



COMMONWEALTH OF PENNSYLVANIA
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January 30, 2012

Mr. Thomas O. Fitzpatrick
Mercury Online Charter School of Pennsylvania
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DELIVERED VIA EMAIL

Mr. Fitzpatrick:

Thank you for your interest in opening a cyber charter school in Pennsylvania. After reviewing the **Mercury Online Charter School of Pennsylvania** 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,

A handwritten signature in black ink, appearing to read "Carolyn C. Dumaresq".

Carolyn C. Dumaresq, Ed.D.

**The Proposed Mercury Online Charter School of Pennsylvania
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 Mercury Online Charter School of Pennsylvania (“Mercury”) submitted to the Department 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, Mercury Online Charter School of Pennsylvania presented the Department with information about its application. Department personnel who had reviewed the application also posed questions to the Mercury Online Charter School of Pennsylvania representatives.

The Application

On October 3, 2011, the proposed Mercury Online Charter School of Pennsylvania (Mercury) 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 Mercury Online Charter School of Pennsylvania will:

- Enroll students in grades K-12
- Be headquartered in Harrisburg, Pennsylvania
- The maximum projected student enrollment for year one is 650 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 Mercury Online Charter School of Pennsylvania (Mercury).

Members of the review committee feel strongly that the framework for the Mercury provides several components that we hope will serve as a model to other cyber charters and traditional schools. Specifically, the plan to have a teacher-led instructional model with low student-teacher ratios and a requirement for regular synchronous, student-teacher contact is excellent. World language instruction required for all students in all grade levels will provide students with the ability to compete and succeed in a global economy.

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

- The curriculum must be complete and aligned to the Pennsylvania State Academic Standards must be addressed.
- Special Education issues related to Least Restrictive Environment (LRE) reevaluation procedures, and provision of transition services must be addressed.
- Mercury's application failed to provide sufficient evidence of an ESL Program.
- The financial information must be clarified in the following areas:
 - Unexplained revenue line item for extended-term financing.
 - Sufficient resources to accommodate students requesting face-to-face ("4+1") instruction.
 - A multi-year financial plan.
 - Inconsistent statements regarding purchasing procedures.
- Mercury must provide complete Professional Education and Teacher Induction plans
- Insufficient Planning for Administration of PSSA must be addressed.
- Technology for all students across the state must be equitable.
- Mercury must demonstrate sustainable support and demonstrate organizational independence.
- Articles of Incorporation and Bylaws must be completed and correct.
- Evidence of insurability must be provided.

- A copy of the signed Memorandum of Understanding with the entity from which Mercury will secure their facility must be provided.

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, Mercury showed no evidence in any of the subject areas of a complete curriculum framework that clearly describes content. 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. Mercury did not articulate how planned instruction aligned with academic standards shall be provided at all grade levels. When asked the question if the curriculum has been developed for grades 9 thru 12, Mercury stated that it is in the process of being developed.

The following Special Education issues must be addressed:

The application submitted by Mercury and the testimony of the Mercury's representatives failed to address issues related to Least Restrictive Environment (LRE) reevaluation procedures, and provision of Transition Services.

Mercury failed to demonstrate that it has a continuum of alternative placements available to meet the needs of students with disabilities as required by 34 CFR 300.115 (a)(b)(1)(2). The Mercury application, specifically on Page 48, acknowledges that "supplemental specialized instruction may be provided within a Resource Room setting on an itinerant basis, with the majority of instruction (including general curriculum instruction) provided in the general education setting". However, there is no evidence in the application that specifically describes local capacity at the cyber charter school to service students in either part-time or full time special education classes. There is no description of local capacity for servicing students with autism, intellectual disabilities, multiple disabilities, or emotional disturbance.

Although the hearing testimony provided by the charter school representatives supported evidence of meeting students' needs for related services and contracting for these services, the application provided no specific information to indicate who or where related services vendors are located or what type of services they will provide.

The Mercury's application, specifically on page 51, states, "Any student eligible for services will undergo a review of current and past data at least every three years". The application clearly does not provide a description for reevaluating students under § 711.22. Reevaluation (c) Children with disabilities who are identified as mentally retarded shall be reevaluated at least once every 2 years.

