COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
333 MARKET STREET
HARRISBURG, PENNSYLVANIA 17126-0333

SECRETARY OF EDUCATION 717-787-5820

January 28, 2013

Mr. Owen K. Dublin
Mercury Online Charter School of PA
503 North 40th Street
First Floor
Philadelphia, PA 19104

SENT VIA CERTIFIED MAIL AND E-MAIL

Dear Mr. Dublin:

Thank you for your interest in opening a cyber charter school in Pennsylvania. After reviewing the Mercury Online Charter School of Pennsylvania 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 Michael Wilson at (717) 214-5708 or mrwilson@pa.gov.

Sincerely,

Ronald J. Tomalis

Ronald J. Tomalis

Enclosure

Pennsylvania Department of Education's Decision

Mercury Online Charter School of Pennsylvania
2012 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. The CSL requires that a cyber charter school applicant submit its application 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.

Mercury Online Charter School of Pennsylvania (Mercury Online) submitted a timely application to establish a cyber charter school. The Department provided 30 days notice of a public hearing held on November 28, 2012.

Decision

Based on a thorough review of the written application as well as questions and responses recorded at the November 28, 2012 public hearing, the Department is denying the application of Mercury Online. Deficiencies were found in the following areas:

- Application Requirements
- Sustainable Support
- Governance
- Finance
- Curriculum
- English as a Second Language
- Professional Development and Teacher Induction
- Special Education
- Technology
- Comprehensive Planning and School Improvement

The application did not comply with applicable requirements.

The CSL authorizes the Department to develop forms necessary to carry out the provisions of the CSL applicable to cyber charter schools. On an annual basis, the Department posts a Cyber Charter School Application document on its publicly accessible website. For applicants seeking to begin school operations during the 2013-2014 school year, the Department posted a 2012 Cyber Charter School Application.

(a) The application lacked clear and accurate information.

In its application, Mercury Online refers to at least four different entities or divisions of entities that would be involved in the operation of the cyber charter school – Mercury Online Charter School of Pennsylvania, Mosaica Education (Mosaica), Mercury Academy and Mercury Education. The names of the entities/divisions are sometimes interchanged. During the public hearing, representatives of Mosacia explained that: Mocaisa is a private for-profit entity that would serve as the applicant's education management organization/charter management organization (EMO); Mercury Academy is a division of Mosaica; and, Mercury Online Charter School of Pennsylvania is the non-profit entity applying for the cyber charter. No information about Mercury Education was provided. Mosacia's representatives also explained the application mistakenly interchanged the names of the entities or divisions and some of the services represented to be provided by one entity or division may in fact be provided by another.

For additional illustrative purposes, the "Certificate of Liability Insurance" included with the application identifies Mosaica Education, Inc. d/b/a Mercury Online Charter School of Pennsylvania as the insured. The private, for-profit EMO of the cyber charter school may not use the cyber charter school's name as a registered business name. Again, this information is in contradiction to other information submitted in the application and provided during the public hearing.

Due to the interchanging use of the names of the entities and divisions in the application, the application lacks the necessary clarity and accuracy to allow the Department to determine which entity or division will be providing specific services and properly review the application.

(b) Evidence of insurability was not submitted.

The CSL requires that a cyber charter school applicant submit a description of how the cyber charter school will provide adequate liability and other appropriate insurance. The "Certificate of Liability Insurance" included with the application identifies Mosaica Education, Inc. d/b/a Mercury Online Charter School of Pennsylvania as the insured. The Certificate is not in the name of the applicant. Accordingly, Mercury Online failed to submit sufficient evidence of insurability. Additionally, the private, for-profit EMO of the cyber charter school may not use the cyber charter school's name as a registered business name.

(c) Proposed partnerships with institutions of higher education, charter schools and other entities were not clearly explained.

In its application, Mercury Online states it is building relationships with institutions of higher education, school districts, charter schools, and educational service providers. However, it does not provide any further explanation about these relationships, what they are or will be, and how it will benefit the students enrolled in Mercury Online.

The applicant did not establish demonstrated, sustainable support for the school plan.

One of the criteria to be used by the Department to evaluate a cyber charter school application is the "demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians and students." 24 P.S. § 17-1745(f)(1)(i). "[S]ustainable support means support sufficient to sustain and maintain the proposed charter school as an on-going entity." *In Re: Ronald H. Brown Charter School,* CAB No. 1999-1, p. 18.

