COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

January 21, 2016

Mr. David Taylor
3715 Roundtop Road
Elizabethtown, PA 17022

SENT VIA CERTIFIED MAIL AND E-MAIL

Dear Mr. Taylor:

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

In addition, the Department received notice from Advance's counsel that the Pennsylvania Department of State (State) had inadvertently processed and approved the Articles of Incorporation for Advance even though the name had previously been reserved by another person. Therefore, State advised that Advance could file new Articles of Incorporation with a different name and State would accept the change retroactive to the original filing date. Therefore, on December 23, 2015, new Articles of Incorporation were filed changing the name of the non-profit corporation to Reach Cyber Charter School.

Since this was an error made by State, PDE will accept that the name of the non-profit corporation is Reach Cyber Charter School rather than Advance Cyber Charter School. If you revise and resubmit your application to address the deficiencies identified in the attached decision, please ensure that you change the name of the school on the revised and resubmitted application.

If you have any questions, please contact Steve Carney at (717) 214-5708 or stevcarney@pa.gov.

Sincerely,

Pedro A. Rivera

Enclosure

Advance Cyber Charter School
2015 Cyber Charter School Application

Background

Pursuant to the Charter School Law (CSL), 24 P.S. §§ 17-1701-A *et seq.*, 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. 24 P.S. § 17-1741-A(a)(1). 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. 24 P.S. § 17-1745-A(d). 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. 24 P.S. § 17-1745-A(e).

The Advance Cyber Charter School (Advance) submitted an application to establish a cyber charter school (Application) on September 23, 2015. The Department provided 30 days' notice of a public hearing, which was held on November 2, 2015 (November 2 Hearing).

Decision

Based on a thorough review of the written Application,[1] as well as questions and responses recorded at the November 2 Hearing, the Department denies Advance's Application. Deficiencies in the Application were identified in the following areas:

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[1] At the November 2 Hearing, a Department staff member noted that he heard about the experience of Connections Education operating for over ten years in Pennsylvania, and therefore, asked Advance how it differed from an existing cyber charter school, Commonwealth Connections Academy Cyber Charter School (CCA), that uses Connections Education curriculum and has a STEM program. Although reference was made to CCA's renewal application, the staff member was not asking that Advance review and address the renewal application, but simply asked for Advance to explain how it was different from CCA. In response, Advance noted differences between the schools. In fact, an Advance Board member commented about the differences based on her involvement with CCA for 11 or 12 years.

After the November 2 Hearing, by letter dated November 23, 2015, Advance submitted a written explanation of the differences between Advance and CCA. In addition, with its November 23, 2015 letter, Advance submitted a 26-page document entitled "Responses to Questions Posed at the Board Hearing." Advance stated that it submitted this document because two of its Board members were unable to attend the November 2 Hearing due to unforeseen circumstances. Finally, Advance also submitted a copy of a fee schedule that had not been submitted with the Application.

The Department has a limited time in which to review a cyber charter school application, hold a public hearing, and issue a written decision granting or denying the application. 24 P.S. § 17-1745-A(e). In addition, the CSL provides the applicant with the right to "revise and resubmit" a denied application, and the Department must grant or deny the revised application within 60 days after its receipt. 24 P.S. § 17-1745-A(g).

The CSL does not require the Department to accept additional documents from an applicant that were not submitted as part of the application. As such, the Department has consistently advised that it will not accept any documents submitted to the Department that were not submitted with the application.

Because Advance submitted additional documents after it submitted its Application, the Department has not considered the additional documents in issuing this decision to deny Advance's Application. However, as noted

- Application Requirements
- Governance
- Technology
- Curriculum
- English as a Second Language
- Finance
- Physical Facilities
- Dual Enrollment

I. The applicant failed to comply with application requirements.

(a) The applicant failed to provide sufficient information concerning the curriculum to be offered and how it meets the requirements of 22 Pa. Code Chapter 4.

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 it has the capability, in terms of support and planning, to provide comprehensive learning experiences to all its students. 24 P.S. § 17-1745-A(f)(1)(ii). A cyber charter applicant must demonstrate that the programs outlined in the application will enable students to meet the academic standards under 22 Pa. Code Chapter 4. 24 P.S. § 17-1745-A(f)(1)(iii). A cyber charter applicant is required to include with its application the curriculum to be offered and how it meets the requirements of 22 Pa. Code Chapter 4. 24 P.S. § 17-1747-A(1).