The hearing testimony provided by Mercury's representatives and the Mercury application failed to support evidence of meeting students' transition services needs as required by 34CFR § 300.320(b)(1)(2). In addition, there is no specific information to indicate who or where interagency contacts are located or who specifically will be the point of contact for transition services at Mercury.

In conclusion, Mercury failed to meet the LRE requirements, Reevaluation requirements and transition services requirements as outlined in federal regulations.

The following ESL issues must be addressed:

Mercury's application failed to provide sufficient evidence of an ESL Program. Although Mercury stated that they would "comply with whatever is required in Pennsylvania based on whatever assessment is necessary," the application demonstrated little awareness of Pennsylvania requirements. To begin, Mercury provided no evidence of a process for identification and placement based on administration of a Home Language Survey, use of the W-APT for formal assessment, and consideration of multiple criteria for placement. It provided no evidence of Pennsylvania's required criteria for program exit, nor evidence of a plan to monitor progress of former ELLs for 2 years after exit.

Although Mercury's application emphasized "personalized instruction, an environment that meets individual students' unique needs, and an individualized path for growth and development," it did not specify planned instruction for English language learners. Mercury provided no evidence of an Instructional model based on sound educational theory that allows for appropriate staff and resources, and is regularly evaluated using ACCESS and PSSA data. It provided no evidence of English language acquisition classes that deliver daily instruction based on proficiency level, using curriculum aligned to PA ELPS and PA academic standards in order to facilitate students' achievement of English proficiency. It failed to provide an ESL curriculum aligned to PA ELPS and academic standards. It did not account for the number of courses or online time required for ESL instruction. Similarly, while Mercury's application stated that "a specific ELL component will be included in the curriculum offered by Mercury. This highly interactive, multimedia coursework is designed to incorporate learning in math and science even as it assists students in developing fluency," the application contained no specifics on how academic content classes would provide meaningful, comprehensible access to instruction and standards and would incorporate the PA ELPS. Finally, Mercury failed to provide a description of how it would ensure that ELLs were administered the annual English language proficiency assessment (ACCESS for ELLs) and that ELLs participated in the annual academic assessments (PSSAs) as appropriate with accommodations.

The following financial issues must be addressed:

The application includes an unexplained revenue line item for extended-term financing in the amount of \$530,000, and an unexplained expenditure of \$154,000 for debt service. School representatives stated that they did not anticipate borrowing money, but were unable to explain the presence of the line items in the budget.

It is unclear whether the budget includes sufficient resources to accommodate students requesting face-to-face ("4+1") instruction, which the applicant plans to offer. The application states that the school plans to offer an option for students to choose a "4+1" option, where students participate in 4 days per week of online instruction at home supplemented by one day a week of face-to-face instruction at a "local learning center." The current budget and application do not detail what assumptions were made in projecting the number of students that would choose to utilize this option. School representatives stated that the number of students choosing

“4+1” versus a fully online curriculum would not change the cost or affect the budget, even if every student elected to choose the “4+1” model. However, they also stated that there will always be someone staffed as a point of contact at the learning centers, but that staffing will vary depending on how many students choose the “4+1” option. It is unclear whether the applicant has considered the difference in costs associated with offering a fully online curriculum versus the need to provide staff and space for face-to-face instruction at learning centers accessible to all interested students.

The applicant has not yet identified facility locations for the learning centers, beyond identifying the three target cities in which the centers might be located.

Further, the application does not explain how transportation to the learning centers would be provided, and the school’s budget does not include any funds for student transportation.

An explanation regarding how budgeted staff and rented space could accommodate a large portion of enrolled students is needed to evaluate the viability of the school’s budget and “4+1” plan.

While not required, the school did not submit a multi-year financial plan. A multi-year financial plan is a useful fiscal tool that can help to identify future gaps in resources, including operating deficits. It is recommended that the school submit a five-year plan to the Department for review.

