



May 21, 2012

Thomas O. Fitzpatrick
Mercury Online Charter School of Pennsylvania of Pennsylvania

DELIVERED VIA EMAIL

Dear Mr. Fitzpatrick,

Thank you for submitting your responses to the deficiencies noted in your application issued on January 30, 2012 by the Pennsylvania Department of Education.

After reviewing the Mercury Online Cyber Charter School of Pennsylvania revised application, it is the decision of the Pennsylvania Department of Education to deny your application.

Upon review it was found that the majority of the deficiencies outlined in the initial denied application were not addressed in the resubmitted application. The still existing deficiencies are detailed in the enclosure.

If you are still interested in opening a cyber charter school, you may appeal this decision to the Charter Appeals Board. Should you choose to appeal the decision of the Department to the Charter Appeals Board, please review the enclosed document entitled Cyber Charter Appeal Process.

If you have any questions, please contact Marlene Kanuck at (717) 783-9294 or at mkanuck@pa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolyn C. Dumaresq", written over a horizontal line.

Carolyn C. Dumaresq, Ed. D.
Deputy Secretary

Enclosure

**The Proposed Mercury Online Charter School of Pennsylvania (Mercury)
2011 Cyber Charter School Application**

Background

Amendments to the Charter School Law (“CSL”), 24 P.S. §§17-1701-A – 17-1751-A, that became effective July 1, 2002, include new Subchapter (c), which sets forth new provisions for the establishment and oversight of cyber charter schools. *See*, Act of June 29, 2002, No. 88, §14, adding 24 P.S. §§17-1741-A to 17-1751-A (“Act 88”). Pursuant to Act 88, the Department of Education (the “Department”) has the authority and responsibility to receive, review and act on applications for the creation of a cyber-charter school.

On October 3, 2011, the proposed Mercury Online Cyber Charter School of Pennsylvania submitted an application to operate as a cyber-charter school. The Department provided 30 days of notice with respect to a public hearing that was held on November 29, 2011. At the hearing, Mercury presented the Department with information about its application. Department personnel reviewed the application and posed questions to Mercury representatives.

On January 30, 2012, the Department denied Mercury’s application due to deficiencies. Pursuant to Charter School Law, the application had the opportunity to be revised and resubmitted to the Department. Mercury submitted a revised application on April 4, 2012. The Department had 60 days after receipt to grant or deny the revised application.

Detailed Decision of the Pennsylvania Department of Education

Based on a thorough review of the resubmitted application, the Department has concluded that the majority of deficiencies noted in the initial application were not addressed in the resubmission. Therefore, the Pennsylvania Department of Education is denying the application of **Mercury**.

Curriculum Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Curriculum Requirements:

- There is no evidence, in any subject areas, of a complete curriculum framework which clearly describes content. Curriculum maps delineating courses offered and how they meet requirements of 22 Pa. Code Ch4. (relating to academic Standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch.4 are not present.
- Mercury does not articulate how planned instruction, aligning with academic standards, shall be provided at all grade levels.

ESL Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in ESL Requirements:

- Mercury's initial application provided no evidence of English language acquisition curriculum aligned to PA ELPS and PA academic standards to facilitate students' achievement of English proficiency.
- Mercury's resubmitted application only references an ESL curriculum as "custom-designed content" but does not include a curriculum framework with aligned standards, scope or sequence, or sample lesson plans which provide evidence of a standards-based curriculum designed to increase English proficiency and support academic achievement.

Financial Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Financial Requirements:

- Mercury's resubmitted application contains inconsistencies regarding proceeds and debt service.
- During the hearing, representatives stated that the school did not intend to borrow funds. In Mercury's resubmission (Financial Section, page 1), "extended term financing," revenue and debt service costs were removed. However, both are still shown in the revised budget and five year plan. The seventh page of "Attachment B – Revised Budget; Five Year Budget" shows \$177,670 in "Proceeds from Extended Term Financing" in

FY13, which grows to \$311,497 by FY17. The eighth page shows \$51,524 in debt service expenditures in FY13, growing to \$277,658 by FY17.

Professional Development Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Professional Development Requirements:

- Mercury's resubmitted application includes its Individualized Professional Development Plan (IPDP) instead of a detailed Act 48 Professional Education Plan. The IPDP cannot be used as a school-wide professional development plan.
- A detailed Professional Education Plan (PEP) must be included in a cyber charter school application. The PEP must designate, or provide 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. The plan and subsequent information must explain how the school will assess the professional education needs and necessary professional education activities that will be provided in the interim startup phase of operation and/or the first three years of the school's operation. In order to meet the professional development action plan, the school's activities must comply with content area, teaching practices, and meeting the needs of diverse learners. The plan must also explain how the school's professional education program will be evaluated to determine its effectiveness, allowing for adjustments and changes to be made.
- The need for a Professional Education Plan, as described above, was also described in the initial decision denying Mercury's application. Mercury failed to provide the required PEP.