Advance provided a detailed description of its educational program and a list of courses that the school will offer its students in all grade levels. However, Advance failed to provide a copy of its curriculum and failed to discuss planned instruction, including course objectives, course materials and activities, and estimated instructional time. Advance failed to provide evidence of curriculum mapping to demonstrate that planned instruction for each course offering is aligned to: (1) learning objectives and outcomes; (2) eligible content and assessment anchors that will be measured on the Pennsylvania state assessments; and (3) Pennsylvania academic standards. Without a copy of the curriculum, including the information noted above, the Department cannot assess the adequacy of the curriculum and whether it aligns to Pennsylvania academic standards.

Additionally, a charter is a license for the operation of a cyber charter school and the application submitted to obtain a charter becomes part of the charter. The curriculum is an essential component of a cyber charter school, and therefore, the curriculum Advance intends to use must be included with the Application so that it becomes part of the charter.

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above, Advance may include the additional documents in a resubmission to the Department under section 1745-A(g) of the CSL, 24 P.S. § 17-1745-A(g).

(b) The applicant failed to provide sufficient information concerning the ownership of all facilities and offices of its proposed school and any lease arrangements.

A cyber charter applicant must provide the addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements. 24 P.S. § 17-1747-A(16). An executed lease is not required, but information about proposed facilities, such as letters of intent, documentation concerning the ownership of potential properties, or any proposed lease arrangements associated with proposed properties is required.

Advance indicated on its Cyber Charter School Application Fact Sheet that it has a proposed administrative location at Governor's Plaza North, 2101 Front Street, Harrisburg, PA. Although Advance attached a Letter of Intent to its Application as Appendix R, the letter does not identify the owner of the property, which is a requirement of the CSL. The letter contains a signature of the alleged landlord, but because the signature is not identifiable, it does not provide ownership information. Advance must provide ownership information for the proposed administrative location.

(c) The applicant failed to demonstrate evidence of insurability.

A cyber charter applicant is required to submit a description of how it will provide adequate liability and other appropriate insurance for the proposed school, its employees and the board of trustees. 24 P.S. §§ 17-1719-A(17) and 17-1749-A(a)(1). Evidence of insurability must be submitted with the application.

Advance attached Certificates of Liability and Workers Compensation Insurance to its Application. Both certificates list only Connections Education LLC as an insured. Advance must be listed as an insured on the policy. In addition, Advance did not provide how it would obtain other appropriate insurance for employees and the Board of Trustees, such as Directors and Officers liability insurance. Although, as noted in section V.(c) below, Advance budgeted $1,500 for Directors and Officers insurance, it did not provide a declaration sheet or other evidence to support this cost and demonstrate that it could obtain such insurance. Advance must provide evidence of adequate liability and other appropriate insurance for Advance.

(d) The applicant failed to provide appropriate information concerning the applicant's retirement system.

Charter school employees shall be enrolled in the Public School Employees' Retirement System (PSERS) unless the board of trustees of the charter school has a retirement program that covers the employees or the employee is currently enrolled in another retirement program at the time of the charter school application. 24 P.S. §§ 17-1724-A(c) and 17-1749-A(a)(1).

Advance included inconsistent information in its Application related to the school's retirement system. Advance stated on its Cyber Charter School Application Fact Sheet that it had an existing retirement system. In another part of its Application, Advance explained that it "budgeted retirement/pension/tax expenses to match the current PSERS employer contribution

rates, although an alternative lower-cost retirement option may be pursued." During the November 2 Hearing, Advance testified that it expects PSERS to be the actual retirement system. Advance must indicate consistently and clearly whether its employees will be enrolled in PSERS or another retirement program. If employees are to be enrolled in a retirement program other than PSERS, such program must be identified.

(e) The applicant failed to provide consistent information regarding the admission ages for kindergarten students and beginners.

