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January 30, 2012

Mr. Owen W. Schmitt
Innovate-U Cyber Charter School
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DELIVERED VIA EMAIL

Mr. Schmitt:

Thank you for your interest in opening a cyber charter school in Pennsylvania. After reviewing the **Innovate-U Cyber Charter School** application, it is the decision of the Pennsylvania Department of Education to deny your application.

Your application provided several unique components that will provide students with an interesting new opportunity. However, the reviewers have noted several deficiencies in the pages that follow.

When PDE denies a cyber charter school applicant a charter, the applicant may revise and resubmit the denied application or may appeal the denial to the Charter Appeal Board. A cyber charter school applicant may only revise and resubmit a denied application to PDE one time. Any revised and resubmitted application must be provided to PDE within at least 120 days prior to the originally proposed opening date of the cyber charter school.

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

Sincerely,

Carolyn C. Dumaresq, Ed.D.

The Proposed Innovate-U Cyber Charter School
2011 Cyber Charter School Application

Background

Amendments to the Charter School Law ("CSL"), 24 P.S. §§17-1701-A – 17-1751-A, that became effective July 1, 2002, include new Subchapter (c), which sets forth new provisions for the establishment and oversight of cyber charter schools. *See,* Act of June 29, 2002, No. 88, §14, adding 24 P.S. §§17-1741-A to 17-1751-A ("Act 88"). Pursuant to Act 88, the Department of Education (the "Department") has the authority and responsibility to receive, review and act on applications for the creation of a cyber charter school. Act 88 requires that cyber charter school applicants submit applications to the Department by October 1 of the school year preceding the school year in which the cyber charter school proposes to commence operation. After submission of an application, the Department is required to hold at least one public hearing and grant or deny the application within 120 days of its receipt.

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

The Application

On October 3, 2011, the proposed Innovate-U Cyber Charter School ("ICCS") submitted to the Department an application to operate a cyber charter school. The Department is to evaluate the application based on 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.

The Proposed Innovate-U Cyber Charter School will:

- Enroll students in grades K-12
- Be headquartered in Allentown, Pennsylvania
- The maximum projected student enrollment for year one is 750 students, increasing to 1,300 for year five

Decision of the Pennsylvania Department of Education

Based on a thorough review of the written application as well as questions and responses recorded at the November 29, 2011 public hearing, the Pennsylvania Department of Education is denying the application of the Innovate-U Cyber Charter School (ICCS).

Members of the review committee feel strongly that the framework for the ICCS provides several components that we hope will serve as a model to other cyber charters and traditional schools. Specifically, the plan to center student education on Science, Technology, Engineering and Math (S.T.E.M.) beginning in the primary grades and continuing through 12th grade will prepare students for college and the workforce in S.T.E.M. related fields.

However, the following deficiencies must be sufficiently addressed before a charter could be approved:

- ICCS's curriculum must be complete and aligned to the Pennsylvania State Academic Standards must be addressed.
- ICCS's application and responses to questions fail to meet even the minimum requirements of IDEA and Pa Chapter 711.
- ICCS's application failed to provide sufficient evidence of an ESL Program.
- ICCS's did not submit a budget or financial plan as part of its initial cyber charter application, as required by law. The purchasing procedure described in the initial application is unclear. The application states that it includes as an attachment a Letter of Intent to Lease; however, no such letter is included as part of the application.
- ICCS must provide complete Professional Education and Teacher Induction plans
- Insufficient Evaluation of Academic Achievement must be addressed.
- Technology for all students across the state must be equitable.
- Articles of Incorporation are not included in the application.
- ICCS must demonstrate sustainable support.
- Evidence of insurability must be provided.
- Any other deficiencies that are sited below.

Detailed Response

Proof of curriculum and assessment alignment must be submitted to the Department to ensure that requirements of Chapter 4 are met:

In review of the curriculum, ICCS showed no evidence in any of the subject areas of a complete curriculum framework that clearly describes content. When asked if they had curriculum in the application they stated that they were willing to submit it at the current time. Unfortunately nothing additional can be submitted in the application review meeting. They did not include curriculum maps delineating course to be offered and how it meets the requirements of 22 Pa. Code Ch4. (relating to academic Standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch4. Innovate did not articulate how planned instruction aligned with academic standards shall be provided at all grade levels. The only documentation that was provided in the application was a curriculum guide for the grade levels being offered. When asked the question if the curriculum has been developed for grades being offered they stated yes, however Innovate suggested that they were going to have many different course providers for courses and various grade levels. This is a large concern for instructors and flow from grade level to grade level, if Innovate has different course providers for the same subject area at different grade levels.