The application includes inconsistent statements regarding purchasing procedures. The application states that items over \$5,000 “will be initiated by forwarding a request through the CAO and Board,” while elsewhere, the application indicates that purchases under \$10,000 will require Board approval. School representatives stated that an exact resolution has not yet been adopted, but will be determined and resolved by the Board as part of establishing by-laws and Board policy.

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

There was a limited Professional Education Plan and no Teacher Induction Plan in the application.

The Mercury 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 described an “Individualized Professional

Development Plan” in their interview as a method of evaluation to tie in the individual teacher’s professional development with student achievement.

Mercury 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 Planning for Administration of PSSA must be addressed:

The application and testimony indicate that the Mercury is not sufficiently prepared to administer the PSSA to all enrolled students across the state. Mr. Johnson stated that some areas would need to have enough students in order to have a center available where the PSSA will be administered. All students attending the school would need to have availability to take the PSSA within a reasonable distance from their home.

In addition, testimony response to who will bear the cost of travel for the 4 + 1 model indicated Mercury might not be suitable for all students who which to enroll . All cyber charter schools must be willing and able to enroll and bring equitable resources to all students no matter where they might live in Pennsylvania. Testimony indicates that families who choose Mercury will be asked to bear the cost of travel for the 4 + 1 program, including travel to centers to participate in the PSSA.

Mercury must address technology issues outlined below:

The application states that both synchronous and asynchronous resources will be used. More specifically it describes two instructional delivery methods: 100% online and 4+1 (4 days online and one day face-to-face). During the one day of face-to-face the instructional time will focus on Paragon, an integrated social studies program. Other core curriculums also have the ability to be integrated into Paragon (pages 3-5). Please elaborate on the specific synchronous and asynchronous technologies that are to be used, as well as their use in both the 100% online and 4-1 models. The information provided in the application was a bit unclear as to how all of this integrates together.

On page 87 of the application it states that teachers will be trained in first tier troubleshooting with live support via telephone, email, and webinar. Please provide more details on all types of technical support that will be available, including hours of live support.

Being a cyber-school, connectivity is a major issue. On page 90 of the application, it is stated that a 56k modem (dialup) is the minimum requirement for a student, while a cable modem, DSL or other broadband connection is recommended. What happens if a student only has a dialup

connection and has difficulty using the technology resources to their fullest capabilities? How will Mercury address this potential inequity issue among students and their ability to access resources?

Within the application (pages 89-90), minimum hardware requirements are established. More specifically these are a 1.5Gz Pentium 4 (PC) and an 800 MHz PowerPC G4 (Mac). Note these technologies are at least five years old. Combine this with a potential dialup connection; a student could face issues with access to all the online resources. Are these specifications indicative of the computers being provided to students by Mercury? If so, then these machines must be refurbished. Please elaborate on the exact equipment being provided to students.

The following questions refer to compliance with CIPA and PA Act 197 of 2004:

- How will you provide for all students at all ages education regarding appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms, and regarding cyber-bullying awareness and response?
- What is your Acceptable Use Policy for educators, students, and family members using the school's technology?
- What is your Internet Safety Policy and how will you ensure the Internet Safety of your students and staff if the filtering software is not enabled unless requested by the recipient?

Technology Literacy training for skills must be addressed:

On page 57 of the application, it references Compass Learning's spiraled Odyssey curriculum to provide cross-curriculum learning opportunities. Please elaborate on any other educational technology resources/curricular materials Mercury may be planning to use.

Technology literacy is addressed on page 12 of the application regarding the development of keyboarding and other computer skills. Have considerations been made to adopt any nationally recognized standards relative to technology literacy and 21st Century Skills to support the goals of developing higher-order thinking, problem solving, global awareness, etc.? If so, what standards and how can technology be used to develop the skills outlined in the standards?

Mercury 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, Mercury states that it is developing support through planned community meetings and an online cyber petition. Mercury notes that the results of these efforts will be

available next month. Mercury also states that it will provide letters of support upon request. This does not demonstrate sustainable support for the cyber charter school plan.

