



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

January 27, 2020

Mr. Richard Flynn, Board President
Virtual Preparatory Academy of Pennsylvania Cyber Charter School
c/o Patricia Hennessy
1500 Market Street, 39th Floor
Philadelphia, PA 19102

SENT VIA CERTIFIED MAIL AND E-MAIL

Dear Mr. Flynn:

After reviewing the Virtual Preparatory Academy of Pennsylvania Cyber Charter School 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 Sherri L. Smith, Advisor to the Deputy Secretary, at ssherri@pa.gov.

Sincerely,



Pedro A. Rivera
Secretary of Education

Enclosure

cc: Adam A. Schott, Special Assistant to the Secretary
Sherri L. Smith, Advisor to the Deputy Secretary
Matthew S. Stem, Deputy Secretary for Elementary and Secondary Education
David W. Volkman, 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 5, 2019, the Department provided 30 days’ notice of a public hearing held on November 19, 2019 (hereinafter referred to as “November 19 Hearing”).

Decision

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

- (i) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.
- (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 written application as well as questions and responses recorded at the November 19 Hearing, the Department denies Virtual Preparatory Academy’s application. While a single deficiency would be grounds to deny the application, the Department has identified significant deficiencies for every criterion. Discussion of the specific deficiencies follows.

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

Virtual Preparatory Academy projects that it would serve 500 students in its planned first school year of operation (2021-22) and grow to 2,500 students within five years (Application, p. 3). If Virtual Preparatory Academy’s projections hold, its opening enrollment would exceed the enrollments of approximately one-

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

third of the state’s existing cyber charter schools. At an enrollment of 2,500, Virtual Preparatory Academy would be one of the state’s larger cyber charter schools (rank: six of 15) and place among the top third of the state’s local education agencies of any kind (rank: 210 of 782).² Alongside these enrollment projections, Virtual Preparatory Academy proposes a five-member founding coalition (Application, p. 3). In describing the formation of its founding coalition, or board of trustees, two members were cited as being “familiar with” Accel Online Pennsylvania, LLC (hereinafter referred to as “Accel”), the applicant’s proposed for-profit education service provider (Application, p. 60 & Appendix E).

Despite these projections, evidence of wider community support is wholly absent. Notably, the applicant writes that “the success of Virtual Preparatory Academy of Pennsylvania and its students is predicated on the support of communities” (Application, p. 58). Prior State Charter School Appeal Board (CAB) and court decisions have found that demonstrated, sustainable support for a charter school may be evaluated in a variety of means—through petitions, records of community meetings, letters of support, financial support from a non-profit organization, and evidence of pre-applications.³ The applicant provides nothing of the kind. Virtual Preparatory Academy references letters of support in the application appendix; however, no such letters are included (Application, p. 58). The applicant further references a petition with a subset of signers “demonstrating interest pre-enrollment in Pennsylvania” [sic] as evidence of sustainable support to operate (Application, p. 57). It is unclear whether “pre-enrollment in Pennsylvania” is meant to convey enrollment in Virtual Preparatory Academy; in any case, no petition or equivalent supporting evidence are reflected in the application.

Finally, no public comment in support of Virtual Preparatory Academy was received ahead of, or recorded during, the Department’s November 19 Hearing on the application.

Virtual Preparatory Academy’s application fails to document demonstrated, sustainable support by teachers, parents or guardians, and students. Accordingly, the application is denied.

Criterion 2: Virtual Preparatory Academy lacks the capability, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.

In evaluating 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.⁴ From basic budgeting and facilities planning to provisions for oversight of proposed service providers, Virtual

² See Pennsylvania Department of Education (2019), for 2018-19 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>.

³ See *Montour Sch. Dist. v. Propel Charter School-Montour*, 889 A.2d 682, 687 (Pa. Cmwlth. 2005); see also, *Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131, 137 (Pa. Cmwlth. 2001).

⁴ *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).

Preparatory Academy fails to demonstrate this capacity. Further, the applicant’s proposed reliance on external service providers does not resolve these concerns; in fact, in important ways, it exacerbates them. Specific findings are as follows:

- A. The applicant failed to provide information concerning the ownership of all facilities and offices of its school and any lease arrangements.

Responsible planning dictates—and the CSL requires—that a cyber charter school applicant 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; however, information about proposed facilities (*e.g.*, letters of intent or any proposed lease arrangements associated with potential properties), is required.⁵ While the application references a letter of intent to lease (Application, p. 71), it was confirmed at the November 19 Hearing that the letter of intent to lease was not included in the application (Transcript, p. 125).