In its application, Mercury Online states it is working with a variety of charter schools and school districts to develop partnerships to generate sustainable support to operate the cyber charter school. No letters of support from these charter schools or school districts were submitted with the application. Additionally, Mercury Online's application did not include any letters of support from other potential community partners. Although Mercury Online submitted form petitions signed by various individuals as evidence of support for the school, the petitions are not dated and no other evidence of support was presented to the Department. In its application, Mercury Online states it is developing support through planned community meetings and an online cyber petition. Mercury Online notes the results of these efforts will be available "next month." Mercury Online also states it will provide letters of support upon request. The Department may only consider the information submitted with the application. Mercury Online failed to demonstrate it has clear support sufficient to establish, sustain, and maintain the proposed charter school as an on-going entity following approval of the charter.

The applicant did not submit sufficient evidence of properly established procedures for governance of the school.

(a) Articles of Incorporation and bylaws.

Mercury Online's bylaws include two "Article I" sections.

Section 2.a. of the second Article I of the bylaws states the number of directors on the Board of Directors shall be between five and seven. In its application, Mercury Online states the Board shall have no less than three members. Mercury Online must clearly and consistently state the requirements of the operation of the Board of Directors.

(b) Evidence of independence of the cyber charter school applicant.

Cyber charter schools are independent public schools that are established and operate under a charter issued by the Department. Based on the documentation submitted with the application and statements made at the public hearing, Mercury Online is a separate non-profit corporation. Mercury Online intends to enter into an agreement for Mosaica Education to serve as the school's EMO. During the public hearing, Mosaica Education's and Mercury Online's representatives identified the proposed facility location for the applicant's administrative offices as a building owned by a Mosaica Education subsidiary. During the public hearing, representatives of Mosaica Education explained that the proposed EMO had an "interest" in the proposed school and "found" the individuals now identified as the members of the Board of

Directors and founders of the proposed school. The documents filed with the Pennsylvania Department of State to form the entity were filed by Mosaica Education, its affiliates or employees. During the public hearing Mercury Online's representatives stated that although the school entity could terminate a contract entered into with Mosaica Education, "as a practical matter," terminating the contract was not likely to occur. Further, Mercury Online failed to demonstrate a connection between the Board members that would evidence a willingness to continue the school's operations if the contract with Mosaica Education were terminated. The management agreement between Mercury Online and Mosaica Education was not submitted and this did not give the Department the opportunity to review evidence of independence of the applicant. Based on the above, Mercury Online failed to demonstrate sufficient independence and sustainability of an independent school without the involvement of Mosaica Education.

(c) Agreements with providers of services were not submitted.

In its application, Mercury Online states it will meet in October to review a draft management contract with Mosaica Education. A finalized management contract was not included with the application. A finalized management contract must be submitted at the time of the application for the Department to determine whether the Board of Trustees remains in ultimate control of the cyber charter school. *School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045 (Pa. Cmwlth. 2001).

Mercury Online also states it will partner with *Desire2Learn* for its Learning Management System. Mercury Online also identified Mercury Education as an entity that will participate in some of the operations of the school. The application did not provide sufficient detail concerning the role these other entities would have in the operations of the school or what services would be provided by the entities. Additionally, agreements with the entities were not submitted in either draft or final form. Without additional information concerning the roles of these entities, the applicant has failed to demonstrate that it will properly operate as an independent public school or that it has the necessary support and planning to provide a comprehensive learning experience to students of the cyber charter school.

(d) Direction of teachers by the cyber charter school.

In the application, Mercury Online states that Mercury Academy's teachers will deliver direct instruction in each lesson. At the hearing, Mosaica's representatives admitted that names of several entities and divisions were incorrectly used interchangeably in the application, resulting in confusion about who would be responsible for the delivery of certain services. Thus, although some information was provided about the teachers to be used at Mercury Online, the information was incorrect or unclear and Mercury Online did not provide a copy of any written agreement between the applicant and any other service providers to demonstrate Mercury Online's authority over teachers. Without a written agreement to review, the Department cannot make proper determinations about whether such an agreement would be in compliance with applicable law. The applicant also did not demonstrate sufficient authority concerning its teachers to demonstrate independence.

The applicant failed to demonstrate the necessary financial support and planning.

(a) The applicant failed to demonstrate the necessary understanding of cyber charter school funding provisions.

In its proposed budget, Mercury Online includes no revenues from local sources and includes significant revenues from state sources. Pursuant to 24 P.S. § 17-1725-A(a), a charter school is paid by the student's resident district. Only if the student's resident district fails to make a required payment can the charter school seek payment from the Department from payments made to the district. Mercury Online failed to present evidence that it was aware of the requirements for charter school financing and that it had plans in place to properly seek payment from school districts.