On the Cyber Charter School Application Fact Sheet, Advance provided that the admission age for both kindergarten students and beginners would be 5 years of age. The admission age for beginners and kindergarten students should not be the same. In addition, Advance provides inconsistent information about the ages of admission. In the narrative portion of the Application, Advance stated that the kindergarten admission age would be determined by the student's resident school district, and that the admission age for beginners would be 6 years of age on or before September 1. Advance must correct this inconsistent information about ages of admission for beginners and kindergarten students.

(f) The applicant inappropriately conditioned enrollment on the receipt of documents that it cannot require students to provide.

Using the Department's Enrollment of Students Basic Education Circular (BEC), Advance accurately identified the five documents that must be provided before a student can enroll in Advance, unless the student is homeless. However, Advance then stated that certain additional documents would be required as a condition of enrollment, and that only after receipt of these documents would the student "be considered eligible for enrollment."

Once a student provides the five documents identified in the BEC as documents that are required for enrollment, the student must be considered enrolled in Advance. Advance may then request other information from students but cannot condition enrollment on receipt of that information. Therefore, Advance must clarify that when a student provides the five required documents, the student is enrolled in Advance, rather than "considered eligible for enrollment."

II. 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 as a nonprofit entity with an established and effective board of trustees. 24 P.S. § 17-1745-A(f)(1)(ii). 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) The applicant failed to provide appropriate information for a cyber charter school in its articles of incorporation.

A cyber charter school must be nonsectarian in all operations. 24 P.S. § 17-1715-A(4). The Articles of Incorporation (Articles) attached to Advance's Application as Appendix M state that Advance is organized under section 501(c)(3) of the Internal Revenue Code to operate for charitable, religious, education, and/or scientific purposes. When a cyber charter applicant files its Articles, it cannot include "religious" as one of the purposes for which the entity is organized. Therefore, Advance must amend its Articles and remove the word "religious" therefrom.

In addition, Advance indicates in its Articles that "in the event of dissolution, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the cyber charter school, distribute all of the assets of the cyber charter school exclusively to one or more organizations having purposes substantially similar to those of the cyber charter school." However, the CSL provides that upon dissolution of a cyber charter school, "[a]ny remaining assets of the cyber charter school shall be given over to the intermediate unit in which the cyber charter school's administrative office is located for distribution to the school districts in which the students enrolled in the cyber charter school reside at the time of dissolution." 24 P.S. § 17-1741-A(a)(3). Therefore, Advance must correct this dissolution provision in its Articles.

(b) The applicant failed to provide sufficient evidence that it would operate as an independent public school and failed to demonstrate that it has proper authority over the operations of the school.

A cyber charter school is an independent public school established and operated under a charter issued by the Department. 24 P.S. § 17-1703-A. A cyber charter school must be organized as an independent, nonprofit corporation. *Id.* The board of trustees of a cyber charter school shall have authority to decide matters related to the operation of the school. 24 P.S. §§ 17-1716-A(a) and 17-1749-A(a)(1). 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. 24 P.S. §§ 17-1724-A(a) and 17-1749-A(a)(1). 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. 24 P.S. §§ 17-1716-A(a) and 17-1749-A(a)(1).

The CSL does not prohibit a cyber charter school from contracting out certain management and administrative responsibilities to for-profit entities. The cyber charter school's board of trustees, however, must have real and substantial authority over educational decisions, the operations of the school, and staff, including teachers. Therefore, a detailed review of the relationship between a cyber charter school and an entity providing management or other operational or educational services to the cyber charter school is necessary to ensure proper independence of the cyber charter school and that appropriate oversight and governance is retained by the cyber charter school's board of trustees.

Advance has partnered with Connections Education LLC through its subsidiary Connections Academy of Pennsylvania LLC (Connections), a for-profit, virtual educational products and services provider, for Connections to provide curriculum and operational services to Advance. Advance attached to its Application as Appendix N a draft of Connections Academy of

Pennsylvania LLC and Charter School Virtual Learning Programs Statement of Agreement between Advance and Connections (Statement of Agreement).

Advance stated in its Application that Connections will not manage the school, but will provide educational products and services. Although Advance stated that Connections will not manage the school, there are provisions in the Statement of Agreement that indicate Connections will have improper control of the operations of the school. Based on Advance's Application, including the Statement of Agreement, the Department is unable to satisfactorily determine that Advance's Board of Trustees will have appropriate independence from Connections and ultimate control over the cyber charter school.

(1) Staff.