Technology Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Technology Requirements:

- Mercury's resubmitted application states, "If the speed is lower than our required minimum and the family cannot afford to upgrade, Mercury will provide a stipend for high speed internet." This may work in cases where broadband access is readily available but it does not address students living in areas of the state where broadband may not be readily available. Mercury's resubmitted application does not address these situations to ensure equitable access for all students enrolled in the school.

- Mercury’s resubmitted application lists equipment options including Netbooks. While Netbooks may have the capability to run various applications for a cyber education program, they are not recommended due to small screen size and the inability of the Intel Atom chip to handle multiple, bandwidth-intensive applications simultaneously. Because discrepancies between Netbooks and laptops and/or desktop computers exist; access to equitable equipment for all students will not exist.
- Mercury’s resubmitted application states that “Attachment E” contains the Internet Safety and Acceptable Use Policy. However, the attachment was not provided in the resubmitted application.

Articles of Incorporation Requirements

Mercury’s resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Articles of Incorporation Requirements:

- In its initial application, Mercury provided a draft copy of its Articles of Incorporation. However, the form was incomplete and had not been filed with the Pennsylvania Department of State. In addition, the name of the entity on the draft Articles differed from the name on the Bylaws, which also differed from the name on the application. Mercury was informed that the Department needed a copy of the Articles that had been filed with the Pennsylvania Department of State, and that the correct name of the charter school had to be provided and used on all documents. In its resubmitted application, Mercury did not provide a completed and filed copy of the Articles of Incorporation.
- The one page document Mercury provided was not the complete document used to file Articles of Incorporation and was not filed with the Department of State.
- Mercury stated that, “A d.b.a. has been filed to align the ‘Mercury Charter School of Pennsylvania’ name listed on the Articles of Incorporation with the ‘Mercury Online Charter School of Pennsylvania’ listed on the charter application.” However, Mercury further stated that it would provide a copy of the executed d.b.a. when it received the final paperwork. The Department does not find this to be an acceptable response as Mercury had sufficient opportunity to correct the deficiency noted in its initial application. In its decision, the Department clearly stated that Mercury needed to “provide a copy of the Articles of Incorporation that had been filed with the Pennsylvania Department of State so that the Department can verify that the entity is an independent nonprofit corporation.” Although Mercury now states that a d.b.a. has been filed, no

documentation has been provided to the Department to prove such a statement, despite the Department's requests with ample time allotted for resubmission.

- Mercury's inability to provide the required documentation to show that the charter school is an independent nonprofit corporation raises serious concerns with the Department about Mercury's ability and/or willingness to comply with necessary laws, rules, regulations and procedures associated with the operation of a cyber charter school.

Management Agreements Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Management Agreements Requirements:

- In its decision after reviewing the original application, the Department noted that Mercury's response, "Not applicable at this time," to the Department's request for copies of any management agreements made it seem clear that Mercury intended to use a management company for the proposed cyber charter school. Thus, in compliance with relevant case law, the Department told Mercury that it must provide the Department with a finalized management agreement so the Department could determine whether the Board of Trustees would retain ultimate control of the cyber charter school.
- Mercury failed to comply with the above requirement in its resubmission and, instead, provided an unsigned draft management agreement with Mosaica Education. In addition to the fact the management agreement is not a finalized agreement, as is required; there are errors in the agreement where inaccurate references to particular articles within the agreement are made. Because Mercury did not provide a signed, finalized management agreement, the Department cannot determine, as it must, whether the Board of Trustees would retain ultimate control of the cyber charter school.

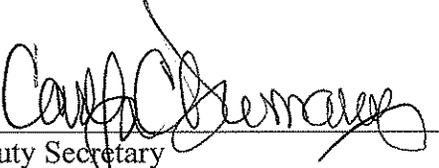
Insurability Requirements

Mercury's resubmitted application still does not satisfy specific deficiencies noted in the original application. The following are the remaining deficiencies in Insurability Requirements:

- Mercury was informed, in the Department's decision, that it must provide evidence of insurability in areas such as health and general liability, school operation, Directors' and Officers' liability coverage, etc. Mercury indicated it had obtained preliminary approval for insurance in these areas. In its resubmitted application, Mercury provides a Certificate of Liability Insurance with the insured identified as Mosaica Education, Inc., which is the proposed management company and not the proposed cyber charter school.

- As previously explained, the insurance coverage must be for the proposed cyber charter school, which must be an independent nonprofit corporation. Thus, Mercury failed to correct another noted deficiency, identified by the Department in its prior decision, in its resubmission.

Therefore, for reasons stated above, the cyber charter school application for Mercury Online Cyber Charter School of Pennsylvania is denied.



Deputy Secretary
Office of Elementary & Secondary Education

5/21/12

Date