(b) The applicant did not submit sufficient evidence of preliminary or start-up funding.

Mercury Online's application and proposed budget include revenues only from state and federal sources. Mercury Online failed to include any information in its application relating to loans or grants that would be utilized to establish the cyber charter school and operate the school pending the receipt of sufficient student tuition revenues. The application does not contain evidence that the school will have start-up capital to fund operations prior to the receipt of other revenue. Mercury Online failed to demonstrate that it has clear support sufficient to establish, sustain and maintain the proposed charter school as an on-going entity following approval of the charter. The school must submit a plan to fund operations during the start-up period.

(c) The applicant failed to submit sufficient evidence of leasing arrangements for the physical school facility.

Mercury Online provided the name of the limited liability company that owns the facility where the applicant intends to locate its operations but did not provide an address, as required. During the public hearing, representatives of Mosaica Education and Mercury Online identified a location in Harrisburg, Pennsylvania, as the proposed site for the cyber charter school's administrative offices. This property was identified as being owned by a subsidiary of Mosaica Education. A letter of intent or other document for a lease of the property was not included with the application. Although Mercury Online does not have to provide a lease at this time, it must provide, at a minimum, a letter of intent or other documentation from the owner of the building that there have been discussions about the availability of this facility for use by Mercury Online and supporting Mercury On line's statement that it is being provided in "turn-key" condition that will not require any renovation by Mercury Online.

(d) Financial planning for employee costs was insufficient.

The CSL provides that all cyber charter school employees shall be enrolled in the Pennsylvania School Employee Retirement System (PSERS), unless at the time of application the applicant has another retirement program for the employees or the individual employee is enrolled in

another retirement program. The CSL also requires that a cyber charter school provide its employees with the same health benefits as an employee of the local school district. Mercury Online's application does not appear to account for the projected increases in employer contribution rates for the Pennsylvania School Employee Retirement System (PSERS), and it is unclear whether the school has sufficiently budgeted for benefits costs in the first year. In all five years shown in the budget, benefit costs (including health insurance contributions, Federal Insurance Contributions Act (FICA) tax, and PSERS contributions) equal exactly 28% of salary costs. The PSERS contribution rate for 2013-14 was recently certified at 16.93%, and is projected to increase to more than 26% by 2016-17. Additionally, the 28% of salary projection does not adequately account for other taxes and benefits which must be paid by the charter school.

(e) Adequate financial planning was not demonstrated.

As a cyber charter school, Mercury Online will be expected to enroll students from any school district in Pennsylvania. The applicant estimated revenue using per-pupil rates from just three specific districts – Harrisburg, Pittsburgh, and Philadelphia. Given that the school would be open to students of any district in the Commonwealth, the applicant must explain how the resulting revenues are consistent with an expected weighted average rate.

Mercury Online seeks to begin the 2013-2014 school year offering all (K-12) grade levels). In its application, Mercury Online projected enrollment of 15 students in each grade level. By building a budget assuming 15 students per class in each grade K-12, the applicant appears to be limited in its ability to reduce its teacher complement (and associated costs) if enrollments are lower than projected in certain grades. The enrollment projections and staffing allocations used to develop the budget assume an even distribution of students in all grades K-12 in each year of operation. Failure to meet enrollment targets will lead to lower than expected student/teacher ratios required to teach certain grades and subjects. During the public hearing, Mercury Online's representative indicated that separate teachers will be hired for K-8 and high school grades, and that the high school teachers are "course based." Mercury Online failed to explain how it will adjust the number of teachers to offset the associated reduction in revenue while still providing instruction in all subject areas.

The applicant failed to provide proof of curriculum and assessment alignment that meets requirements of 22 Pa. Code Chapter 4.

Mercury Online did not include detailed curriculum maps delineating courses to be offered and how it meets the requirements of 22 Pa. Code Chapter 4. Mercury Online did not articulate how planned instruction aligned with academic standards shall be provided at all grade levels in the areas of assessment and resources.

Mercury Online plans to offer instruction for all (K-12) grade levels. The applicant did not provide sample lessons or assessments aligned to the course work being offered. Mercury Online could not verify that any of the courses were aligned to PA Academic Standards or the PA Common Core Standards.

Mercury Online did not provide any curriculum for Advanced Placement courses or Health and Physical Education. A review of the application materials failed to reveal any evidence of electives for Vocational-Technical education and the Arts.

The applicant failed to provide sufficient evidence of an English as a Second Language (ESL) Program.