Although Advance provided an Organizational Chart with its Application, it is only for year 5 and does not include Connections. In addition, Advance did not specify the job positions of Connections' staff that will provide services to Advance or the reporting structure between Connections' staff and Advance. The Department is unable to verify that the staffing plan in the Application and provisions of the Statement of Agreement are consistent with Advance's organizational structure, including how Connections staff fits into that structure. Therefore, the Department is unable to determine that Advance would have proper independence from Connections and appropriate governance of the school during the charter term.

Additionally, the Statement of Agreement provides that "the Board of Trustees delegates to Connections (Delegation of Responsibility) responsibility to support the Lead School Administrator, with recruiting, training, supervision, oversight, discipline and dismissal of Teachers, Administrative Staff, the Special Education Director, 504 coordinator, clerical staff, and other such support positions as may be necessary to support School operations." Advance failed to explain, however, the type of support being provided to the Lead School Administrator, who from Connections is providing the support, how it is provided, or what authority the Lead School Administrator has over those providing the support from Connections. Advance also failed to state who employs the Lead School Administrator. Additionally, on Advance's Organizational Chart for year 5, a Lead School Administrator is not identified.

Without knowing who employs the Lead School Administrator and without further explanation of the Delegation of Responsibility provision and an organizational chart evidencing the relationship and reporting structure between Connections and Advance, the Department is unable to conclude that Advance's Board of Trustees has appropriate control over the operations of Advance.

(2) Policies.

The Statement of Agreement further provides that Advance's Board of Trustees will "[a]bide by and administer all Connections established protocols, policies and procedures in connection with the Education Program." It also provides that "[t]he Lead School Administrator shall comply with Connections practices and protocols in the delivery of the Education Program and shall report to Connections as to the implementation of such practices and protocols." Based upon the

above-referenced provisions, the Statement of Agreement effectively requires Advance's Board of Trustees to adopt the protocols, policies and procedures of Connections for implementation of the Education Program without the Board of Trustees providing input and without approving the content of such protocols, policies and procedures. Advance's Board of Trustees must adopt the policies and procedures by which the school will operate. Requiring the Board of Trustees to abide by and administer Connections' protocols, policies and procedures, infringes on the Board of Trustees' ability to decide matters related to the operation of the school. This is especially true if the Board of Trustees would find that such protocols, policies and procedures are insufficient, impractical, or incompatible with the Board of Trustees' operation of the school. Moreover, without having these protocols, policies and procedures included with the Application, the Department is unable to conclude that the Board of Trustees would have the appropriate authority to decide matters related to the operations of Advance.

Another provision in the Statement of Agreement provides that "[i]n consultation with Connections, the Special Education Protocols will be subject to review and revision from time to time throughout the Term." However, "the Special Education Protocols and all modifications to the Special Education Protocols are subject to Connections' approval." For the reasons explained in the preceding paragraph, requiring that Connections approve the Special Education Protocols undermines the control of the Board of Trustees to operate the school.

The Statement of Agreement also indicates that all copyrighted works are intellectual property of Connections, which presumably includes the policies and procedures at issue, and that Advance's right to use the policies and procedures terminates automatically upon termination of the Statement of Agreement. The control of the Board of Trustees is undermined if the policies and procedures for operating Advance are the intellectual property of Connections, and Advance cannot use them if the Statement of Agreement is terminated. As previously noted, Advance's Board of Trustees must adopt policies and procedures by which the school will operate. Once adopted, they must be the property of the cyber charter school and not of a separate entity.

(3) Budget.

The Statement of Agreement provides that, "[n]o later than the earlier of June 1 or fourteen (14) working days prior to any deadline specified in the Charter or other regulatory mandate, Connections will present to the Finance Committee or its designee a proposed balanced budget (i.e., not resulting in a cumulative net asset deficit) for the following fiscal year developed under the direction of the Board of Trustees or its designee. The Budget shall be in reasonable detail and shall be based on the applicable Fee Schedule. In the event that the Board of Trustees and Connections do not agree on a Budget, the parties shall have until June 30, or such date as is required by applicable laws or regulations or the Charter for budget submission to come to an agreement on a Budget." Because this provision requires Advance and Connections to agree on a budget, the Department is unable to conclude that the Board of Trustees has appropriate authority to decide matters related to the operations of the school, including budgeting. Advance's Board of Trustees must have the sole authority to approve its budget.