The following Special Education issues must be addressed:

The application submitted by ICCS and the answers to questions by representatives of ICCS during the hearing contain numerous vague, incomplete and inadequate explanations of how the proposed school would provide Free and Appropriate Public Education (FAPE) for students with disabilities. The application and subsequent answers to questions during the hearing fail to demonstrate that the applicant is prepared to operate a public education program with appropriate support to students with disabilities and without discrimination on the basis of their disabilities.

The ICCS's application failed to demonstrate how students with disabilities will be educated with students without disabilities in accordance with Least Restrictive Environment requirements found in 22 Pa Code § 711.3 and 34 CFR § 300.114 through 116. When questioned about how the school would meet the instructional needs of a student with a severe learning disability in reading the applicant responded they would contract for the student to receive services from an outside professional without mentioning how the curriculum or instruction could be modified or how supplementary aids and services could be provided.

The ICCS's application failed to describe how students with disabilities would receive specially designed instruction (SDI) in accordance with 22 Pa Code §711.3 and 34 CFR § 300.39 and 320. The application does not mention SDI in any context and the respondent's answers to questions about how the instructional needs of individual students with disabilities would be met went unanswered.

A major tenet of the ICCS's application is that its program prepares students for careers and higher education yet the application is silent on how the program, as required by 34 CFR §

300.43 and 320, would prepare students with disabilities movement from school to post-school activities. These areas would include but not limited to employment, postsecondary education, vocational education, continuing and adult education, adult services, independent living, or community participation. When questioned about the omission of individual transition planning for students with disabilities within the application the representative stated, "It may not have specifically addressed in that way, but part of the program itself is designed specifically for that reason...It's designed so that students would be...able to—upon graduation they would be able to go out into the marketplace." There was no mention of transition being based on the individual child's needs, taking into account the child's strengths, preferences, and interests as well as other factors described under 34 CFR § 300.43.

34 CFR § 300.115 and 116 require public school entities to ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. The ICCS's application states that special education services would be provided by "one" special program at each grade level. When asked what would that look like in the hearing, the respondent stated, "Meaning that there would be one design I guess an idea of what the goal would be for that year, but obviously understanding that different students are going to have different capabilities."

The ICCS's application and responses to questions fail to meet even the minimum requirements of IDEA and Pa Chapter 711 as evidenced by the examples stated above.

The following financial issues must be addressed:

The school did not submit a budget or financial plan as part of its initial cyber charter application, as required by law. School representatives stated that they did include a budget in their initial application, but it could not be located it in the application files received by PDE. As a result, the reasonableness and necessity of the school's proposed preliminary start-up and operating budget cannot be assessed. ICCS must submit a start-up and preliminary operating budget, using PDE-2028 template, in order to sufficiently assess the school's projected revenues and expenditures. In addition to the budget, a multi-year financial plan is a useful fiscal tool that can help to identify future gaps in resources, including operating deficits. While not required, it is recommended that the school submit a five-year plan to the Department for review in addition to the preliminary operating budget.

The purchasing procedure described in the initial application is unclear. The application states that "Expenditures in excess of $10,000 will require prior approval of the Board of Trustees after the submission of a minimum of three bids." The application then goes on to state that "Expenditures in excess of $500 but not exceeding $10,000 will be permitted only when sufficient funds remain in the budget and only after the submission of three bids have been submitted to and authorized by the Board of Trustees." The application would benefit from clarification regarding what level of expenditures requires submissions of competitive bids, and what level of expenditures requires approval by the Board of Trustees.

The application states that it includes as an attachment a Letter of Intent to Lease; however, no such letter is included as part of the application. The Letter of Intent to Lease would provide

additional information on the owner and lease arrangements of the intended facility at 1143 Clair Street, Allentown, PA, which is not included elsewhere in the documentation.

The application states that ICCS will "provide an insurance certification with all required coverage prior to the time of the hearing." School representatives at the hearing stated that insurance will be secured after approval of the charter. The application does not include any additional information regarding health, general liability, property, and director and officers' liability coverage as requested.

Professional Education or Teacher Induction plans in the application were limited or not included:

The Professional Education Plan was limited to a description of the Leadership and Enrichment program, nationally recognized teaching certification, emerging technology training, Pennsylvania Inspired Leadership (PIL) and continuing education, and annual goal setting. There was no Teacher Induction Plan in the application.