In the absence of this required facility information, it is impossible to evaluate estimated facility costs. For example, Virtual Preparatory Academy’s application indicates that the school anticipates leasing facilities in the York/Harrisburg area, and that current cyber charter schools in the Harrisburg area informed cost estimates⁶; however, based on analysis of rental costs from the most recently available independent audits for two of those schools (Reach and CCA), the projected average rental cost in the Harrisburg area is approximately \$200,000 in 2021—twice the amount included in Virtual Preparatory Academy’s budget for 2022 (Transcript, pp. 102, 126).

- B. The applicant failed to demonstrate evidence of 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 the board of trustees (24 P.S. § 17-1719-A(17)); this information is crucial to ensure basic protections for the school’s stakeholders in the event of school closure, and to guard investments by Pennsylvania taxpayers.

While the application states that copies of certificates of insurance listing Virtual Preparatory Academy as insured can be provided (p. 73), these materials were not included as required. Further, while the application states that Accel would “act on behalf of the School to obtain and maintain for the School the types of and limits on insurance policies as required” (Application, Appendix E), the applicant failed to explain how liability insurance will be provided through Accel. It was confirmed at the November 19 Hearing that Virtual Preparatory Academy was still considering how it will obtain insurance (Transcript p. 128).

⁵ *Sch. Dist. of York v. Lincoln-Edison Charter Sch.*, 798 A.2d at 304.

⁶ Virtual Preparatory Academy identified the current cyber charter schools as Reach Cyber Charter School (Reach), Insight Pennsylvania Cyber Charter School (Insight), and Commonwealth Charter Academy Charter School (CCA).

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

A cyber charter school applicant is required to draft a preliminary operating budget covering all projected sources of revenue. Revenue estimates must be sufficient and reasonable to demonstrate the applicant's capability, in terms of financial support and planning, to provide comprehensive learning experiences for students.

In its application, Virtual Preparatory Academy states "a detailed narrative regarding the budget is also provided in Appendix E" (Application, p. 67). Yet the applicant does not include this narrative in its application, and a representative from another proposed provider, Charter Choices, Inc.⁷ (hereinafter referred to as "Charter Choices"), confirmed that omission at the November 19 Hearing (Transcript, p. 103). As a result, the applicant's assumptions in developing local and federal revenue source estimates (including Title I, Title II, and Title III and Individuals with Disabilities Education Act (IDEA) funds) are unknown, making it impossible to evaluate the accuracy or reasonability of those estimates.

What is known is that Virtual Preparatory Academy's proposed budget projects that operating expenditures will exceed local and federal revenues by an amount equal to 6.1 percent of expenditures in its first year of operation.⁸ The applicant intends to rely on a startup loan, provided by its proposed education service provider, a financial institution, or a private source, to close the deficit if necessary (Transcript, pp. 109-110). While the applicant indicated that a loan would be used only if needed (Transcript, p. 110), the proposed budget includes a revenue line item for an advance from Accel equal to just under \$700,000 (Application, Appendix F), and it was confirmed at the November 19 Hearing that the applicant believes expenditures will "most likely" outpace revenues in the first year of operation (Transcript, p. 110). As a financial best practice, a school's expenditures should not be greater than the operating revenue it receives, as this is an indication of insufficient cash flow to cover normal operating expenses.

Virtual Preparatory Academy states that its financial estimates "are based upon the publicly available school budgets of existing cyber charter schools" (Application, p. 69). During the November 19 Hearing, the representative from Charter Choices stated that three cyber charters in the Harrisburg area (Insight, Reach, and CCA) were used as benchmarks in developing expenditure estimates (Transcript, p. 105). However, more detailed information regarding how these schools informed estimates is not provided in the application, nor was it forthcoming during the November 19 Hearing. Further, a representative from Accel indicated that estimated costs for certain expenses, such as marketing and Individualized Education Program services, were based on "prior experience" (Transcript, pp. 104, 113-114). Again, in the absence of a budget narrative, it cannot be determined whether employees' "prior experiences" are generalizable, reasonable, or accurate.

⁷ The applicant has engaged Charter Choices to support certain business office functions, including district billing (Transcript, p. 122).

⁸ The submitted budget (Appendix F, Preliminary Startup and Operating Budget) includes projected receipts of \$5.6 million in local sources (tuition payments from other schools) and \$0.2 million in federal sources in the 2021-22 school year—a total of just under \$5.8 million in operating revenues. During the same school year, the applicant is projecting a total of nearly \$6.2 million in expenditures. This results in an operating deficit of approximately \$0.4 million (6.1 percent) of budgeted expenditures.

