of the application.***

As noted above, Insight PA's application included a 5 Year Budget and a 1 Year Budget. The K12 Services Agreement provides for K12 to staff multiple positions. Fees for the individual positions staffed by K12 employees are not included on the price list included as part of the K12 Price List, but the K12 Price List includes various flat percentage fees, per-student fees, and per-staff fees that provide payment from Insight PA to K12 for the products and services provided by K12 to Insight PA through the K12 employees. The 5 Year Budget and 1 Year Budget include expenditures to represent these fees. In addition to including these amounts, the 1 Year Budget specifically identifies expenditures by Insight PA for salaries for staff identified as "Advisors, Counselors, Attendance/Truancy, and Student Records Admin.," "Special Ed. Admin.," "Student Records Admin.," and other positions that are employees of K12 and paid directly by K12. The K12 Services Agreement provides that Insight PA is responsible for paying salaries for some of these staff, even though employed by K12. The full scope of Insight PA's financial obligations under the Agreement is unclear. Insight PA may be budgeting to pay for staff and services which are to be provided under fees otherwise due to K12 under the K12 Price List. Insight PA has not demonstrated that staffing and fees for management of the school are not redundant.

Amounts paid to a service provider are typically itemized in a budget as "professional services." However, Insight PA's budget includes amounts that are to be paid to K12 in several categories. For example, some amounts are identified as fees for K12, such as line item 2300-300 Support

Services – Administration – Professional Services for \$2.2 million. Other line items include amounts for K12 services or products, such as line item 1100-600 Regular Programs – Supplies for \$3,478,000, which a K12 representative testified refers to instructional materials, curriculum, and curriculum delivery. Other line items include salaries for K12 employees and Insight employees, such as line item 2100 - 100 Support Services – Pupil Personnel, which a K12 representative testified refers to positions such as counselors employed by Insight and Attendance/Truancy Offices employed by K12. Other amounts for K12 items do not have stated prices in the K12 Price List, such as SMIS program integration and network security and monitoring, which are listed in the K12 Price List as a flat fee to be determined annually. The Department supports Insight PA’s efforts to more clearly identify the budgeted expenses expected to be associated with operating the school, including by delineation of individual pricing in the Agreement and expenses in the budget documents; however, Insight PA did not present sufficient evidence to support a conclusion that Insight PA understands the full cost of the Agreement, how the costs are itemized in its budget, and how Insight PA will ensure that amounts paid to K12 are correct.

Insight PA failed to provide a reasonable explanation for the line item identified as Oversight/Sponsor Fee. This line item is \$0 in FY2016, \$320,282 in FY2017, and grows to \$742,502 in FY2020. During the hearing, a K12 representative testified that the budget line corresponds to fees for an innovation fund, which the school will use to improve virtual instruction. However, there is no mention of an innovation fund or its intended purpose throughout Insight PA’s application.

Projected salary amounts are inconsistent. Based on staffing levels indicated in the insurance quote in Insight PA’s application and salaries and bonuses from the 5 Year Budget, average salaries per staff member grow by more than one-third in FY2017, by 9% in FY2018, and then decline by 7% and 5% in FY2019 and FY2020, respectively.

At a minimum, the contradictory and incomplete information in the application, particularly the K12 Services Agreement, K12 price list, 5 Year Budget, and 1 Year Budget prohibits the Department from evaluating the sufficiency of the budget.

***(c) The applicant failed to provide sufficient and reasonable information regarding the budgeted revenues.***

Based on school district revenue in Insight PA’s budget and Insight PA’s enrollment assumptions, Insight PA assumes a \$10,969 per regular education student rate and \$11,539 per special education student rate for FY2016. Weighted averages of amounts, calculated using 2014-2015 per student rates and 2012-2013 enrollment figures by school district, to be used for billing in 2014-2015, excluding the top and bottom three school district rates, are \$9,512 per regular education student and \$20,988 per special education student. Insight PA estimated 15.3% higher for regular education students and 45% less for special education students than the FY2015 statewide weighted average.

