



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

June 10, 2021

VIA CERTIFIED MAIL AND E-MAIL

Mr. Stephen J. Flavell
Executive Education Cyber Charter School
555 Union Boulevard
Allentown, PA 18109
sjflave@gmail.com

Dear Mr. Flavell:

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

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

Sincerely,

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

Noe Ortega
Acting Secretary of Education

Enclosure

cc: Adam A. Schott, Special Assistant to the Secretary
Sherri L. Smith, Acting Deputy Secretary for Elementary and Secondary Education

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 begin 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.

Executive Education Cyber Charter School (hereinafter referred to as “Executive Education” or “Applicant”) timely applied to establish a cyber charter school (“Application”).² On October 3, 2020, the Department provided notice of a virtual public hearing for cyber charter school applications. In accordance with this public notice, the Department received numerous comments in opposition to the Application. The Department held the virtual public hearing for Executive Education’s Application on November 12, 2020 (hereinafter referred to as “November 12, 2020 Hearing”). On January 28, 2021, following a thorough review of both the Application and the November 12, 2020 Hearing record, the Department denied Executive Education’s Application based on deficiencies for each of five statutorily enumerated criteria.

The CSL permits a cyber charter school applicant to revise and resubmit its application to the Department (24 P.S. § 17-1745-A(g)). While it has been the Department’s practice to require an applicant to submit a physical copy of its application, accompanied by flash drives containing electronic copies of the physical application, the Department granted Executive Education’s request for flexibility in the submission of application materials given the ongoing COVID-19 pandemic.³ On April 7, 2021, the Department received delivery of a physical copy and access to a Google Drive folder of Executive Education’s Revised 2020 Application (“Revised Application”). However, the physical copy of the Revised Application was printed such that certain portions were illegible and prevented the Department from scanning the documents. Further, the Department was unable to access the Google Drive folder documents. On April 13, 2021, the Department received a flash drive containing the Revised Application. As such, and for purposes of 24 P.S. § 17-1745-A(h), the date of receipt is noted as April 13, 2021.

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

² The Department received the Application on October 1, 2020.

³ See *Cyber Charter School Application* (Revised June 2018), Introduction Section, available at: <https://www.education.pa.gov/Documents/K-12/Charter%20Schools/Applications/Cyber%20Charter%20School%20Application%202018-Fillable.pdf>; see e.g., *Executive Education Cyber Charter School Application Decision* (issued January 28, 2021), *Virtual Preparatory Academy of Pennsylvania Cyber Charter School Revised Application Decision* (issued November 30, 2020), *Virtual Preparatory Academy of Pennsylvania Cyber Charter School Application Decision* (issued January 27, 2020), application decisions are available at: <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/Charter-Applications.aspx>.

Decision

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

- (i) The demonstrated, sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.
- (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 review of the Revised Application against these five criteria, the Department denies the proposed Executive Education Cyber Charter School. Though a single deficiency would be grounds for denial, the Department again identifies deficiencies for every criterion. Discussion of specific deficiencies follows below.

Criterion 1: Executive Education provides inadequate evidence of sustainable support for the cyber charter school plan by teachers, parents or guardians, and students.

With the ability to draw from a statewide catchment, cyber charters are well positioned to satisfy the CSL requirement that charter school applicants demonstrate sustainable support from a diverse array of stakeholders including teachers, parents or guardians, and students. While Executive Education’s Revised Application includes additional form letters and other artifacts intended to show backing for the proposed school, more meaningful evidence of sustainable support is lacking.

For example, the Applicant again identifies just five educators on its Founding Coalition—a fraction of the professional staff complement the Applicant proposes to field two months from now (Revised Application, Exhibit C). Moreover, the Applicant’s listing of educator members of the Founding Coalition (*Id.*, p. 4) is not reflected in the narrative description of the Founding Coalition (*Id.*, pp. 59-67). In addition, the Founding Coalition continues to include only five parent members, a modest figure when weighed against the Applicant’s enrollment goals (*Id.*, pp. 4-5).

The limitations of the Founding Coalition reverberate in plans for Executive Education’s proposed board of trustees. The Applicant proposes a five-member board at pages 73 and 76 of the Revised Application but provides conflicting information on how successor trustees will be

selected. For instance, on page 67, the Applicant indicates that “Anyone who has interest in Pennsylvania and supporting a high-quality cyber charter school can seek appointment to the Board of Directors,” while another portion of the Revised Application refers to election (*i.e.*, vote) by “members of the constituency the Trustee represents” (*Id.*, p. 73). The Applicant provides no information on how such constituencies are defined, how membership is structured, and how election procedures unfold.

Finally, Executive Education’s provision of additional letters of support does not answer or outweigh the significant and credible critiques of the proposed cyber charter school that preceded and accompanied the November 12, 2020 Hearing (Transcript, pp. 6-14, Exhibits 1-8).