The ICCS must provide a detailed Professional Education Plan that designates, or provides for the designation of, a professional education planning committee consisting of parents, administration representation, teachers and educational specialists designated by their peers, community representation and local business representation. The plan and subsequent information should explain how the school will assess the professional education needs, and necessary professional education activities that will be provided in the interim startup phase of operation and/or the first three years of the school's operation. In order to meet the professional development action plan, the school's activities must comply with content area, teaching practices, and meeting the needs of diverse learners. The plan must also explain how the school's professional education program will be evaluated to determine its effectiveness so that adjustments and changes could be made. The school stated in their interview that they will "conduct surveys with the people who are receiving the professional development to see how it is helping them in the classroom." The school also mentioned in their interview that they will be "monitoring the professional development to determine whether or not it is useful and successful."

The ICCS stated in the interview hearing that they are aware of the Teacher Induction guidelines however they must develop a Teacher Induction Plan that includes a teacher induction committee (Induction Council) consisting of administration representation, as well as teachers or educational specialist designated by their peers. This plan must provide goals and competencies and an assessment process. The plan must explain how a school induction team will be set and how mentors will be designated and matched with the new teachers in a sustainable mentor-inductee relationship. The plan must also include the Code of Professional Practice and Conduct as stated in 22 Pa. Code 235 as one of many activities. The plan must also provide an explanation of how the induction program will be monitored and evaluated along with how records relating to program participation and completion will be maintained.

Insufficient Evaluation of Academic Achievement must be addressed:

There is insufficient and vague explanation of the method(s) that the school will use to determine a student's proficiency in any of the subjects. According to testimony of the applicant the school will use assessments embedded into the school's curricula, but there is no indication that these assessments have not been mapped to Pennsylvania academic standards. This leaves the school unable to evaluate progress toward meeting No Child Left Behind (NCLB) and Pennsylvania accountability standards.

ICCS must address technology issues outlined below:

Broadband/Connectivity

Having broadband connectivity to the home is essential for every student to have the same level and quality of access to all instructional materials and collaboration tools within a cyber-school environment. But some students in the state may live in areas not serviced with broadband to the home. Regardless of the connectivity available, no student's cyber school education should be limited based on where they live.

To this end, ICCS should establish a minimum connectivity standard which is required to access all the virtual tools to be used by the students. For those students not living in a home currently serviced by broadband, Innovate U should create specific policies that outline how the school will help the family work with local telecommunication providers to explore broadband options that may be available. Within the application (page 35) it did state that "Internet will be provided through contracts with regional Internet Service providers. RCN, Service Electric, Verizon and other potential providers will be contracted, and necessary equipment and agreements will be arranged and provided." More details as to Innovate U's Internet requirements would also help in working with these telecommunication suppliers.

In cases where no broadband options are available to the student's home, additional policies should be created that outline how Innovate U will work families to establish alternatives to accessing the instructional materials/collaboration tools. Perhaps in such cases an individualized access plan is created that addresses alternative modes of the delivery of material, partnerships with local community resources that may have access to broadband, etc.

Acceptable Use Policy (AUP)

An Acceptable Use Policy (AUP) / Internet Safety Policy have been developed to address the need for compliance with the Federal Children's Internet Protection Act (CIPA) and PA Child Internet Protection Act (Act 197 of 2004). ICCS's AUP addresses the terms and conditions for appropriate/safe network and equipment use.

It is recommended that the AUP include provisions that address the new updates to the Federal CIPA Act. At a minimum, the updates to the law will require that the schools' Internet Safety Policy include provisions to educate minors about appropriate online behavior, including interacting with other individuals on social networking websites/chat-rooms and cyber bullying awareness/response.

In other words the specific educational experiences that the school will require students to complete relative to appropriate online behavior need to be included in the AUP.

Delivery of Educational Programs

In the ICCS's application, it was stated that Blackboard will be used as the learning management system, which provides access to students, parents and teachers so that progress can be monitored. The system would also be used to house content from various sources and is available in an asynchronous format on a 24/7 basis. The application also stated that synchronous technologies would be used as well to create a "virtual classroom." During the hearing it was mentioned that other technologies/systems will be used to deliver these synchronous educational opportunities, but the specifics were not provided. More information required to ascertain what specific technologies will be used to deliver all instructional and collaborative resources.

Equipment

The application states on page 35 that "Dell will be contacted as our primary equipment provider, with intent to provide students with computers similar to the Inspiron desktop model and all necessary accessories. During the hearing it was stated that other hardware vendors will be considered as well.

But information is still needed as to the minimum hardware requirements for the computers being provided to students. Note that all hardware specifications need to align with the requirements of the software provided to students, as well provide the ability to effectively process any resources delivered online (such as video streaming, synchronous classrooms, etc.). In addition what is the planned equipment refresh cycle to ensure that current and future students have continued access to equipment that supports updates to the educational resources provided?