(4) Termination provisions.

The Statement of Agreement contains termination provisions that significantly limit Advance's ability to operate the school and creates uncertainty for Advance.

As discussed previously, the Board of Trustees has the authority to rescind the Delegation of Responsibility provision by which the Board delegates responsibilities to Connections. However, Connections has the option to terminate the Agreement if Advance's Board decides to exercise its right to rescind the Delegation of Responsibility provision. Therefore, the Board's right to rescind the Delegation of Responsibility provision is constrained by Connections' ability to terminate the Agreement upon rescission, and the Board's ability to operate the school is limited.

Additionally, Advance may terminate the Statement of Agreement if its Board of Trustees determines at the end of a school year that Connections' education program does not meet requirements for a cyber charter school, presumably academically and/or financially. Advance can exercise this right only after Connections is given reasonable notice and opportunity to cure the alleged failure. However, this provision does not specify a time period within which Connections must effectuate a cure. Without a time by which Connections must effectuate a cure, Advance's termination right is illusory, and demonstrates that Advance does not have proper authority to operate the school.

Based on all of the above-identified provisions of the Statement of Agreement, the Department is unable to conclude that Advance's Board of Trustees would have appropriate control over the operations of Advance. Advance noted that the Statement of Agreement is "unsigned subject to feedback from the authorizer and the parties have agreed to further negotiated language based on that feedback." Thus, Advance and Connections may use the information above to further negotiate language for the Statement of Agreement, and as previously noted, may include any amended Statement of Agreement with a revised and resubmitted application.

III. 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. 24 P.S. § 17-1745-A(f)(1)(ii). 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 must: (1) provide all instructional materials; (2) provide all equipment, including but not limited to, computer, monitor and printer; and (3) provide or reimburse for all technology and services necessary for the on-line delivery of the curriculum and instruction. 24 P.S. § 17-1743-A(e).

(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 access available to the home.

Advance discussed options for providing adequate connectivity during the November 2 Hearing. However, Advance did not provide evidence that it has developed or formalized policies and procedures to ensure adequate access for every student or that it considered potential Internet options that would be available to ensure adequate access, especially in remote areas of the Commonwealth.

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

A cyber charter school is required to provide, or reimburse each student enrolled, for all technology and services necessary for the online delivery of the school's curriculum and instruction. 24 P.S. § 17-1743-A(e). Therefore, 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. *Id.*; 24 P.S. § 17-1745-A(f)(1)(ii).

In the Draft Student Handbook attached to its Application as Appendix V, Advance states that the school will not provide an internet subsidy for the summer months. However, Advance proposes to offer its curriculum and instruction at different pacing options, including an accelerated pace and a year-round pace, both of which allow students to take courses during the summer. If students avail themselves of these pacing options, then Advance must provide, or reimburse each student for all technology and services for the online delivery of the school's curriculum and instruction during the summer months.

In addition, Advance states that the school will pay a stipend to each household three times during the school year to assist with the cost of internet service and printer ink. Advance must pay the full cost of internet access for students, and not simply an amount that will "assist" with the cost of access. In addition, tri-annual payments may cause financial hardships for families paying monthly internet costs for several months before they are reimbursed. Advance must ensure families are reimbursed regularly for Internet access services so as not to cause financial hardships for families paying monthly Internet costs, and so there is no disruption of service for families who are unable to pay Internet costs up-front for multiple months.

(c) The applicant failed to demonstrate compliance with requirements to provide all students with computers.

As noted above, the CSL requires that a cyber charter school provide a computer to each student enrolled. 24 P.S. § 17-1743-A(e). A cyber charter school may not permit students to use their personal equipment. The use of personal equipment raises significant concerns, particularly how a cyber charter school will ensure that all students receive an equitable educational experience and have access to technical support and a safe online experience. Advance indicated in its Application and confirmed during the November 2 Hearing that it will permit students to use their personal equipment. However, Advance must eliminate this option from its technology policies and procedures, and must provide a computer and all other equipment necessary to access the online curriculum and instruction to each student enrolled.

(d) The applicant failed to define the technology and equipment standards that promote equitable access to online learning.