While the applicant acknowledged that staffing represents a significant portion of these expenditure estimates, detail is extraordinarily thin and oftentimes conflicting—raising questions about basic financial planning as well as the applicant’s capacity to deliver high quality instruction, a finding described in greater detail under Criterion 3.

For example, during the November 19 Hearing, the applicant stated that “the staffing plan promotes low student-to-teacher ratios,” and that staffing is expected to grow commensurate with enrollment, increasing from 28 full-time employees in year one to 65 in year three (Transcript, p. 112). To back these projections, the representative from Charter Choices stated that the applicant used the student-to-teacher ratios of one teacher for every 33 students in grades kindergarten to 5 and one teacher for every 36 students in grades 6 to 12 in developing the budget (Transcript, p. 113). Additionally, the Charter Choices representative noted that based on “benchmark data and statewide market research,” the applicant used \$50,000 as an average base salary for regular education teachers, \$60,000 as an average base salary for special education teachers, and an assumed five percent annual salary increase in budgeting personnel costs (Transcript, p. 113).

Given this methodology, there appear to be inconsistencies between the number of teacher positions included in the budget and the number of teacher positions needed to meet the stated student-to-teacher ratios. For example, as shown in the first table, below, the submitted budget—given the average regular education and special education teacher base salaries cited during the November 19 Hearing—appears to include a total of 18 teachers in year one, increasing to 50 by year three. However, as shown in the second table, the number of teachers required to meet the stated target ratios, given enrollment projections, is 13 in year one, increasing to 37 by year three. The latter table does not distinguish between regular and special education enrollment and teachers, as that level of detail was not provided by the applicant.

Table 1. Total teachers, based on budget and average salaries

	2022	2023	2024
Regular Education			
Budgeted Salaries	747,601	1,559,385	2,450,214
Average Salary	50,000	52,500	55,125
Reg. Ed. Teachers	15	30	44
Special Education			
Budgeted Salaries	180,000	252,305	397,862
Average Salary	60,000	63,000	66,150
Special Ed. Teachers	3	4	6
Total Teachers	18	34	50

Table 2. Total teachers, based on projected enrollment and target ratios

	2022	2023	2024
K-5 Enrollment	100	200	300
K-5 Teachers	3	6	8
6-8 Enrollment	200	350	400
6-8 Teachers	5	9	10
9-12 Enrollment	200	450	800
9-12 Teachers	5	11	19
Total Teachers	13	26	37

D. The applicant failed to demonstrate proper planning regarding—and sufficient independence from—its education service provider.

From the outset, Virtual Preparatory Academy demonstrates enormous reliance—financial, programmatic, and otherwise—on Accel. As discussed above, according to the application, Accel offered Virtual Preparatory Academy the option of a line of credit/start up loan “to facilitate the successful launch of the School” (Application, Appendix E). Indeed, the applicant’s proposed budget shows a total advance of almost \$700,000—\$274,700 for the start-up year and almost \$424,000 in fiscal year 2022 (*Id.*). While the draft service agreement states that if the applicant desires a line of credit, it will repay the principal of the loan with interest at the prime rate (as reported by the Wall Street Journal’s bank survey) plus one percent, neither the amount of the loan, nor a repayment schedule for the loan, are reflected in the agreement.⁹ It is not typical of an arm’s length transaction between two unrelated parties for the for-profit entity to provide a loan with no specified repayment timeline. During the November 19 Hearing, the applicant stated that it may decide not to proceed with the loan and may look to outside sources for funding start-up costs of the school (Transcript, p. 109).

This same draft 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.” Yet Appendix A to the service agreement was not included in the application. In addition, important discrepancies exist across the submitted and referenced materials; for example, the draft agreement identifies as many as 25 services to be provided by Accel, while the submitted budget includes nine line items associated with Accel (those line items are delineated in the budget with an asterisk). During the November 19 Hearing, a representative from Accel provided a description of services it expects to deliver; however, the applicant did not describe how associated costs were estimated (Transcript, pp. 130-134). Accordingly, it is unclear whether the submitted budget reflects all services included in the Accel draft service agreement; it is further unknown whether the fees associated with those services are reasonable.

However, one thing is clear—Accel’s expenditures are consistently high following the start-up year. Expenditures related to services provided by Accel average 45.2 percent of Virtual Preparatory Academy’s

⁹ During the November 19 Hearing, the applicant stated that the Service Agreement with Accel provided in the application is not, in fact, the final agreement. Instead, the applicant used a draft agreement based on a relationship with a school in Ohio (Transcript, p. 138). The final agreement is still being negotiated and could not be evaluated at the time of this review.

total proposed budget, ranging from a low of 44.0 percent to a high of 46.3 percent from 2022 to 2026 as shown in Table 3, below.

