



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

November 30, 2020

VIA CERTIFIED MAIL AND E-MAIL

Mr. Richard Flynn, Board President
Virtual Preparatory Academy of Pennsylvania Cyber Charter School
c/o Patricia Hennessy, Esq.
Centre Square West Tower
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Dear Mr. Flynn:

After reviewing the Virtual Preparatory Academy of Pennsylvania Cyber Charter School's revised application, it is the decision of the Pennsylvania Department of Education to deny the application. Please review the pages that follow for more information.

If you have any questions, please contact Randall Seely, Chief, Division of Charter Schools, at rseely@pa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Noe Ortega".

Noe Ortega
Acting Secretary of Education

Enclosure

cc: Adam Schott, Special Assistant to the Secretary
Sherri L. Smith, Advisor to the Deputy Secretary
Matthew S. Stem, Deputy Secretary for Elementary and Secondary Education
Pamela Smith, Executive Deputy Secretary

Background

Pursuant to the Charter School Law (CSL), 24 P.S. §§ 17-1701-A – 17-1751-A,¹ the Pennsylvania Department of Education (Department) has the authority and responsibility to receive, review, and act on applications for the establishment of cyber charter schools. 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 operations. Following submission of an application, the Department is required to: 1) hold at least one public hearing on the application; and 2) grant or deny the application within 120 days of its receipt.

The Virtual Preparatory Academy of Pennsylvania Cyber Charter School (hereinafter referred to as “Virtual Preparatory Academy” or “Applicant”) timely submitted an application to establish a cyber charter school on October 1, 2019 (hereinafter referred to as “October 1, 2019 Application”). On October 5, 2019, the Department provided 30 days’ notice of a public hearing held on November 19, 2019 (hereinafter referred to as “November 19, 2019 Hearing”) and denied the application on January 27, 2020 (hereinafter referred to as “January 27 Denial”).

The CSL permits a cyber charter school applicant to revise and resubmit its application to the Department (24 P.S. § 17-1745-A(g)). Virtual Preparatory Academy submitted a revised application, received by the Department on October 1, 2020 (hereinafter referred to as “Revised Application”). While Virtual Preparatory Academy’s submission did not comport with resubmission instructions and timelines outlined in the Department’s January 27 Denial, the Department proceeded to review the application in light of the extraordinary conditions presented by the global pandemic declared by the World Health Organization on March 11, 2020. Due to the significant deficiencies noted in the January 27 Denial, the Department scheduled a public hearing for Virtual Preparatory Academy’s revised application for November 5, 2020 (hereinafter referred to as “November 5 Hearing”).² In accordance with the public notice, the Department received numerous comments in opposition to Virtual Preparatory Academy’s revised application.³

Decision

The CSL, 24 P.S. § 17-1745-A(f)(1), requires the Department to evaluate a cyber charter school application, whether initial or revised, against the following criteria:

- (i) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.

¹ All statutory references shall be to the CSL, unless otherwise noted.

² The Department previously provided notice of Public Hearings for cyber charter school applications via the Pennsylvania Bulletin (October 3, 2020).

³ Virtual Preparatory Academy filed a notice of objection and response to certain portions of comments. *See* Transcript, Exhibit 12.

- (ii) The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.
- (iii) The extent to which the programs outlined in the application will enable students to meet the academic standards under 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.
- (iv) The extent to which the application meets the requirements of section 1747-A.
- (v) The extent to which the cyber charter school may serve as a model for other public schools.

24 P.S. § 17-1745-A(f)(1).

Based on a thorough review of the revised application, questions and responses recorded at the November 5 Hearing, and the public comments and responses thereto, the Department denies Virtual Preparatory Academy’s revised application. While a single deficiency would be grounds to deny the application, the Department has again identified significant deficiencies for each criterion. Discussion of the specific deficiencies follows.

Criterion 1: Virtual Preparatory Academy again fails to document demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.

As with its October 1, 2019 Application, Virtual Preparatory Academy projects it will serve 500 students in its planned first school year of operations before reaching an enrollment of 2,500 students by year five (Revised Application, p. 3). If these projections hold, Virtual Preparatory Academy would be one of the state’s larger cyber charter schools (rank: six of 15 (inclusive of Virtual Preparatory Academy)) and place among the top third of the state’s local education agencies of any kind (rank: 210 of 781).⁴ Alongside these enrollment projections, Virtual Preparatory Academy continues to propose a five-member founding coalition (Revised Application, p. 3). In describing the formation of its founding coalition, two members are cited as being “familiar with” Accel Online Pennsylvania, LLC (hereinafter referred to as “Accel”), the Applicant’s proposed for-profit education service provider (Revised Application, pp. 71-72).

Despite the advantage of eight additional months since the Department’s January 27 Denial, the Applicant continues to be unable to demonstrate sustainable support. For example, the Applicant claims that “parent and student groups will be an active part of school community and we expect to help initiate those groups immediately upon school launch”—raising the question of why such groups are not presently involved (Revised Application, p. 72). Similarly, the founding coalition is wholly devoid of teachers or other educators (Revised Application, p. 3). The Applicant does provide a petition of signatures as an ostensible measure of support; however, a significant proportion of entries are illegible (86), incomplete (56), or indicate residency outside Pennsylvania (9) (Revised Application, Appendix

⁴ See Pennsylvania Department of Education (2020) for 2019-20 PIMS enrollment data for all publicly funded schools in Pennsylvania as reported by school districts, area vocational-technical schools, charter schools, intermediate units, and state-operated educational facilities.
<https://www.education.pa.gov/DataAndReporting/Enrollment/Pages/PublicSchEnrReports.aspx>.