A cyber charter applicant must establish procedures to periodically assess the school's equipment and infrastructure against established industry standards and identified educational needs. In addition, a cyber charter applicant must have a process by which technology is refreshed in a timely fashion to meet new standards and needs.

Advance did not provide evidence that it has developed or formalized policies and procedures that identify the criteria used for this assessment and explain a process by which the school will refresh its technology.

(e) The applicant failed to incorporate equipment repair and replacement policies and procedures, and did not submit sufficient evidence of financial support and planning for technology and related services.

A cyber charter school must establish policies, procedures, and user agreement forms to address financial responsibilities to repair and replace equipment that has been damaged by the student or stolen, and the steps to be taken to quickly and conveniently repair and replace the damaged equipment.

Although Advance testified that Connections will be responsible for repair and replacement, Advance failed to provide developed or formalized policies and procedures that address the financial responsibilities associated with repair and replacement and how this will be accomplished in a quick and convenient manner.

As noted above, a cyber charter school must provide all students with all equipment, including, but not limited to, a computer, computer monitor, and printer. During the November 2 Hearing, Advance testified that it budgeted for these expenditures on a per-student and per-staff basis, but it did not take into account the cost of hardware replacement.

IV. 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. 24 P.S. § 17-1745-A(f)(1)(ii). 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. 24 P.S. § 17-1745-A(f)(1)(iii). 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 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 Pennsylvania academic standards; and, administration of annual proficiency and academic assessments.

Although Advance identified Pearson's Language Central as a resource that the school will use to supplement its English Language Arts curriculum and provide language development instruction, Advance 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. In addition, Advance did not discuss planned instruction for English language acquisition and English Language Arts classes. Without a copy of the ESL curriculum, the Department cannot access the adequacy of the curriculum and whether it aligns to Pennsylvania academic standards.

Additionally, a charter is a license for the operation of a cyber charter school and the application submitted to obtain a charter becomes part of the charter. The curriculum, including an ESL curriculum, is an essential component of a cyber charter school. Therefore, the ESL curriculum Advance intends to use must be included with the Application so that it becomes part of the charter.

V. The applicant failed to demonstrate the 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. 24 P.S. § 17-1745-A(f)(1)(ii).

(a) The applicant failed to budget for costs associated with services that the school will provide to students.

Advance stated that it will offer credit recovery courses during the school year and summer months. However, Advance was unable to explain how expenditures associated with these courses had been accounted for in its Budget. In addition, Advance stated that they will offer

traditional, year-round, and accelerated pacing calendar options. Although Advance testified during the November 2 Hearing that additional compensation for year-round staff had been accounted for in the Start-up and Operating Budgets in its Application, Advance did not provide information about how or where these additional costs appear in these budgets, or provide a plan for how they would staff those positions. In fact, Advance's Draft Employee Handbook attached to its Application as Appendix T states that School Non-Administrative Employees only work on a ten-month calendar basis.

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

Advance did not provide a fee schedule for the products and services being provided by Connections with its Application.[2] Therefore, the Department was unable to determine whether expenditure estimates were sufficient, reasonable, and consistent with its Application.

The amount that Advance budgeted for advertising and recruitment services does not appear to be adequate for the activities described in its Timetable during the start-up year. The Timetable in its Application states that staff recruitment and training, student recruitment, and marketing efforts (including direct mail, website, media outreach, referrals/word of mouth, search engines, and social media) will take place during the start-up year. Yet, Advance only budgeted $5,000 for Advertising in Line Item 2380-540 and $0 for Recruitment Services in Line Item 2500-330 in its Start-up Budget.

Employee Benefits in Line Item 2380-200 should include retirement, health benefits, other post-employment benefits, and any additional fringe benefits. Advance testified during the November 2 Hearing that current PSERS employer contribution rates were used to calculate retirement/pension expenses, but Advance did not include information about how it determined the amounts for other employee benefits. Therefore, the Department was unable to evaluate whether the amount budgeted for employee benefits was reasonable.

Although Advance included a staffing plan in its Application, the plan did not categorize employees in a manner consistent with Salaries in Line Item 2380-100. Specifically, when total salaries are divided by total proposed staffing levels set forth in the staffing plan, the average salary decreases year over year. Advance did not provide any other information regarding proposed teacher and staff salaries. Therefore, the Department was unable to evaluate whether the amount budgeted for salaries was sufficient.