Table 3. Accel expenditures per budget

	Start-up	2022	2023	2024	2025	2026
Accel expenditures	\$41,400	\$2,853,005	\$4,887,750	\$7,003,980	\$9,384,895	\$11,499,463
Total applicant expenditures	\$274,700	\$6,167,925	\$11,100,132	\$15,123,428	\$20,795,858	\$25,918,981
Percent of total applicant expenditures	15.1%	46.3%	44.0%	46.3%	45.1%	44.4%

The proposed budget does not attribute expenditures to Accel for facility rent, utilities, maintenance and repair, or insurance—despite service agreement language that states the service provider will “obtain, manage, and maintain School’s office and satellite facilities” (Application, Appendix E) and that the “Service Provider shall act on behalf of the School to obtain and maintain for the School the types of and limits on insurance policies as required by the Charter and applicable law” (Application, Appendix E). Therefore, it is possible that the total amount of budgeted expenditures for Accel exceeds what was shown in the proposed budget.

Relatedly, it is unclear from the application which finance and accounting functions will be performed by Virtual Preparatory Academy, and which will be performed by the service provider. The provided draft service agreement states several important financial management and accounting functions to be supported by or performed by Accel such as payroll and benefits, invoice payment processing, budgeting and financial reporting—including preparing a proposed annual budget, financial statements, and monthly financial forecast and analysis reports. The service provider will also be responsible for accounts payable, support for grant writing and reporting, and other accounting information and services (Application, Appendix E).

Virtual Preparatory Academy’s decision to add a third entity to the mix makes matters even more opaque. During the November 19 Hearing, the applicant stated that Charter Choices had been engaged to support certain business office functions, including district billing (Transcript, p. 122). The relationship with Charter Choices is not described in Virtual Preparatory Academy’s application, nor is a proposed service agreement or fee schedule provided. The applicant stated that discussions of responsibilities between Accel, Charter Choices, and the School are “ongoing” (Transcript pp. 123-124). Without knowing which functions will be performed by which organization, or how many individuals are proposed to perform the work, an evaluation of whether there is sufficient segregation of accounting duties is impossible.

Finally, the draft service agreement with Accel contains numerous provisions that show a significant dependence on the proposed service provider—dependence that limits Virtual Preparatory Academy’s ability to manage school employees, communicate with and be accountable to the school community, and monitor

agreements with other service providers. Table 4, below, outlines several of the most deficient contract provisions. Underlying all of questionable provisions are two more general ones:

- 1) The draft agreement does not describe how the contract will be overseen by the applicant and its Board including regular monitoring and more formal summative evaluation. (During the November 19 Hearing, the applicant stated that renewal of the contract will be overseen by the applicant’s solicitor in conjunction with the Board; however, the applicant did not provide additional information on how the provider will be evaluated by the Board, apart from student outcomes and parent satisfaction surveys (Transcript, p. 139).) As many of the applicant’s functions are provided by Accel, it is critical that the Board have a process of evaluating performance independently.
- 2) As the application does not explain which administrative functions will be performed by service employees versus other contractors or Virtual Preparatory Academy employees, it is not clear what degree of internal controls will be in place to prevent fraud or abuse.

Table 4. Service agreement language that implicates planning, independence, and viability

Agreement Language	Deficiency
<p><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. All public relations will be subject to the mutual approval of both Parties, which approval may not be unreasonably withheld.”</i> (Application, Appendix E, p. 3).</p>	<p>By requiring all public relations be subject to Accel’s approval, the applicant is limiting the Board of Trustee’s authority regarding outreach and communications, potential recruitment efforts, and strategic planning of its own school.</p>
<p><i>“Reasonable Compensation: The Service Fees are reasonable compensation for services rendered”</i> (Application, Appendix E, p. 9).</p>	<p>In the absence of supporting information (e.g., budget narrative, fee schedule and methodology), it is impossible to assess the reasonableness of proposed fees. During the November 19 Hearing, the applicant stated that it was an oversight not to include the fee schedule in the submitted application (Transcript, pp. 135-136).</p>
<p><i>“In addition to the Service Fees referenced in Section 4.2 below, the School will reimburse Service Provider for all costs incurred and paid by Service Provider in providing the Educational Services . . . Such costs may include, but are not limited to . . . salaries of School Personnel.”</i> (Application, Appendix E, p. 9).</p>	<p>Based on these provisions, the service provider may receive reimbursement for Virtual Preparatory Academy employees. At the same time, the service agreement states that “No employee of one Party will be considered an employee of the other Party by either Party for any purpose whatsoever” (Application, Appendix E, p. 8). In any event, it is not clear why salaries of school personnel would need to be reimbursed to the service provider. Ultimately, during the November 19 Hearing, it was stated that this language may not represent the</p>