Mercury must demonstrate organizational independence:

In its application, Mercury states that it may delegate to any employee or contractor duties of the Board of Trustees except for dismissal of employees, approval of Board policies, approval of the budget or budget revisions or purchases over \$5,000. It is not clear what Mercury means by this delegation because if extensive powers and duties are delegated to another entity, it appears that the arrangement would be that of, or similar to, a management agreement. In fact, in Mercury's Bylaws it is stated that the Board's delegation of duties and powers may be made to "the management company of the school".

When asked in the application for copies of any management agreements, Mercury states "not applicable at this time." However, at the public hearing, Mercury representatives stated that a 12 ½% management fee would be paid to Mosaica Education, which would provide all the backroom functions including the financing, the administrative, the human resources, the hiring, and the staffing of the curriculum. When questioned further, Mercury's representatives stated that Mercury Online Education, Inc. is a part of Mosaica and that it would be Mercury Online Education, Inc. that would receive the management fee in addition to \$1,000 per student for the curriculum. Thus, notwithstanding that Mercury stated in its application "not applicable at this time", to the request for copies of any management agreements, it is clear that Mercury intends to use a management company for its proposed cyber charter school. Therefore, Mercury is required to provide the Department with a finalized management agreement in order for the Department to determine whether the Board of Trustees remains ultimate control of the cyber charter school. *School District of the City of York v. Lincoln-Edison Charter School*, 772 A.2d 1045 (Pa. Cmwlth. (2001)).

Bylaws:

Mercury states in its Bylaws that its corporate seal shall be inscribed with the corporation name and "Corporation Seal of Birney Preparatory Academy". Mercury must correct this misstatement.

Articles of Incorporation:

Mercury provided a draft copy of Articles of Incorporation. However, the form was not a complete form and the Articles have not been filed with the Pennsylvania Department of State. Finally, the name of the nonprofit corporation in the draft Articles is MOA Charter School of Pennsylvania, Inc. The name in the Bylaws is MOA of Pennsylvania, Inc. and in the application the name is Mercury Online Charter School of Pennsylvania of Pennsylvania.

In its application, Mercury must provide a copy of the Articles of Incorporation that have been filed with the Pennsylvania Department of State so that the Department can verify that the entity is an independent nonprofit corporation. In addition, although the various names used in the Articles, the Bylaws and the application are very similar, Mercury must identify the correct name of the proposed cyber charter school and use that name in its documents.

Mercury must provide a Memorandum of Understanding to document facility lease:

Mercury provided the name of the limited liability company that owns the facility where Mercury intends to locate its operations but did not provide an address, as required. Although Mercury does not have to provide a lease at this time, it must provide, at a minimum, a letter of intent or other documentation from the owner of the building that there have been discussions about the availability of this facility for use by Mercury and supporting Mercury's statement that it is being provided in "turn-key" condition that will not require any renovation by Mercury.

Mercury must provide evidence of insurability:

The cyber charter school application requires that the applicant provide evidence of insurability in specifically identified, such as health and general liability, school operation, Directors' and Officers' liability coverage, etc. Mercury stated that it would provide evidence of insurance in all areas upon approval of its application. This is not in compliance with the application requirements, which require evidence that the applicant has obtained preliminary approval for insurance in these areas.

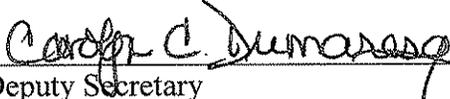
Miscellaneous:

Mercury states in its application that it is building relationships with institutions of higher education, charter schools, and educational service providers. However, it does not provide any further explanation about these relationships, what they are or will be, and how it will benefit the students enrolled in Mercury. A fuller explanation of this is required.

Mercury states in its application that its first year of operation will be only for grades 9 and 10. However, later in the application Mercury states that it will enroll students in grades K-12 and provides a chart of projected enrollments. The projected enrollments show students in each grade beginning in the first year. Mercury must correct this contradiction.

Based on the deficiencies identified above, the Mercury Online Charter School of

Pennsylvania's application submitted to the Department is denied.


Deputy Secretary
Office of Elementary & Secondary Education

1/30/12
Date