D). Virtual Preparatory Academy does provide eight letters of support; however, one letter was withdrawn,⁵ while the employer of another signer, who submitted a letter on that employer’s letterhead, notified the Department that it “takes no position on VPAP’s application” (Transcript, Exhibit 10). Notably, the Department received 10 letters of opposition to the revised application (Transcript, Exhibits 1-9, 11). Four of these commenters spoke in opposition to the revised application during the Department’s November 5 Hearing (Transcript, pp. 7-23).

In contrast, no public comment in support of Virtual Preparatory Academy was received ahead of or recorded during the Department’s November 5 Hearing.

Virtual Preparatory Academy introduces two of its five proposed founding coalition members as familiar with the Applicant’s for-profit management partner rather than the school itself; failed to evince backing by teachers or students; and engendered significant expressions of public opposition. Accordingly, Virtual Preparatory Academy once again fails to document demonstrated, sustainable support, and the application is denied.

Criterion 2: Virtual Preparatory Academy continues to lack the capability, in terms of both support and planning, to provide comprehensive learning experiences to students.

For this criterion, the Department is concerned with evidence that the applicant can design and deliver comprehensive learning experiences to students, and that the applicant’s board of trustees will hold real and substantial authority over the operation of the school, educational decisions, and staff (*Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400 (Pa. Cmwlth. 2003); *Sch. Dist. of York v. Lincoln-Edison Charter Sch.*, 798 A.2d 295 (Pa. Cmwlth. 2002); *Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131 (Pa. Cmwlth. 2001); and *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 760 A.2d 452 (Pa. Cmwlth. 2000), *aff’d* 812 A.2d 1172 (Pa. 2002)). Virtual Preparatory Academy fails to demonstrate such capacity, while leaning on external service providers to a degree that raises concerns about the Applicant’s independence and organizational viability. Specific findings are as follows:

A. The Applicant fails to demonstrate insurability.

A cyber charter school 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 governing board (24 P.S. § 17-1719-A(17)); this information ensures basic protections for the school’s stakeholders in the event of school closure and guards investments by Pennsylvania taxpayers. Replicating a deficiency from its initial application, Virtual Preparatory Academy fails to include copies of certificates of insurance as required, nor does it provide examples of the Request for Proposals it issued for insurance, despite referencing such request during the November 5 Hearing (Transcript, p. 212). Further, while the

⁵ On November 19, 2020, Congressman Mike Doyle wrote to Acting Secretary Ortega: “my office sent a letter of support on the academy’s behalf, signaling an endorsement for a cyber charter school application. However, upon closer examination of their record, I formally withdraw my support...”. A true and correct copy of the November 19, 2020 letter is appended hereto as Appendix A.

application states that the proposed Service Provider (Accel), its affiliates, and their respective representatives will be additional insureds under these policies (Revised Application, Appendix L, pp. 19-20), the Applicant could not confirm during the November 5 Hearing that the budget is inclusive of those insurance costs (Transcript, p. 213).

B. The Applicant fails to demonstrate necessary financial support and planning.

A cyber charter school applicant is required to provide a preliminary operating budget, inclusive of projected revenue sources (24 P.S. § 17-1719-A(9)). Revenue estimates must be sufficient and reasonable to demonstrate the applicant’s capability, in terms of both financial support and planning, to provide comprehensive learning experiences for students. Here, Virtual Preparatory Academy continues to provide unclear, incomplete, and contradictory information regarding revenues, expenditures, and long-term financial planning.

In Pennsylvania, local revenues for charter schools are based on per-pupil rates from students’ resident school districts. According to the Applicant’s budget narrative, Virtual Preparatory Academy used a blended rate of \$10,500 per-pupil for general education students and an incremental rate of \$18,000 for special education students (Revised Application, Appendix M, p. 1). During the November 5 Hearing, a representative from the school testified that the per-student rates were calculated using internal benchmarks and “applying a discount to them” (Transcript, p. 182). It is unclear what source undergirds these internal benchmarks, or why the school applied a discount to those rates; nor is it clear what was meant by incremental rate.

Moreover, the regular and special education rates used in estimating revenues do not match the budget narrative, as exhibited in Table 1 below. When dividing the projected revenue by the enrollment distributed among regular and special education, the school appears to have used an estimate of \$11,400 for the regular education per-pupil rate and \$18,144 for the special education rate for the 2020-21 year.⁶

Table 1: Projected Per-Pupil Rates, 2021-22 to 2025-26

	2022	2023	2024	2025	2026
Regular Ed Revenue -VPAP Budget	\$4,987,500	\$10,176,508	\$15,573,131	\$21,183,639	\$27,014,471
Special Ed Revenue - VPAP Budget	\$1,134,000	\$2,250,000	\$3,384,000	\$4,500,000	\$5,634,000
Regular Ed Enrollment	437.5	875	1,312.5	1,750	2,187.5
Special Ed Enrollment	62.5	125	187.5	250	312.5
Calculated Regular Ed Per-Pupil Rate	\$11,400	\$11,630	\$11,865	\$12,105	\$12,349
Calculated Special Ed Per-Pupil Rate	\$18,144	\$18,000	\$18,048	\$18,000	\$18,029

⁶ This analysis also calculates special education tuition rates based on 12.5 percent of projected enrollment comprised of special education students (Application, pp. 22-23).

Budgeted Regular Ed Per-Pupil Rate	\$10,500	\$10,710	\$10,924	\$11,143	\$11,366
Budgeted Special Ed Per-Pupil Rate	\$18,000	\$18,360	\$18,727	\$19,102	\$19,484

The Applicant also presented conflicting information regarding federal revenues. Virtual Preparatory Academy’s budget narrative assumes 49 percent of enrollment will be comprised of economically disadvantaged students, along with a Title I rate of \$225 per student per year (Revised Application, Appendix M, p. 1). However, during the November 5 Hearing, the Applicant estimated Title I revenues at “roughly \$450 per student just as a proxy for the overall future funding we would apply for” (Transcript, p. 183).