22 Pa. Code § 4.26 requires that a cyber charter school "provide a program for each student whose dominant language is not English for the purpose of facilitating the student's achievement of English proficiency and the academic standards under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction." The 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. Cyber charter schools are subject to 22 Pa. Code Chapter 4 and the Department's related requirements for ESL programs.

Mercury Online's application failed to provide an ESL curriculum aligned to Pennsylvania English Language Proficiency Standards and academic standards and did not account for the number of courses offered.

The applicant failed to provide evidence of sufficiently developed professional education and teacher induction plans.

A cyber charter school applicant must provide a detailed Professional Education Plan that designates, or provides for the designation of, a professional education planning committee consisting of parents, administration representation, teachers and educational specialists designated by their peers, community representation and local business representation. Mercury Online's professional education plan was limited to a description of how the applicant proposes to recruit and select teachers. Mercury Online's representatives also admitted they were not familiar with the Act 48 Professional Education Plan guidelines.

The professional education and teacher induction information in Mercury Online's application did not address goals and competencies, an assessment process, or the Code of Professional Practice and Conduct as stated in 22 Pa. Code Chapter 235. The plan did not provide an explanation of how the teacher induction program will be monitored and evaluated along with how records relating to program participation and completion will be maintained. Mercury Online's representatives stated they were only generally familiar, but not specifically familiar, with the Department's teacher effectiveness tool.

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

(a) The applicant failed to demonstrate it has a continuum of placement options available to meet the needs of students with disabilities.

Mercury Online failed to demonstrate that it has a plan and design to meet the requirements of 34 CFR § 300.115(a) and (b)(1) and (2), requiring a continuum of placement options available to meet the needs of students with various disabilities or that it has developed capacity to provide services to a cross section of students with disabilities. Mercury Online acknowledged its duty to provide the services and stated that its actual student enrollment would dictate what services were needed (who, what, where, when, how, etc.) and thus this would become a part of their planning, and the profiles of student enrollment would drive the design of the program. The lack of an adequate description of a program design failed to demonstrate that Mercury Online was prepared to meet applicable requirements. Mercury Online also failed to demonstrate that its program has the local capacity to service students with a variety of disabilities.

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

As a statewide cyber charter school, Mercury Online would be required to accept students who reside anywhere within Pennsylvania. Mercury Online failed to demonstrate that it has sufficient resources established across the state to meet the needs of students with disabilities including special education service provision, transition planning for post-secondary education, employment, independent living, and transportation as a related service. Mercury Online did not provide evidence that it contacted a state-wide sampling of service providers and other resources to verify they are available and willing to provide services to Mercury Online's students. Additionally, the application does not address transition planning and the resources that Mercury Online has established to address post-secondary education, employment and independent living, including, for example: how student internships and job shadowing are to be implemented and monitored, how college visits and career days are to be addressed statewide, and resources that have been dedicated to life skills and independent living transition objectives. The application also fails to identify a plan that Mercury Online has in place to ensure that transportation vendors or other resources are established who can provide transportation as a related service to students with disabilities when required as a part of the student's IEP.

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

Mercury Online failed to submit any policies or procedures in key required areas of special education which could demonstrate that it has a working knowledge how special education operates and how it will implement these requirements within its program. Mercury Online failed to demonstrate that it has prepared a program and plan which meets both the federal and state requirements for the implementation of the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA). Key areas not addressed include: Child Find, Assistive Technology, the IEP Process, Parent and Teacher Training Opportunities related to special

education topics, Least Restrictive Environment, Positive Behavior Support (including the use of restraints), Independent Education Evaluation at Public Expense, Confidentiality, Extended School Year, Dispute Resolution, Intensive Interagency, Graduation and Dropout Prevention, Suspension and Expulsions of Students with Disabilities, Disproportionate Representation of Minorities, Public School Enrollment, and Surrogate Parents.

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

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

The CSL requires that a cyber charter school provide or reimburse for all technology and services necessary for the on-line delivery of curriculum and instruction. In its application, Mercury Online states that it will provide internet access for qualifying students. No further explanation of this statement was found in the application. Mercury Online failed to submit sufficient information to ensure compliance with the CSL's requirements concerning internet reimbursement.

(b) The applicant failed to address the parent/student interview process for online learning

During the public hearing, Mercury Online's representatives indicated an interview process is in place to determine the readiness of a parent/student for online education. This process includes the use of various assessments to determine readiness. In addition, an onboarding process is in place to prepare students and parents for an online education experience and the use/troubleshooting of the equipment provided. However, Mercury Online's application provided limited information on the interview and onboarding processes to demonstrate compliance with applicable requirements and that the applicant is prepared to ensure proper enrollment of students in the school.