Virtual Preparatory Academy of Pennsylvania Cyber Charter School
 Decision by the Pennsylvania Department of Education

Agreement Language	Deficiency
	current position of the Board concerning staffing. (Transcript, p. 137).
<p><i>“The Lead Administrator is the Board representative and in consultation with Service Provider, shall be responsible for the day-to-day management of the School, implementation of the Educational Program, supervising Personnel, and being the primary liaison between the Board and Service Provider and the Board and Personnel.”</i> (Application, Appendix E, p. 11); and</p> <p><i>“The Lead Administrator shall consult with Service provider about oversight and employment actions regarding Personnel . . . and promptly report to Board and Service Provider any actions taken . . .”</i> (Application, Appendix E, p. 11).</p>	Language such as “in consultation with” and “shall consult” gives the service provider equal standing with the Lead Administrator and Board, when the applicant must demonstrate that it is an independent entity.
<p><i>“The Board shall evaluate the Lead Administrator annually using criteria adopted by the Board after consulting with Service Provider. While the Board is responsible for evaluating the Lead Administrator, the evaluation shall include consultation with Service Provider”</i> (Application, Appendix E, p. 12).</p>	These provisions limit the Board of Trustees’ ability to develop standards and evaluate the Lead Administrator independently.
<p><i>“Service Provider may terminate this Agreement effective at the end of the then-current school year if there are unresolvable differences between the Parties regarding what Service Provider, in its sole discretion, considers to be conduct by the School that reflects materially and unfavorably on Service Provider. The Parties shall work in good faith to resolve their differences to Service Provider’s satisfaction during the thirty (30) days after which Service Provider provides School with notice of intent to terminate”</i> (Application, Appendix E, p. 13).</p>	This language gives Accel sole authority to terminate the contract and suspend services. No detail is provided concerning actions by the school that may reflect “materially and unfavorably” on Accel. As many of Virtual Preparatory Academy’s proposed functions envision Accel’s role, the termination language, if included in any final agreement, threatens the viability of school operations.
<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; provided that any notice of termination 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</i></p>	While it is reasonable for a service agreement to allow a service provider to take steps in the event the client entity is 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 to stem from factors beyond the applicant’s control places all risk on the shoulders

Agreement Language	Deficiency
<p><i>as designated by the Service Provider”</i> (Application, Appendix E, p. 13).</p>	<p>of Virtual Preparatory Academy—rather than spreading risk between the school and its provider. Again, as many of Virtual Preparatory Academy’s proposed functions envision Accel’s role, the 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 and may without the consent of the School, delegate the performance of but not responsibility for any duties and obligations of Service Provider hereunder to any Affiliate, independent contractors, experts or professional advisors”</i> (Application, Appendix E, p. 23).</p>	<p>This provision gives Accel the authority to transition performance of services outlined in the service agreement to other contractors without involvement by the applicant. This limits the Board’s authority over contracts and provision of services, and further limits the Board’s ability to accurately evaluate service provision. During the November 19 Hearing, the applicant did not sufficiently clarify what authority Accel would have to operate independently or enter into subcontracts without Board approval. (Transcript, pp. 136, 146).</p>
<p><i>“The Board may issue to Service Provider an annual bonus to acknowledge academic gains and achievement by the students enrolled in the School.”</i> (Application, Appendix E, p. 26).</p>	<p>This single-sentence appendix does not include detail on what targets the service provider must meet to achieve a bonus, nor does it provide any detail on the potential size of this bonus. For both reasons, it is impossible to evaluate the potential financial impact of the bonus relative to other information in the application. During the November 19 Hearing, the applicant noted that the bonus has not yet been determined by the Board, as the agreement provided is a draft version (Transcript, p. 140).</p>

Virtual Preparatory Academy’s application fails to evince the planning and capacity necessary to provide students with comprehensive learning experiences, while exhibiting heavy reliance on service providers without clear delineation of roles and responsibilities. Accordingly, the application is denied.

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

Virtual Preparatory Academy fails to provide information that is central to evaluating proposed academic programs; in other cases, programmatic information is missing entirely. Specific findings are as follows:

A. Virtual Preparatory Academy does not include curriculum and other required submissions in its application

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).

Virtual Preparatory Academy’s application does not include a curriculum, let alone evidence of curriculum alignment. During its presentation at the November 19 Hearing, the applicant acknowledged that it “did not submit course content and course alignments” (Transcript, p. 27) and that “course specific state standard alignments have not been delivered at this point” (Transcript, p. 32).