The Applicant’s financial projections boil down to an operating surplus equal to 0.7 percent of expenditures in the first year of operation.⁷ As with its initial application, Virtual Preparatory Academy intends to rely on a startup loan of almost \$200,000 provided by either Accel or an undisclosed other party; the budget assumes loan repayment by the end of 2022-23 at an interest rate of four percent (Transcript, pp. 187-188). While the Applicant noted that the startup loan is a contingency plan, no portion of the loan is identified in the budget as being held in reserve or unspent (Transcript, p. 203). As the Applicant’s projected surplus from the first full year of operation is only \$45,658, and the vast majority of the school revenues are due to enrollment (which can be volatile), Virtual Preparatory Academy does not appear to possess available working capital, reserves, or budgeted contingencies for unanticipated circumstances.

The size of the projected loan appears to be based on estimated expenditures for the “start-up” period, but the duration of that period is unclear (*i.e.*, how many months are budgeted). The start-up budget also omits any expenditures for Accel; however, during the November 5 Hearing, it was noted that costs associated with Accel for the start-up year are shown in the budget under 2022 (Transcript, pp. 189-190), which creates additional uncertainty regarding whether the size of the loan is sufficient to meet school needs.

An additional area of ambiguity concerns the Applicant’s faculty plans, specifically salary assumptions by position. Virtual Preparatory Academy indicates that “salary assumptions were based on Pennsylvania-specific market research and include year-round staffing needs” (Revised Application, Appendix M, p. 2). During the hearing, however, the school representatives noted that market research conducted by the Applicant was a “...combination of the benchmarks specific to Pennsylvania, the virtual schools, as well as some feedback from the board and from Charter Choices” (Transcript, pp. 192-193). Detail for how salaries were estimated for administrative and support positions was not included in the application, making it difficult to assess reasonableness.

⁷ For 2021-22, the submitted budget includes projected receipts of \$6.1 million in local sources (tuition payments from other schools) and \$0.1 million in federal sources—a total of \$6.2 million in operating revenues. During the same school year, the applicant is projecting nearly \$6.2 million in expenditures. This results in an operating surplus of approximately \$46,000 (0.7 percent of budgeted expenditures).

Whatever the methodology for determining base salaries, the budget narrative states that salaries will increase 2.5 percent annually (Revised Application, Appendix M, p. 2). However, there are several areas where the budget does not match this statement. The contracted business manager position is growing at a 2.0 percent inflationary rate, while other positions reflect an increase between 2022 and 2023 of more than 2.5 percent. Lastly, there appears to be a position in 2026 that is not reflected in the proposed staffing plan.⁸ These inconsistencies call into question whether the budget accurately and fully reflects all personnel expenditures, and further demonstrates the Applicant’s inability to meet the requirements of the CSL.

Beyond base salaries, the Applicant included a budget for bonuses for staff members “...based on school and individual performance” (Revised Application, p. 100). Virtual Preparatory Academy budgeted \$20,000 for bonuses for staff members in 2021-22, which increases “accordingly with staff in subsequent years beyond 2021-22” (Revised Application, Appendix M, p. 2). According to an applicant representative, all staff in the application’s staffing plan are eligible for bonuses (Transcript, p. 198), even though Virtual Preparatory Academy’s proposed staffing plan includes contracted personnel from an external entity. In any case, it is unclear why the Applicant has budgeted for bonuses in addition to the regular annual salary increases.

Relative to employee benefits, during the November 5 Hearing, the school provided estimates of 20 percent of salaries for health care benefits, 10 percent of salaries for payroll taxes, and five percent of salaries for pension. The applicant stated that the pension amount was based on a quote from a potential vendor; however, no quote was included in the application (Transcript, p. 193). Similarly, the application noted that it plans to offer a 403(b) program to employees, but no draft or request for proposal was included (Transcript, p. 195).

Finally, there are other areas where the Applicant neglected to include the full cost of all expenditures in the budget. For example, the Applicant anticipates leasing facilities, totaling roughly 4,400 square feet, prior to the school’s opening on Linglestown Road in Harrisburg (Revised Application, Appendix N, p. 1). According to a Virtual Preparatory Academy representative, not all staff will work from this location, and most teachers will work from home—making it difficult to estimate whether the proposed square footage is sufficient to meet staffing needs or if the proposed space is excessive to the needs of the school (Transcript, p. 207). Additionally, the application states that Virtual Preparatory Academy will contract for janitorial services and a full-service management group if those services are not provided by the Landlord (Revised Application, p.84). While the Proposal to Lease notes that janitorial service is not included in the lease cost (Revised Application, Appendix N, p. 1), responses during the November 5 Hearing indicate that the janitorial costs, potentially along with management company costs, were not included in the budget (Transcript, pp. 209-211). These differences call into question whether the budget reflects all anticipated operating expenditures as attested to at the November 5 Hearing (Transcript, p. 190).

⁸ This is the gifted and talented coordinator position; the salary line item increases from \$66,290 in 2025 to \$135,936 in 2026, yet only one position is listed on the staffing chart.

C. The Applicant fails to demonstrate proper planning regarding—or sufficient independence from—its education service provider.

As in its first application, Virtual Preparatory Academy exhibits enormous reliance—financial, programmatic, and otherwise—on Accel. As discussed above, Virtual Preparatory Academy’s proposed budget shows a total advance of almost \$200,000 for the start-up year (Revised Application, Appendix M, p. 6). Although the Applicant has not yet decided whether it will use Accel as the source of that advance, Accel’s draft service agreement references it: “Unless otherwise agreed by the Parties, unpaid Service fees and loans (other than the Start-up Loan) to the School, if any, to pay expenses . . .” (Revised Application, Appendix L, p. 11). During the November 5 Hearing, the Applicant acknowledged that there are no revenues from additional loans or fundraising apart from the start-up loan included in the budget (Transcript, p. 190).