*(d) The applicant failed to demonstrate the school's ability to manage and oversee finances appropriately.*

Insight PA's application states that the CEO and CFO will be employed by Insight PA and tasked with daily oversight over all vendors. The K12 Services Agreement provides for the CFO to be responsible for the oversight and control of all school revenues, financial audits, and calculation and payments to K12. The K12 Services Agreement describes the CFO's financial duties that are shared with K12, including joint development and proposal of the annual school budget and the shared ability to propose budget modifications. The K12 Services Agreement also describes K12's financial duties, including the preparation and submission of school finance reports.

The organizational chart included in Insight PA's application shows three K12 employees — Senior Accountant, State Reporting & Federal Program Manager, and Child Accounting Coordinator — reporting to the K12 employee Director of Finance. The Director of Finance reports to the K12 Executive Director and may only consult with the CFO. The Executive Director reports to the Regional Vice President of K12 and may only consult with the CEO. Individuals performing financial management tasks, including budget development, budget monitoring, accounting, processing accounts receivable and accounts payable, overseeing vendors, and supporting financial audits, report to the K12 Director of Finance and not to the CFO. In addition, K12 is responsible for the preparation of the school's financial reports—a key financial management function. Based on this information, the CFO does not have authority or responsibility for the financial operations of the school which are associated with this position. The scope of the CFO's responsibilities are not consistent with the information in the K12 Services Agreement and Insight PA's application.

Although the K12 Services Agreement includes a number of important financial management and accounting functions to be performed by K12, Insight PA's application and the K12 Services Agreement fail to identify minimum qualifications and professional experience required of the K12 staff members who will provide these services. Insight PA has no oversight of K12 employees and virtually no means to evaluate or affect K12's performance under the Agreement, particularly in the area of academic achievement. Insight PA's current board of trustees includes several prominent, knowledgeable and experienced individuals that can assist with the oversight of K12 if sufficient time and resources are devoted to the function. However, to the extent Insight PA would exercise oversight of K12's performance under the Agreement, Insight PA failed to identify minimum qualifications and professional experience that future members of the Insight PA board would be required to possess or time and resources required from the board members in order to adequately oversee K12.

**Conclusion**

Based on the deficiencies identified above, individually, collectively, and in any combination, Insight PA's application is denied.

Insight PA may appeal this decision to the State Charter School Appeal Board (CAB) within 30 days of the date of mailing of the decision. 24 P.S. §§ 17-1745-A(f)(4) and 17-1746-A. If

Insight PA files an appeal with CAB, it shall serve a copy of its appeal on the Department at the following address:

Pennsylvania Department of Education  
Office of Chief Counsel  
333 Market Street, 9<sup>th</sup> Floor  
Harrisburg, PA 17126-0333

Alternatively, Insight PA may exercise a one-time opportunity to revise and resubmit its application to the Department. 24 P.S. § 17-1745-A(g). To allow sufficient time for the Department to review a revised application, a revised application must be received by the Department at least 120 days prior to the original proposed opening date for the cyber charter school. A revised application received after this time period will be returned to the applicant with instructions to submit a new application in accordance with 24 P.S. § 17-1745-A(d). If Insight PA submits a revised application, it shall submit the revised application to the Department at the following address:

Pennsylvania Department of Education  
Charter Schools Office  
333 Market Street, 10<sup>th</sup> Floor  
Harrisburg, PA 17126-0333

A revised application shall contain: (1) the name of the applicant seeking review and identification of the submission as a revised application; (2) the date of mailing the revised application to the Department; (3) reference to the decision sought to be reviewed, including the date the decision was entered; and (4) a response to each deficiency listed in the decision.

  
Pedro A. Rivera  
Acting Secretary of Education

1/29/15  
Date Mailed