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

Research consistently identifies educator quality as the most important in-school determinant on student learning and finds that educator quality is especially important for historically underserved student groups. Accordingly, any meaningful evaluation of an applicant’s capacity to support students in meeting state academic standards relies on examination of the applicant’s plans to identify, support, and retain highly effective educators.

Yet Virtual Preparatory Academy fails to include a professional development plan (Transcript, pp. 70-71), a teacher induction plan (*Id.*), proposed faculty—or even the most basic staffing figures (Application, p. 3). Efforts during the November 19 Hearing to elucidate the applicant’s approach demonstrated that required submissions in a cyber charter application are, at best, only in development:

- “. . . we would anticipate crafting a professional development plan that utilizes the Pennsylvania Department of Education established template for PD plans.” (*emphasis added*) (Transcript, p. 72).
- “And then of course, we again, partnering with the communities that are already out there and deep, deep experts, so whether that’s intermediate units or technical assistance through PATTAN, other organizations, we’d want to leverage those folks in creating the most aligned and appropriate professional development as well.” (*emphasis added*) (*Id.*).
- “So, we have a hiring plan sort of by year based on projected enrollment . . .” (*emphasis added*) (p. 112).

Other shortcomings regarding proposed school staffing include inaccurate references to certification policies¹⁰ (Application, p. 94), inconsistencies between the number of teacher positions included in the

¹⁰ The applicant states:

Teachers will be required to meet certain certification requirements, 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 VPAP 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

budget and the number of teachers needed to meet the stated student-to-teacher ratios (Application, p. 82; Transcript, pp. 112-113), and a concerning implication that the applicant has singular authority to assess a candidate's eligibility for employment in the context of criminal and child abuse history checks:

When we get a State Police clearance or a CHRI [Criminal History Record Information] clearance back, obviously there are certain types of offenses that are going to have a different implication on ability to continue with hire. That's a decision making process that's going to sit with the school level leader, the head of school or their designee, to review that particular offense and make a determination on whether that candidate is eligible for employment with the school.

(Transcript, pp. 52-53). To be clear, the Pennsylvania School Code, 24 P.S. § 1-111(e)(1), outlines approximately two-dozen provisions of Title 18 that cover offenses that represent a permanent barrier to teaching.

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

Enabling students to meet state academic standards means all students—including English learners and students receiving special education services.

Beginning with the former, 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.

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. 93-94). Not only does the applicant misstate the certification percentage requirements of the CSL, this section appears to be 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>.

When the Department scoured the 250-page application for Virtual Preparatory Academy’s plans for supporting English learners, it found three paragraphs—all but two sentences of which concern screening, identification, and placement. The applicant includes no proposed policies (Transcript, p. 63); no English language development (ELD) curriculum (Transcript, p. 61); no professional development plans (Transcript, p. 68); and no plans for evaluating the school’s English learner program. During the November 19 Hearing, Department staff posed follow up questions concerning program monitoring; however, the applicant was unable to identify any specific outcome measure (other than to misidentify the state’s English language proficiency measure), nor could it outline an evaluative approach (Transcript, pp. 58-59).

Planning for special education services is equally deficient. Cyber charter schools are required to comply with federal and state requirements applicable to educating students with disabilities. 24 P.S. § 17-1749-A; 22 Pa. Code Chapter 711. The Department requires that a cyber charter school applicant demonstrate capacity for program design, process, and service delivery to provide a Free Appropriate Public Education for students with disabilities. This includes provisions such as a continuum of placement options and related services as required to assist students with disabilities in benefiting from special education, as well as an appropriate, adequate allocation and preparation of special education and related services personnel to meet the needs of the projected special education student population.

The applicant fails to demonstrate such capacity. Virtual Preparatory Academy provides no indication of how delivery of instruction will be modified, differentiated, or accommodated to meet the varied needs of students with special needs; omits a list or method to locate qualified agencies to provide related services; ignores the need for adequate planning for parent training; and fails to delineate a continuum of alternative placements.

Virtual Preparatory Academy fails to demonstrate capacity to support all students in meeting state academic standards. Required application elements including curriculum, proposed faculty and plans to support their professional growth, and school-level policies are missing or inadequate. Further, the applicant’s ability to serve vulnerable student populations is not evident owing to inadequate or nonexistent planning. Accordingly, the application is denied.

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

The CSL requires any charter school application to meet application standards under Section 1719-A, while an application for a cyber charter school must meet an additional 16 standards described at Section 1747-A. Virtual Preparatory Academy’s application reflects significant deficiencies from both sections, summarized in Table 5, below.