In addition, although the provided budget shows no expenditures for Accel in the start-up year, the November 5 Hearing confirmed that some costs incurred by Accel during the start-up year are reflected in the 2021-22 budget (Transcript, pp. 189-90). The amount of the expenditures is unclear based on the provided application, a seeming conflict with the draft service agreement which states that the “Service Provider will notify the School of any payments due and owing to Service Provider...as soon as possible after the end of each month” (Revised Application, Appendix L, p. 11).

The service agreement states that “in exchange for services provided, the school will pay to the service provider fees according to the fee schedule attached hereto as Appendix A” (Revised Application, Appendix L, p. 10).

The fee schedule includes upfront fees, monthly fees, and fixed fee services. The service agreement states that the fees are reasonable compensation for services rendered (Revised Application, Appendix L, p. 10). During the November 5 Hearing, the Applicant referenced K12 and Connections Academy as the basis for determining if all service fees are reasonable (Transcript, p. 220). Based on the provided fee schedule, Virtual Preparatory Academy will pay Accel \$1,565 per new regular education enrollee, \$1,865 per new special education enrollee, and \$150 per re-enrollee. In addition, Virtual Preparatory Academy will pay Accel almost \$400 per month for each regular education student and almost \$600 per month for each special education student; the school will further pay \$650 per month for each employee of the school for staff support and professional development services. Based on the school’s estimated per pupil rates for regular and special education, the total proposed fees (excluding fees charged for employees) are equal to almost half of the estimated regular education tuition and 40.2 percent of the proposed special education tuition rate, sharply reducing available revenues for remaining school expenditures, including salaries and benefits for all school employees, rent, insurance, and other expenses; see Table 2.

Table 2: Proposed Accel Fees as a Percentage of Per Pupil Rates, 2020-21⁹

	Per Pupil Rate	Upfront Fees	Yearly Fee ¹⁰	Total Fees as Percentage of Per Pupil Rate
Regular Education	\$10,500	\$1,565	\$3,564	48.8%
Special Education	\$18,000	\$1,865	\$5,364	40.2%

These fees generate a flow of expenditures from the ostensibly independent nonprofit school to its for-profit management company that range from 43.3 percent to 47.4 percent during the first five years of Virtual Preparatory Academy operation; see Table 3.

Table 3: Accel Expenditures per Budget

	Start-up	2022	2023	2024	2025	2026
Accel expenditures	-	\$2,940,125	\$5,575,286	\$8,271,200	\$11,075,340	\$13,835,244
Total applicant expenditures	\$198,032	\$6,202,342	\$11,910,524	\$17,924,333	\$24,723,331	\$31,960,782
Percent of total applicant expenditures	-	47.4%	46.8%	46.1%	44.8%	43.3%

Virtual Preparatory Academy’s reliance on external providers goes beyond Accel, however. According to the application, finance and accounting functions for the school will be split between Accel and Charter Choices, an independent consulting firm. While Accel will support or perform functions such as preparing financial statements, payroll and benefits, monthly forecast and analysis reports, accounts payable, grant writing and reporting, and other accounting information and services (Revised Application, Appendix L, pp. 3-5), Charter Choices will manage district billing, compliance reporting, and independent review of Accel invoices and fees (Revised Application, Appendix R, pp. 4-5). Notably, it does not appear that there will be any school staff responsible for any of these functions.

The lack of direct school involvement with these functions raise questions about how responsibilities will be divided among the external partners. For example, during the November 5 Hearing, the Applicant noted that Accel would be responsible for budgeting, planning, and financial reporting, with Charter Choices responsible for “high level finances” (Transcript, pp. 204-205). Another example: page 46 of the application states that “the budget draft and supporting documentation will be prepared no later than May 1st for review by the Board Treasurer” and then immediately notes that the “Business Manager, contracted through Charter Choices Inc. will prepare the General fund budget.” However, during the November 5 Hearing, the Applicant stated that Accel would be responsible for developing the school’s budget (Transcript, p. 206).

⁹ Summary reflects proposed regular and special education rates cited by the school for the 2021-22 year.

¹⁰ Yearly fee was calculated by multiplying regular and special education monthly fees by nine months. This does not include the monthly fees charged by Accel for each teacher.

Relatedly, it is unclear how either Accel or Charter Choices will be evaluated by Virtual Preparatory Academy. The proposed service agreement with Accel states that the Board will offer a written annual evaluation of the provider’s performance (Revised Application, Appendix L, p. 9). During the November 5 Hearing, the Applicant noted that the evaluation would be conducted by a third party; however, no evaluation criteria was forthcoming (Transcript, p. 224). The proposal from Charter Choices does not mention an evaluation process, but November 5 Hearing testimony mentioned a third-party audit to evaluate performance; again, no additional detail was provided (Transcript, p. 230). (It is unclear from the provided budget whether the Applicant has budgeted for these third-party evaluations.)

Accel’s service agreement also refers to a Chief Executive Officer (CEO), a position that does not exist on the proposed staffing plan until 2024-25. According to the service agreement, the CEO will be responsible for processing any invoices related to the service provider (Revised Application, Appendix L, p. 3). During the November 5 Hearing, the Applicant indicated that the invoice processing responsibility will instead be performed by Charter Choices (Transcript, pp. 222-223). In any case, it is unclear who is assumed to be performing responsibilities identified in the application as belonging to the CEO prior to 2024-25 (Transcript, pp. 222-223).

Lastly, as described more fully in Table 4 below, the service agreement with Accel contains several provisions allowing the service provider to terminate its contract with Virtual Preparatory Academy—provisions including an adverse or material change in state, federal, or local funding; any policy action by the school that would increase financial risk to the provider; or conduct by the school that the service provider feels reflects unfavorably upon them (Revised Application, Appendix L, pp. 14-15). For several of these criteria, the service agreement allows for the immediate termination of the agreement.