Articles of Incorporation are not included in the application:

With its application, a cyber charter school applicant is to provide a copy of its Articles of Incorporation so that the Department can ensure that the proposed cyber charter school is an independent nonprofit corporation. ICCS failed to comply with this requirement by not providing a copy of its Articles of Incorporation.

In addition, there is a nonprofit entity incorporated as Innovate-U, Inc. If this is intended to be the Articles of Incorporation for the proposed cyber charter school, it is an incorrect filing because, pursuant to the Charter School Law, the words "charter school" must be included in the name.

Management Agreement must be submitted:

ICCS states that The Right Prep LLC ("Right Prep") is a school support services company and that ICCS has asked Right Prep for a "request for proposal" for management of Innovate. In addition, ICCS states that it will use Right Prep to manage the proposed cyber charter school, at

least through the first three years of operation. Innovate further states that it will contract with a charter management organization following approval by the Innovate Board and that fully executed contracts will be made available at a later date.

The Commonwealth Court has held that a charter school applicant must provide a copy of a finalized management agreement in the application so that the authorizer can determine whether the Board of Trustees will have ultimate control of the charter school. *School District of the City of York v. Lincoln-Edison Charter School,* 772 A.2d 1045 (Pa. Cmwlth. (2001). ICCS's failure to provide a finalized management agreement is in violation of this requirement.

ICCS must demonstrate sustainable support:

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

In its application, ICCS states that it is currently soliciting letters of support from community organizations and politicians and that it will begin hosting outreach meetings for parents. Thus, Innovate has failed to demonstrate sustainable support.

Age of Entry of Beginners must be provided:

On the Fact Sheet in the application, ICCS states that the age of entry for kindergarten students is 4.5 years. However, it does not provide the age of entry for beginners, who are students entering school at the first level above kindergarten. The age of entry for beginners must be provided.

On-site locations for educational opportunities must be equitable statewide:

ICCS states that students will have the "opportunity to culture bacteria at an off-site laboratory" but it does not explain where and whether there will be laboratories throughout the state for students to use. As the Department has stated previously, cyber charter schools provide education for students statewide, and therefore, must have the same opportunities available to all of its students on a statewide basis. Innovate must evidence that such educational opportunities will be available to all students statewide.

Proof of insurance must be provided:

ICCS states that it will provide insurance certification prior to the hearing. However, Innovate has not provided any evidence that it has discussed with any insurance agent/company the insurance needs of ICCS if it would be granted a charter. ICCS must provide evidence that it will be able to provide the necessary and appropriate insurance coverage if it would be granted a charter.

Miscellaneous:

ICCS states in its Employment of Personnel Policy that the CEO shall make appointments on merit without regard to race, religion, color, national origin, sex, sexual orientation, marital status, or membership in an employee organization. However, exception to this policy of merit shall be made for administrators. ICCS must explain what this means and why there is this exception for administrators.

ICCS states that the Public School Code provisions governing nonresident children placed in foster care are not applicable to charter or cyber charter schools pursuant to the Pennsylvania Charter School Law but that the Charter School will use such Public School Code provisions for guidance in such situations in conjunction with consultation with the Charter School's legal counsel. It is not clear what ICCS means by these statements since the status of a student as a foster child should not affect the student's enrollment in Innovate. ICCS must explain the purpose of this provision in its enrollment policy.

Also, in its Enrollment Policy, ICCS states that it will ensure that homeless students have equal access to the same free, appropriate public education, including preschool, provided to other children. Although ICCS is correct in stating that homeless children must have equal access to a free, appropriate public education, cyber charter schools are not authorized to provide preschool education. Thus, ICCS must correct this statement in its policy so it is clear that ICCS does not have the authority to provide preschool education.

ICCS states in its Student Code of Conduct that it will have Saturday detention and in-school suspension as the consequence for certain disruptive behaviors. ICCS should explain how these programs would operate in a cyber charter school environment.

The school calendar provided by ICCS does not provide any dates. In addition, Innovate has not provided information about what constitutes a school day and the school year. Although students enrolled in a cyber charter school may have access to the education program 24/7, the school must state what constitutes a school day, which is when teachers and administrators are available to students.

Based on the deficiencies identified above, the Innovate-U Cyber Charter School's application submitted to the Department is denied.

Carolyn C. Dumaresq

Deputy Secretary
Office of Elementary & Secondary Education

1/30/12
Date