Table 5. Summary of missing and deficient application elements

CSL-required contents of a charter school application. 24 P.S. §§ 17-1719-A, 17-1747-A	Application Deficiencies
Section 1719-A(4): <i>“The proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees.”</i>	The applicant fails to include a sufficient description of the method for appointing or electing trustees. The application states only that “trustees shall be elected at any duly organized meeting of

CSL-required contents of a charter school application. 24 P.S. §§ 17-1719-A, 17-1747-A	Application Deficiencies
	the Board of Trustees by a majority of the Trustees then in office” (Application, Appendix C), and that “the Board will recruit additional members as necessary to form a diverse and well-balanced Board” (Application, p. 60). No specific method for recruiting and selecting trustees is provided, and “Board Meeting Minutes” referenced at “Page C1” are missing.
<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>	As discussed above and confirmed at the November 19 Hearing, Virtual Preparatory Academy’s application fails to include a curriculum. During its presentation at the November 19 Hearing, the applicant acknowledged that it “did not submit course content and course alignments” (Transcript, p. 27) and that “course specific state standard alignments have not been delivered at this point” (Transcript, p. 32).
Section 1719-A (8): “Information on the manner in which community groups will be involved in the charter school planning process.”	The applicant fails to provide sufficient information. No specific community organizations are described and stakeholder engagement strategies are poorly-developed: “The Virtual Preparatory Academy of Pennsylvania will develop a student information and community education plan . . .” (Application, p. 36).
Section 1719-A (11): “A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.”	The applicant lists the 39 th floor Philadelphia office of its counsel—more than 100 miles from its intended Harrisburg location. However, this is not intended to be the facility in which Virtual Preparatory Academy is to be located (Application, pp. 2, 70-72; Transcript, pp. 125-126). No proposed location, facility detail, or letter of intent to lease is provided (<i>Id.</i>).
Section 1719-A(13): “The proposed faculty and a professional development plan for the faculty of a charter school.”	As discussed above, the applicant failed to include a professional development plan (Transcript, pp. 70-71), a teacher induction plan (<i>Id.</i>), or proposed faculty (Application, p. 3).
Section 1719-A (14): “Whether any agreements have been entered into or plans developed with the local school district regarding participation of the charter school students in extracurricular activities within the school district.”	No agreements of any kind with any educational entity, other than the proposed education service provider, are detailed or included.

The CSL sets forth application requirements that pertain to all charter school applicants (section 1719-A), and additional requirements for aspiring cyber charter schools (section 1747-A). As listed above, Virtual Preparatory Academy’s application is deficient in both sections of the statute—again evidencing failure to plan and failure to comply with foundational elements of the CSL. Accordingly, the application is denied.

Criterion 5: Virtual Preparatory Academy fails to provide evidence that the cyber charter school may serve as a model for other public schools.

As noted above, 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 and court decisions concerning what makes for a “model,” the Department 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 January 27, 2020).

For the reasons outlined above (*i.e.*, criteria 1 through 4), as well as analyses that follow, the applicant is not.

For this criterion, it is helpful to begin with three contextual considerations:

- 1) Virtual Preparatory Academy is the first (new) applicant cyber charter school since the school year 2018-19 implementation of accountability systems required under the federal Every Student Succeeds Act (ESSA).
- 2) Cyber charter schools are at least positioned to serve as models for other public schools, and in fact enjoy some unique positioning in this regard. For instance, cyber charter schools are the only public schools able to draw from a statewide student catchment and are positioned to implement technological advances on the widest possible scale.
- 3) Virtual Preparatory Academy proposes to begin operations in the summer of 2021—with all the opportunities for readiness an approximately 20-month runway implies.

In other words, ESSA and Pennsylvania’s ESSA State Plan provide a clear and fair baseline for assessing the performance of all public schools, including cyber charter schools; and the applicant has the luxury of a proposed two-year head start (*i.e.*, the current 2019-20 school year and the 2020-21 planning year) to prepare for school-level implementation of ESSA requirements. The applicant fails to capitalize on these opportunities.

To begin, ESSA requires 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; in fact, ESSA requires states to designate any public high school—regardless of Title I status, and irrespective of performance on other indicators—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 December 2019, pursuant to ESSA requirements, Pennsylvania completed the first round of federal accountability determinations. Fifteen of 15 cyber charter schools in operation as of Fall 2019 were designated for federal accountability, with 11 of these schools carrying CSI designations indicating that the school is among the very lowest performing in the state.

To be clear, the Department’s evaluation of Virtual Preparatory Academy’s application does not draw on the performance of the extant cyber charter sector; however, 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.