Conversely, Virtual Preparatory Academy can terminate the agreement only if the service provider fails to remedy a breach of the agreement within 30 days of written notice, or if the Board determines that the performance of the service provider is insufficient. Importantly, Virtual Preparatory Academy has no standing to issue an immediate termination (Revised Application, Appendix L, p. 15). The agreement also outlines a process giving the vendor the opportunity to cure the issue prior to termination.

Table 4: Service Agreement Language Concerns

Agreement Language	Issue
<i>“Public Relations: Coordination and assistance with any and all advertising, website development and maintenance, branding, and media and public relations efforts including parent and community outreach programs and local community relationship building (collectively, “Public Relations”). Service Provider is under no obligation to implement any Public Relations initiatives promoted by the Board that Service Provider determines will have a negative impact on Service Provider or its Affiliate’s brand</i>	By allowing the Service Provider to refuse to implement public relations initiatives and requiring all public relations be subject to Accel’s approval, the Applicant limits the Board of Trustees’ authority regarding outreach and communications, recruitment efforts, and strategic planning of its own school.

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Agreement Language	Issue
<p><i>identity and/or reputation, including in connection with the School” (Revised Application, Appendix L, pp. 4-5).</i></p>	
<p><i>“Service Provider will support the Chief Executive Officer with the performance of annual evaluations of Personnel in accordance with a system and criteria approved by the Board, federal and Commonwealth law, and the Charter. The Chief Executive Officer may consult with Service Provider about employment actions regarding Personnel” (Revised Application, Appendix L, p. 12).</i></p> <p><i>“The Board shall evaluate the Chief Executive Officer annually using criteria adopted by the Board, which evaluation may be based on tools developed by the Service Provider at the Board’s request. While the Board is responsible for evaluating the Chief Executive Officer, the evaluation may include consultation with the Service Provider” (Revised Application, Appendix L, p. 12).</i></p>	<p>Language such as “in consultation with” and “may include consultation” affords the service provider equal standing with the Chief Executive Officer and Board; instead, the Applicant must demonstrate that it is an independent entity.</p>
<p><i>If the Board decides to terminate the Chief Executive Officer, it shall, to the extent possible, give Service Provider thirty (30) days written notice of intent to terminate, including reasons for the decision. If Service Provider objects to the Board terminating and replacing the Chief Executive Officer, it shall, within ten (10) days of receiving notice from the Board, provide the Board with notice of objection and reason(s) therefore” (Revised Application, Appendix L, p. 12).</i></p>	<p>This provision may limit the Board’s ability to act independently regarding management of the school.</p>
<p><i>“Service Provider may terminate this Agreement if there is any adverse and material change in local, State or federal funding for the School’s students, or applicable laws or regulations impose requirements that are materially different from those in force at the time the Parties entered into this Agreement and Service Provider is unwilling or unable to make the required changes; provided that any notice of termination</i></p>	<p>While it is common for a service agreement to allow a service provider to take certain steps in the event client actions are having a negative impact on the provider, funding per student is based on students’ district of residence, funding formulas, and state appropriations. Allowing service agreement termination in response to such externally driven factors centers risk on the shoulders of Virtual Preparatory Academy—</p>

Agreement Language	Issue
<p><i>delivered to the School based upon an adverse and material change in funding shall be effective when the funding change goes into effect or such later date as designated by the Service Provider. If such an event occurs in the middle of the school year, Service Provider agrees to use its best efforts to complete its obligations for the then-current school year without waiving any rights and remedies hereunder”</i> (Revised Application, Appendix L, p. 14).</p>	<p>rather than spreading risk between the school and provider. Further, it is unclear how the service provider would reasonably and fairly determine financial risk based on changes to policies. This termination language, if included in any final agreement, could threaten the viability of school operations.</p>
<p><i>“ . . . Service Provider may, without prior written consent from or notice to the School, assign this Agreement to its Affiliates or in connection with a merger, acquisition, asset sale or corporate reorganization”</i> (Revised Application, Appendix L, p. 24).</p>	<p>This provision provides Accel authority to transition performance of services outlined in the service agreement to other contractors without approval of or even any involvement by the Applicant. This limits the Board’s authority over contracts, provision of services, and performance evaluation.</p>

Virtual Preparatory Academy’s proposal again fails to demonstrate the planning and capacity necessary to provide students with comprehensive learning experiences, at least in part because of heavy reliance and unaccountable controls with service providers without clear delineation of roles and responsibilities. Accordingly, the application is denied.

Criterion 3: Virtual Preparatory Academy again fails to provide information necessary to evaluate the extent to which programs outlined in the application will enable students to meet standards under 22 Pa. Code Ch. 4.

Virtual Preparatory Academy’s Revised Application fails to provide information that is central to evaluating proposed academic programs. Specific findings are as follows:

- A. Virtual Preparatory Academy’s curriculum is incomplete for some subject areas—and totally absent in others.

In addition to requirements set forth in section 1719-A, a cyber charter school application must include “the curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.” 24 P.S. § 17-1747-A(1).

While Virtual Preparatory Academy stated it provided the curricula for “all core course and electives,” this is true only for a subset of subjects and grade levels (Transcript, pp. 39-40). For example, the Revised Application provided curricula in English Language Arts (“ELA”) and Mathematics for grades

K through 5, with just course syllabi rounding out higher grades (*see generally*, Application, Appendix A). Meanwhile, there is no curricula, just syllabi, for Social Studies and career and elective courses (*Id.*), and neither curricula nor syllabi for Arts, Health and Physical Education, or Family and Consumer Sciences (*Id.*).

The Applicant makes no effort to quantify the mix of synchronous and asynchronous instruction that will deliver this partial curriculum, or to explain how meaningful student engagement will be fostered during asynchronous periods. As one public commenter, a co-author of a national study of virtual charter school programs, noted: “the weak performance of the cyber sector as a whole suggests the need for careful scrutiny of the ways the proposed school will provide robust synchronous instructional interaction between teachers and students. I do not observe convincing evidence...that the [applicant] will provide the substantial and robust synchronous instruction that is surely needed to maintain student engagement and promote learning” (Transcript, Exhibit 11).