Advance included in its Application several provisions regarding pay increases, incentives and bonuses for staff. Advance did not include supporting documentation detailing the potential cost of these additional forms of payment for the Department to ensure consistency between these provisions and the school's Budget. In fact, given that the average salary per staff decreases each year, it does not appear that the Budget accounts for these increases and incentive

[2] Advance attempted to provide a copy of the fee schedule, which was not included with the Application, to the Department after it submitted its Application. As noted previously, the Department does not accept any documents submitted after the application is submitted to the Department. Advance may revise and resubmit its Application to include a copy of the fee schedule. 24 P.S. § 17-1745-A(g).

programs. In addition, the staffing plan contained in the Application does not indicate which positions will be filled for the start-up period, yet the Start-up Budget includes $139,395 for Salaries in Line Item 2380-100 for year one. Advance did not provide supporting documentation to explain the basis for this amount. Therefore, the Department was unable to determine the sufficiency of this amount in comparison to its staffing plan.

Although Advance did not provide documentation to support the $5,000 budgeted each year for Pupil Health Contracted Staff in Line Item 2400-330, Advance testified during the November 2 Hearing that this amount represented an average for pupil services each year. However, a flat line item in years 1 through 5 is unreasonable considering the school intends to increase its enrollment each year, beginning with 500 students in year 1 and ending with 4,500 in year five.

(c) The applicant failed to provide evidence to support the insurance expenditure contained in the proposed budget.

During the November 2 Hearing, Advance testified that it intends to obtain all insurance through Connections Education LLC except for Directors and Officers liability insurance. Advance further testified that Advance budgeted for the cost of insurance from Connections Education LLC in Line Item 2380-330 for School Operations Support. However, this line item is not broken into sub-line items to show the amount budgeted for insurance. In addition, Advance did not provide information about the cost of obtaining insurance from Connections Education LLC on the Certificates of Insurance attached to the Application as Appendix E or any place else in its Application. The Department is therefore unable to determine whether Advance budgeted a sufficient amount for this expenditure and whether the amount budgeted is consistent with the anticipated cost for this expenditure.

Advance budgeted $1,500 for Insurance in Line Item 2380-520 for years 1 through 5, and testified during the November 2 Hearing that the $1,500 represented the amount budgeted for Directors and Officers liability insurance. However, the Department was unable to evaluate the sufficiency of the $1,500 because the Certificates of Insurance attached to the Application as Appendix E are for liability insurance for Connections Educations LLC. Advance did not provide any information related to the cost of Directors and Officers liability insurance. The Department is therefore unable to determine whether Advance budgeted a sufficient amount for this expenditure and whether the amount budgeted is consistent with the anticipated cost for this expenditure.

Although a budget is an estimate of revenues and expenditures, the estimates must be sufficient and reasonable, and estimates must be consistent with information in the application. Of critical importance is the applicant's ability to support the estimates in the budget, and demonstrate the ability to effectively manage the finances of the school so that the school can remain financially viable. Otherwise, the cyber charter school will not be able to provide a comprehensive learning experience for its students.

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

Advance identified a board member with business expertise and another Board member with cyber charter school experience, but did not identify a Board member with financial expertise. In addition, these Board members are only volunteers and will not be overseeing Advance's financial operations on a day-to-day basis. Moreover, although Advance refers in its Application to a Finance Committee to which Connections will be required to present a budget, Advance's staffing plan does not include a Chief Financial Officer or any other financial staff. During the November 2 Hearing, Advance was unable to answer questions related to its Budget and instead deferred to Connections for all financial questions.[3] Based upon these circumstances, Advance has not demonstrated that it has the ability to manage and oversee the financial operations of the school consistent with the information it provided in its Application.

The Statement of Agreement indicates that Connections will be responsible for only some of the financial management functions of Advance. The Statement of Agreement does not indicate that Connections will be responsible for other financial management functions that are necessarily part of Advance's operations, such as payroll processing, billing school districts and the Department, development and implementation of sound financial practices and budget modifications, and multi-year financial planning. It is not clear who will perform these functions if Advance does not have any financial staff. Advance must explain in its Application who will be responsible for these critical financial functions.