Turning first to graduation rate, Virtual Preparatory Academy outlines projected four-year adjusted cohort graduation rates (ACGR) beginning school year 2022-23 and five-year ACGRs beginning school year 2023-24 (Application, p. 8). Running out to school year 2025-26, each of the seven resulting projected rates, across both cohorts, fall far below the most recently reported statewide average four- and five-year ACGRs (Application, p. 8); see Table 6, below. In fact, the applicant’s initial projected ACGRs (*e.g.*, rates of 60 and 65) would automatically qualify the applicant for CSI school—*i.e.*, among the lowest performing public schools in the state—and barely in the top half of the subset of currently operating cyber charter schools that report graduation rates.¹¹

Table 6. Statewide graduation rate v. rate for existing cybers v. applicant’s proposed graduation rates

	Statewide (all public schools) 2017-18	Cyber Charter Schools (all schools with a grade 12) 2017-18	Virtual Preparatory Academy: Projected 1st Year: 2022-23	Virtual Preparatory Academy: Projected Highest Projected
ACGR (4-year)	87.2%	56.2%	60%	75% (2025-26)
ACGR (5-year)	90%	63.3%	70%	80% (2025-26)

Student achievement targets for English language arts and mathematics are much the same, with the applicant projecting performance below current state average achievement levels. As an example, even in the third full year of operations (second year of academic offerings) (school year 2022-23)¹², Virtual Preparatory

¹¹ For example, in 2017-18, four-year ACGRs for the 14 cyber charter schools that reported a graduation rate ranged from 18.9 percent to 78 percent, with a median rate of 56.3 percent.

¹² It is unclear if the applicant meets the requirements of section 1745-A which states “[a]n application to establish a cyber charter school shall be submitted to the department by October 1 of the school year preceding the school year in which the cyber charter school proposes to commence operation.” 24 P.S. § 17-1745-A(d). However, given the numerous deficiencies described throughout this decision, the Department is not addressing whether the application has met the timing requirements of section 1745-A.

*Virtual Preparatory Academy of Pennsylvania Cyber Charter School
Decision by the Pennsylvania Department of Education*

Academy projects that more than a third of students (34 percent) will fail to reach proficiency in English language arts, while nearly half of students (49 percent) will miss that same mark in mathematics (Application, p. 8).

While it is unclear what methodology the applicant employed in setting year over year academic targets, it did not use the one outlined in the first pages of Pennsylvania’s approved ESSA State Plan (*See* Pennsylvania Consolidated State Plan, Section 1, Long-Term goals; available on the Department’s website at the following link: <https://www.education.pa.gov/Documents/K-12/ESSA/PennsylvaniaConsolidatedStatePlan.pdf>). In addition, targets for the applicant’s three proposed “Non-Academic Goals” are calculated incorrectly—or at least inconsistently. Presuming “Year 1” is the applicant’s planned school year 2021-22 opening, measures that begin with a baseline of 80 percent and increase two percentage points each year thereafter for four years would yield results of 88, not 90, percent by year 5 (Application, p. 9).

Concerning goal design more generally, the applicant cites a range of sources before ultimately characterizing Virtual Preparatory Academy’s plans as “below the statewide proficiency levels” and “realistic.” (Transcript, p. 99.) Notably, across the application, Virtual Preparatory Academy makes a single reference to Future Ready PA, the state’s established system for reporting both school and student group performance across a range of academic and student success measures (Application, p. 7).

Virtual Preparatory Academy’s academic goals would preserve—not close—outcome and opportunity gaps. Moreover, there is no consistent or evidence-based methodology informing these targets. These two findings point to a third—the applicant is unfamiliar with expectations under the ESSA and Pennsylvania’s implementation of the same. These considerations, together with findings from criteria 1 through 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 the application submitted and clarifying answers provided by Virtual Preparatory Academy, the Department finds multiple and significant deficiencies for each count. These deficiencies—individually, collectively, and in any combination—are cause to deny Virtual Preparatory Academy’s application.

Virtual Preparatory Academy may appeal this decision to 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 the alternative, the CSL allows the applicant to revise and resubmit its application to the Department. 24 P.S. § 17-1745-A(g). If Virtual Preparatory Academy submits a revised application, it shall submit the revised application to the Department at the following address:

Pennsylvania Department of Education
Division of Charter Schools
333 Market Street, 3rd Floor
Harrisburg, PA 17126-0333

To allow sufficient time for the Department to review the revised application, the revised application must be received by the Department at least 120 days prior to the originally proposed opening date for the cyber charter school.

A revised application received after this time period will be returned to the applicant with instructions to submit a new application in accordance with 24 P.S. § 17-1745-A(d).

Pedro A. Rivera
Secretary of Education

Date mailed: January 27, 2020