B. Virtual Preparatory Academy fails to adequately outline required staffing and professional development plans.

Research consistently identifies educator quality as the most important in-school determinant on student learning. Therefore, and as previously outlined in the Department’s January 27 Denial, any meaningful evaluation of an applicant’s capacity to support students in meeting state standards relies on examination of the Applicant’s plans to identify, support, and retain highly effective educators.

Virtual Preparatory Academy demonstrates significant shortcomings in this regard. No faculty is proposed, and even basic staffing information is deficient and inconsistent; a table on Application page 97 produces a different staffing total (28.5) than the Applicant cited during the November 5 Hearing (27.5) (Transcript, pp. 191-192). Additionally, the proposed staffing plan uses a blended student to teacher ratio based on all students across all grades (Transcript, p. 192). This ratio does not separate regular education and special education; together with the finding above, it is impossible to assess whether the proposed staffing plan for year 1 is appropriate and matches enrollment projections. Further, the Applicant omits any detail on how the number of administrative and support positions were determined.¹¹

Teacher professional development and induction plans are similarly thinly developed—Virtual Preparatory Academy did not share how it will identify specific student needs prior to school opening, nor did it describe how these specific needs would inform professional development planning (Transcript, pp. 88-91). In addition, the Applicant’s professional development plan failed to demonstrate capacity for the delivery of continuing professional education as required by 22 Pa. Code § 49.17.

¹¹ During the Hearing, the applicant provided information on the number of positions included in the startup year but did not explain the assumptions for the remaining years (Transcript, pp. 190-191).

Finally, the Applicant continues to cite inaccurate, outdated certification requirements (Revised Application, pp. 103-104).¹²

C. Virtual Preparatory Academy proposes inadequate, inappropriate practices for vulnerable student populations.

Enabling students to meet state academic standards means all students—including historically underserved populations such as English learners, economically disadvantaged students, and students receiving special education services.

Beginning with English learner programming, cyber charter schools are required to “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” (22 Pa. Code § 4.26).

Despite these clear guiding standards, the Applicant fails to include a grading policy for English learners, detail on state-required criteria for transitioning English learners from English Learner status to former English learner, or a curriculum for English language development (ELD) instruction. During the November 5 Hearing, Department staff posed questions related to these deficiencies, but the Applicant was unable to demonstrate an adequate understanding of the concerns and issues (Transcript, pp. 96-

¹² The applicant states:

Teachers will be required to meet all requirements of Pennsylvania’s charter school law, including the requirement that at least 90 % of the charter school’s professional staff hold appropriate state certification. Additionally, Pennsylvania charter schools must meet the federal law’s Highly Qualified Teacher requirements. Teachers at Virtual Preparatory Academy of Pennsylvania will hold at least a bachelor’s degree and will demonstrate competence in the core content areas in which they teach. Federal law further provides that charter school teachers must meet the certification requirements established in the state’s public charter school law, which may differ from the requirements for full state certification. In Pennsylvania, in order to be highly qualified, all charter school teachers of core content subjects at all grade levels, whether or not they hold state certification, must (1) hold at least a bachelor’s degree and (2) demonstrate subject matter competence in each core content area and grade level at which they teach. To demonstrate subject matter competency, teachers can use a passing grade in the appropriate PRAXIS content area test in the subject area of their teaching assignment. Middle school and high school teachers may also demonstrate competency by having completed a content area major or a graduate degree in the subject area of their teaching assignment. Teachers with three or more years teaching experience may demonstrate subject matter competency through having attained National Board for Professional Teaching Standards (NBPTS) Certification in the core content area of their teaching assignment. Experienced teachers (*i.e.*, one or more years of teaching experience) may demonstrate subject matter competency through completing Pennsylvania’s HOUSSE programs. All special education teachers will be required to hold the appropriate certification.

(Application, pp. 103-104). Not only does the applicant continue to misstate certification percentage requirements of the CSL, this language is a near identical copy from the most recent cyber charter school application approved by the Department. *See* Reach’s (formerly known as Advance Cyber Charter School) September 25, 2015 application, p. 65; available on the Department’s website at the following link: <https://www.education.pa.gov/Documents/K-12/Charter%20Schools/Cyber%20Charter%20School%20Applications/2015%20Cyber%20Charter%20School%20Applications/Advance%20Cyber%20Charter%20School%20Application.pdf>.

103). Relative to the lack of an ELD curriculum, the Applicant acknowledges, “I don't think that any of us feel yet that we have discovered the resource or curriculum that we feel like can best meet the needs of our learners” (Transcript, p. 96).

Nowhere is the Applicant’s lack of planning to support vulnerable populations more evident than in its seven-sentence profile of student demographic characteristics (Revised Application, p. 69). The Applicant offers a range of statistics to justify projections for economically disadvantaged learners, including: an average from Accel schools outside Pennsylvania; an unsourced, undated national average; and a six-year old Pennsylvania average (*Id.*). During the November 5 Hearing, a representative of Virtual Preparatory Academy indicates that “data was pulled from the Pennsylvania Department of Education sources,” and that the Applicant “create[d] a smart average” (Transcript, p. 184). In this same section, Virtual Preparatory Academy reaches back to 2013 to estimate special education enrollment, landing on a different figure (15.4 percent) than it employed in special education tuition rate approximations (Revised Application, p. 69). (The Applicant then lists possible special education service providers before the sentence cuts off midstream (*Id.*).

Virtual Preparatory Academy’s application again reflects a lack of planning to support all students in meeting state standards. Required application elements including curriculum, faculty, and school-level policies are missing or incomplete. Planning is especially deficient regarding English learners, with the Applicant acknowledging that core components of an academic program, such as an ELD curriculum, are unresolved. Accordingly, the application is denied.