VI. The applicant failed to provide sufficient information to establish that it will operate as a cyber charter school and use physical facilities in a proper manner.

On July 11, 2013, the Department issued a Basic Education Circular (BEC) entitled "Cyber Charter School Operations and Proper Use of Physical Facilities" (Cyber Charter School Physical Facilities BEC). As explained in more detail in the Cyber Charter School Facilities BEC, cyber charter schools must be able to function and provide all curriculum and instruction to all of its students without the need for students to attend any physical facility designated by the cyber charter school. A cyber charter school may only use a physical facility as an administrative office or as a resource center for providing no more than supplemental services to students and shall provide equitable access to such services for all students enrolled in the school. The cyber charter school must also be able to demonstrate the ability to enroll students from across the state and provide all services to those students in a materially consistent way, regardless of where they reside.

Throughout its Application, Advance refers to "face-to-face instruction," "blended face-to-face instruction," and "face-to-face interactions." Without further explanation, these references indicate the potential use of physical facilities by Advance for purposes other than providing supplemental services. Therefore, Advance did not demonstrate that it has an understanding of the proper use by a cyber charter school of physical facilities and that it has the capability, in

[3] Advance stated that the Board Treasurer was unable to attend the November 2 Hearing based on unforeseen circumstances. As noted previously, Advance may revise and resubmit its Application to include budget information that addresses identified deficiencies in the Application. 24 P.S. § 17-1745-A(g).

terms of support and planning, to provide comprehensive learning experiences in a manner appropriate for a cyber charter school. Advance must clarify that it understands the proper use of physical facilities by a cyber charter school and that it will not use physical facilities other than for administrative purposes or to provide supplemental services and only for the time needed to provide such services.

VII. The applicant failed to confirm that it will not offer dual enrollment courses.

In its Application, Advance refers to its partnerships with higher education institutions, including teachers and students participating in some of Harrisburg University's offerings. In addition, a representative from Harrisburg University provided a written statement supporting Advance's Application and stating that "HU is especially excited with Advance's focus on creating opportunities for students to earn college credits while in high school."

Section 1525 of the Public School Code allows a school district to enter into agreements with institutions of higher education that are authorized to operate in the Commonwealth to allow the district's resident students to attend such institutions while enrolled in the school district. 24 P.S. § 15-1525. These agreements may allow high school students to receive credits toward the completion of courses at the school district and at the institutions of higher education. *Id.* Such programs are generally referred to as "dual enrollment" or "concurrent enrollment" programs.

Section 1525, however, does not apply to cyber charter schools. 24 P.S. § 17-1749-A(a)(1). Therefore, cyber charter schools are not permitted to operate "dual enrollment" or "concurrent enrollment" programs. Advance must clarify in its Application that it will not operate these types of programs and that references to its partnerships with higher education institutions are not for the purpose of operating these types of programs.

VIII. The applicant failed to submit information to demonstrate that the cyber charter school will serve as a model for other public schools.

Through the CSL, the General Assembly sought to improve student learning, increase learning opportunities for students, encourage the use of different and innovative teachings methods and provide parents and students with expanded choices in types of educational opportunities that are available within the public school system. 24 P.S. §§ 17-1702-A and 17-1749-A(a)(1). In addition, one criterion by which the Department is to evaluate a cyber charter school application is the "extent to which the cyber charter school may serve as a model for other public schools." 24 P.S. § 17-1745-A(f)(1)(v).

Advance proposes to offer traditional, accelerated and year-round options for students, incorporate additional science, technology, engineering and math (STEM) offerings to both students and staff, and create partnerships within the statewide community to offer students STEM opportunities. However, Advance failed to explain how these features increase learning opportunities for students, and provide parents and students with expanded choices in types of educational opportunities available in the public school system. Advance also failed to explain how these features would make Advance a cyber charter school that would serve as a model for other public schools.

Conclusion

Based on the deficiencies identified above, individually, collectively, and in any combination, Advance's Application is denied.

Advance 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 Advance 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, 9th Floor
Harrisburg, PA 17126-0333

Alternatively, Advance 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 Advance 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, 10th 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
Secretary of Education

21 January 2016
Date Mailed