(c) Equipment provided or used must give equitable access to instruction and filtering to all students.

Mercury Online's application includes minimum specifications, specifications for netbooks, and specifications for a Compaq 515 notebook. During the public hearing, Mercury Online's representatives gave conflicting information and states netbooks would be provided to students. It is important for all students to have equipment that provides an equitable instructional experience. For example, the performance of video will be very different from a computer that is at a 1.5 GHz Pentium 4 versus a netbook versus the Compaq 515 that is mentioned. Mercury Online's representatives agreed that netbooks may have certain limitations (due to screen size and processing power) when utilizing the resources Mercury Online will be providing to students. The specifications for the actual equipment to be provided to students was not provided and Mercury Online did not demonstrate that it has evaluated the equipment to ensure

its ability to effectively deploy all the synchronous and asynchronous resources that the school plans to provide to all students.

(d) Sufficient planning for internet and other computer filtering was not demonstrated.

Specifications were not provided as to the internet filtering software that will be used, as well as how it will be maintained and updated on all student machines. Also Mercury Online failed to explain how it will address the need to install and maintain filtering software on non-school provided equipment.

(e) The applicant failed to provide sufficient information concerning the technical support to be provided to students and their parents or guardians.

During the hearing Mercury Online representatives indicated that parents would have the option to provide their own equipment. It was indicated that minimum standards will be provided, but it would be difficult to provide technical support for equipment not provided by the school. Details were not provided for the technical support provided for both school provided and non-school provided equipment.

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

Broadband connectivity is essential for every student to have the same level and quality of access to all instructional materials and collaboration tools within a cyber charter school environment. Some students in the state may live in areas not serviced with broadband to the home. Regardless of the connectivity available, no student's cyber school education should be limited based on where they live. Mercury Online's application states that dialup (56k modem) is a minimum, while a high-speed connection is preferred (DSL, cable, etc.). Also the application specifically states that Mercury Online "will provide a stipend for high speed Internet for families who cannot afford it and will work with families with inadequate Internet speed to trouble shoot a solution." During the public hearing Mercury Online representatives reiterated that high speed is preferable, but dial-up is still an option.

Mercury Online's representatives also indicated that options such as satellite connections and air cards are options for students to have high speed access. Formalized policies and procedures were established as to the specific broadband requirements for students, including the options that will be explored to get high speed access to students who may currently only have dial-up to the home. In addition, details were not provided as to how to serve those students where it is not possible to provide alternate high speed options to ensure that an equitable, timely education experience is provided for all. Finally clarity was not provided as to whether or not the school will cover the costs of all options of providing high speed access to students.

The applicant failed to demonstrate a necessary understanding of the Department's Comprehensive Planning web application and all of the associated school improvement planning tools.

Mercury Online failed to demonstrate an in-depth understanding of the Department's Comprehensive Planning web application and all of the associated school improvement planning tools made available to all schools in the Commonwealth. Mercury Online's application does not indicate knowledge of the planning process the Department offers and fails to commit to actual goals required of the No Child Left Behind Act (NCLB). Mercury Online' application evidences a lack of knowledge of the school improvement planning tools and information in the application demonstrates confusion regarding the use of "school improvement plan."

Mercury Online failed to demonstrate understanding of the ongoing dialogue the Department has with the U.S. Department of Education via the "Accountability Workbook," which is updated at least yearly and contains critical information affecting all Commonwealth public schools.

Mercury Online failed to provide a viable alternative to the Department's planning process to ensure compliance with all federal and state, district and school level planning requirements. Mercury Online's application mentions a Personalized Student Achievement Plan (PSAP), but does not elaborate on how the plan meets all the requirements and no other mention of the Comprehensive Planning web application is made.

Mercury Online did not demonstrate an understanding of specific achievement needs of students likely to enroll. Mercury Online's application states the goal to meet the NCLB targets the second year of operation. NCLB requirements would apply to the first year of operation. In some cases, meeting these thresholds would require the school to ensure that students achieve multiple year gains in a single school year.

Mercury Online provided no detailed plan to provide the estimated minimum number of testing sites for students from outlying areas.

Conclusion

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

Mercury Online 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. In the alternative, Mercury Online 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 the revised application, the revised application must be received by the Department at least 120 days prior to the originally 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).

Ronald Tomalis

Ronald J. Tomalis, Secretary of Education

1/28/13

Date