Criterion 4: Virtual Preparatory Academy’s Revised Application is noncompliant with requirements of section 1747-A.

The CSL requires any charter school application to meet standards under Section 1719-A, while an application for a cyber charter school must meet additional standards under Section 1747-A. Virtual Preparatory Academy’s Revised Application reflects a number of obvious deficiencies, summarized in Table 5 below.

Table 5: Missing and Deficient Application Elements

CSL-required contents of a charter school application. 24 P.S. §§ 17-1719-A, 17-1747-A	Application Deficiencies
<p>Section 1719-A(5): “[T]he curriculum to be offered and the methods of assessing whether student are meeting educational goals.”</p> <p>Section 1747-A(1): “The curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4”</p>	<p>As discussed above, Virtual Preparatory Academy’s Revised Application fails to include a complete curriculum. The revised application provided incomplete curricula for ELA, Mathematics, and Social Studies, in addition to failing to include any curricula for the Arts, Health and Physical Education, or Family and Consumer Sciences (<i>See generally</i>, Application, Appendix A).</p>

CSL-required contents of a charter school application. 24 P.S. §§ 17-1719-A, 17-1747-A	Application Deficiencies
Section 1719-A(8): “ <i>Information on the manner in which community groups will be involved in the charter school planning process.</i> ”	The Applicant failed to provide evidence of community involvement in school planning. The Applicant identifies a single community-based organization among its founding coalition (Revised Application, p. 3) and provided conflicting information during the November 5 Hearing as to whether this organization has been identified (Transcript, pp. 147-148).
Section 1719-A(13): “ <i>The proposed faculty and a professional development plan for the faculty of a charter school.</i> ”	As discussed above, the Applicant failed to include a proposed faculty and the professional development plan failed to demonstrate capacity for the delivery of continuing professional education as required by 22 Pa. Code § 49.17.
Section 1719-A(17): “ <i>How the charter school will provide adequate liability and other appropriate insurance for the charter school, its employes and the board of trustees of the charter school.</i> ”	As discussed above, the Applicant failed to provide evidence of how it will provide adequate liability and other appropriate insurance. (Transcript, pp. 212-214; Revised Application, Appendix L, p. 19).

The CSL sets forth application requirements that pertain to all charter school applicants (section 1719-A), and additional requirements for cyber charter school applicants (section 1747-A). Virtual Preparatory Academy’s Revised Application reflects deficiencies in both sections of the statute. Accordingly, the application is denied.

Criterion 5: Virtual Preparatory Academy again fails to substantiate that it will serve as a model for other public schools.

As noted in the Department’s January 27, 2020 decision on the Applicant’s October 1, 2019 Application, the legislative intent underlying the CSL argues for improved student learning; new and increased learning opportunities for students and educators alike, and accountability for meeting measurable academic standards. Against this backdrop, the Department is charged with evaluating a cyber charter school applicant, in part, on the degree to which it may serve as a model for other public schools, which include other cyber charter schools. In the absence of CAB or court decisions concerning what makes for a “model,” the Department again turns to the dictionary for a clear and unambiguous definition: “*An example for imitation or emulation.*” *Model Definition*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/model> (last visited November 25, 2020).

For the reasons outlined above (*i.e.*, criteria 1 through 4), as well as analyses that follow, the Applicant is not an example to be imitated or emulated.

The 2015 reauthorization of the federal Elementary and Secondary Education Act (ESEA), the Every Student Succeeds Act (ESSA), required states to design and implement systems for holding schools accountable for student outcomes, with particular focus on narrowing outcome gaps for historically underserved populations (20 U.S.C. § 6311). These systems must account for academic achievement and graduation rate measures, with added emphasis on the latter; ESSA requires states to designate any public high school that fails to graduate one third or more of their students for Comprehensive Support and Improvement (CSI), the most intensive of three federally-prescribed accountability designations.

In Fall 2019, Pennsylvania completed the first round of ESSA-required accountability determinations, resulting in school improvement designations for 14 of 14 cyber charter schools currently in operation. Ten of these schools carry CSI designations, indicating that the school is among the very lowest performing in the state, while the remaining four exhibit low performance among historically underserved student groups.¹³ (While these designations are ubiquitous across the state’s cyber charter sector, Virtual Preparatory Academy was not conversant in them; indeed, during the November 5 Hearing, the Applicant repeatedly referenced accountability designations associated with the last reauthorization of the ESEA rather than the current one (Transcript, p. 87).)

Consistent with the Department’s January 27 Denial, while evaluation of Virtual Preparatory Academy’s application does not draw on the performance of the extant cyber charter sector, these data provide an objective basis for evaluating whether Virtual Preparatory Academy’s own projections of its performance, as well as the supporting evidence for these projections, would allow the Applicant to serve as a model for other public schools.

Relative to graduation rate, Virtual Preparatory Academy outlines projected four-year adjusted cohort graduation rates (ACGR) beginning school year 2023-24 and five-year ACGRs beginning school year 2024-25 (Revised Application, p. 11). Each of the projected four-year rates (70, 75, and 80 percent) are substantially below the latest reported (*i.e.*, school year 2018-19) statewide average for the four-year ACGR (86.5 percent); the same divergence is observed with the Applicant’s projected five-year ACGRs (80 and 84 percent) and the latest reported statewide average (88.9 percent) for this measure.¹⁴ These gaps grow when the Applicant’s projected ACGRs are compared with statewide projections for the same under Pennsylvania’s long-term ESSA goals, including a nearly 20 percentage point spread in the four-year ACGR by 2023-24 (Virtual Preparatory Academy: 70 percent; Statewide: 88.9 percent).¹⁵

The Applicant’s goals relative to student achievement are difficult to parse. While the Applicant has increased English language arts achievement targets, still nearly one third of students (32 percent) will fail to reach proficiency in English language arts even after two full years of school operations (Revised

¹³ See Pennsylvania Department of Education (2019) for accountability designation lists. <https://www.education.pa.gov/K-12/ESSA/Pages/Accountability.aspx>

¹⁴ See Pennsylvania Department of Education (2020) for cohort graduation rate statistics. <https://www.education.pa.gov/DataAndReporting/CohortGradRate/Pages/default.aspx>

¹⁵ See Pennsylvania’s amended Consolidated State Plan (2019), pp. 156-157.

Application, p. 11). The Applicant made more substantial revisions to mathematics targets, including an 18-point increase by 2022-23, but provided little evidence to support the change. During the November 5 Hearing, the Applicant was asked to cite “specific changes” between the initial and revised applications that would substantiate such a dramatic shift in targets; the Applicant responded by pointing to a delay in grade level expansion along with vague references to “progress monitoring tools” and that “some of the academic programs have evolved” (Transcript, p. 70). Virtual Preparatory Academy failed to adequately describe—either in the application or during the November 5 Hearing—the methodology underlying these and other goals.

While the Applicant has increased—albeit inconsistently—certain school targets, the percentage of students participating in Advanced Placement (AP) coursework has been revised down in years one through four (Revised Application p. 11). It is concerning that an applicant whose mission includes an “innovative college preparatory” program would need until 2025 to achieve the same level of AP participation that the state as a whole reported during the most recent U.S. Civil Rights Data Collection (15.4 percent) in 2015-16.¹⁶

As a final note, public comment in response to Virtual Preparatory Academy’s application consistently notes low academic and other outcomes reported by out-of-state charter schools associated with Accel, the Applicant’s proposed service provider. Here, the fairest point of comparison is the Ohio Distance and Electronic Learning Academy, or OHDELA!, a “tuition-free, non-sectarian, public, K-12 online charter school” supported by Accel.¹⁷ Notably, no information concerning OHDELA! is available through the Ohio Department of Education website or associated report card system. However, information is available for an “Alternative Education Academy;” when one selects a “school profile page” on the Alternative Education Academy report, OHDELA! web content loads. Back at the OHDELA! website, information related to school governance refers to Alternative Education Academy.

The performance of Alternative Education Academy (and its alias) is woeful, including 13 “F” scores for individual rating elements during the 2018-19 school year and a chronic absenteeism measure of 65.1 percent during the 2019-20 school year (when statewide assessment cancellations across the country interrupted reporting of other outcomes) (Ohio School Report Cards Data Spreadsheets; *Alternative Education Academy Report Card*, Ohio School Report Cards, <https://reportcard.education.ohio.gov/school/overview/143396> (last visited November 25, 2020)).

Virtual Preparatory Academy’s academic and other goals would perpetuate—not reduce—outcome and opportunity gaps. As with the initial application, there is no consistent or evidence-based methodology informing these targets, including for lowered estimations of advanced course-

¹⁶ See U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2015-16 for state estimations. <http://ocrdata.ed.gov>. Number of Pennsylvania public school students enrolled in at least one Advanced Placement course (84,042) was then divided by the combined public school enrollment for grades 9-12 for that same year (546,617) = 15.37 percent.

¹⁷ See Ohio Distance and Electronic Learning Academy. <https://ohdela.com/>. Text under “Request Information” reads: “By submitting this form, I expressly consent and authorize OHDELA and ACCEL Schools (emphasis added) to contact me at the number(s) provided via text or short message service (SMS) as well as by phone, regarding educational matters.”

taking. Finally, relevant evidence from a public cyber charter school supported by Virtual Preparatory Academy’s proposed service provider raises concerns about whether the Applicant’s performance targets are well-founded. These considerations, together with findings from criteria 1, 2, 3 and 4, demonstrate that Virtual Preparatory Academy does not represent a model for other public schools. Accordingly, the application is denied.

Conclusion

The Department is required to evaluate a cyber charter school application against five criteria. Based on Virtual Preparatory Academy of Pennsylvania Cyber Charter School’s Revised Application, clarifying answers provided by the Applicant during the November 5 Hearing, and the volume and credibility of public comment in opposition to the Revised Application, the Department finds multiple, significant deficiencies for each criterion. These deficiencies—individually, collectively, or in any combination—compel the denial of Virtual Preparatory Academy’s Revised Application.

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

In addition to filing via mail, an electronic copy must be sent in accordance with the Department’s Procedures for *Electronic Filings and Video/Telephonic Hearings During COVID-19 Emergency* via email to the following address: ra-EDCharterBoard@pa.gov.



Noe Ortega
Acting Secretary of Education

Date mailed: November 30, 2020

APPENDIX A

COMMITTEE ON
ENERGY AND COMMERCE

SUBCOMMITTEES:
COMMUNICATIONS AND TECHNOLOGY
CHAIRMAN

ENERGY AND POWER

CO-CHAIR:
COALITION FOR AUTISM
RESEARCH AND EDUCATION
CONGRESSIONAL CAUCUS ON ROBOTICS



Congress of the United States
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(412) 283-4451

627 LYSLE BOULEVARD
MCKEESPORT, PA 15132
(412) 664-4049

November 19, 2020

Acting Secretary Noe Ortega
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

Acting Secretary Ortega:

I am writing to withdraw my support for the Virtual Preparatory Academy of PA (VPAP). In September of 2019, my office sent a letter of support on the academy's behalf, signaling an endorsement for a cyber charter school application. However, upon closer examination of their record, I formally withdraw my support and request that you disregard the 2019 letter in any upcoming determinations.

I greatly appreciate your efforts to ensure a high-quality education for all of Pennsylvania's students, and believe our goals to be aligned. I urge you to reach out to my office if you have any questions or concerns.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Mike Doyle".

Mike Doyle
Member of Congress