Executive Education fails to document sustainable support from educators just months ahead of planned school opening; provides conflicting information regarding both its Founding Coalition and governing board; and fails to rebut documented opposition to its proposed cyber charter school. Accordingly, the Revised Application is denied.

Criterion 2: With respect to both support and planning, Executive Education lacks the capability to provide comprehensive learning experiences to students.

Here, the Department evaluates evidence that the applicant can develop, implement, and sustain comprehensive learning experiences to students, and that the applicant’s board of trustees will hold real and substantial authority over school staff (*Carbondale Area Sch. Dist. v. Fell Charter Sch.*, 829 A.2d 400 (Pa. Cmwlth. 2003); *Sch. Dist. of York v. Lincoln-Edison Charter Sch.*, 798 A.2d 295 (Pa. Cmwlth. 2002); *Brackbill v. Ron Brown Charter Sch.*, 777 A.2d 131 (Pa. Cmwlth. 2001); and *West Chester Area Sch. Dist. v. Collegium Charter Sch.*, 760 A.2d 452 (Pa. Cmwlth. 2000), *aff’d* 812 A.2d 1172 (Pa. 2002)). Executive Education fails to demonstrate this capability in at least two key areas, discussed below.

I. **The Applicant fails to demonstrate necessary financial support and planning.**

A cyber charter school applicant must provide a preliminary operating budget, inclusive of projected revenue sources (24 P.S. § 17-1719-A(9)). Specifically, accurate, reasonable, and sufficient revenue and expenditure estimates must demonstrate the applicant’s capability to provide comprehensive learning experiences for students. For this criterion, Executive Education continues to provide unclear, incomplete information just months ahead of planned school opening.

While Executive Education’s Revised Application includes a budget, the Applicant fails to validate the assumptions underlying it. For example, it is unclear whether the Applicant has considered the likely effects of the COVID-19 pandemic on cyber charter enrollment. The only reference to COVID-19 within the Applicant’s budget is to an anticipated decrease in FY 2023 per-pupil tuition rates, which the Applicant attributes to a “COVID lag effect” (Revised Application, Exhibit K). The Revised Application does not explain what this phrase means, or how the projected rate decline was calculated. Taking potential enrollment shifts into consideration is key as revenues—and potential staffing and other operational needs—are overwhelmingly dictated by enrollment.

Further, the Applicant’s budgetary assumptions and dollar values included in the proposed budget are misaligned. In Pennsylvania, local revenues for charter schools are based on per-pupil rates from students’ resident school districts. The proposed budget includes a budget line item for Local Per-Pupil Funding and uses average per-pupil base rates of \$12,963 for regular education students and \$28,721 for special education students. To calculate estimated revenues from this source, the Applicant’s budget indicates a “projected annual per-pupil growth factor” of 1.00 percent is applied in FY 2022 (Revised Application, Exhibit K). However, when multiplying per-pupil base rates by the Applicant’s enrollment projections and accounting for the “projected annual per-pupil growth factor,” the results do not equal the FY 2022 revenue totals provided in the budget; see Table 1, below.

Table 1: FY 2022 Local Revenues, Assuming One Percent Increase in Base Rate

	Submitted Budget			Revenues, per Calculation	Difference
	Enrollment	Base Rate	Revenues, per Budget		
Regular Education	218	\$13,093	\$2,887,784	\$2,854,193	(\$33,591)
Special Education	42	\$29,008	\$1,218,699	\$1,218,345	(\$354)

In fact, even when not accounting for the “projected annual per-pupil growth factor,” calculated results still differ from figures provided by the Applicant in its budget; see Table 2, below.

Table 2: FY 2022 Local Revenues, Assuming Base Rates Provided in Budget

	Submitted Budget			Revenues, per Calculation	Difference
	Enrollment	Base Rate	Revenues, per Budget		
Regular Education	218	\$12,963	\$2,887,784	\$2,825,934	(\$61,850)
Special Education	42	\$28,721	\$1,218,699	\$1,206,282	(\$12,417)

Further, the Applicant presents incomplete information regarding how federal revenues were calculated. While the Applicant identifies assumptions underlying federal revenue estimates, it does not validate eligibility for certain federal programs. The budget indicates that Title I-Part A funds are calculated based on a rate of \$450 per eligible student and Title II funds based on a rate of \$50 per eligible student (Revised Application, Exhibit K); however, the Applicant does not indicate whether the 54 percent Free and Reduced Price Lunch (FRPL) cited in other portions of the Revised Application—or a different rate—was used as a proxy for eligibility under these programs.

In addition, certain calculations related to federal revenues appear to be incorrect. For example, the Applicant budgets \$182,000 in FY 2022 for FRPL revenues by assuming that: (1) 54 percent of students will be eligible for the FRPL program; and (2) revenues received will be at a rate of \$700 per student.⁴ However, based on a FY 2022 total enrollment estimate of 260 students (Revised Application, p. 5), resulting revenues would be \$98,280—significantly less than the \$182,000 included in the budget:

$$260 \text{ students} \times 54\% \text{ eligibility} \times \$700 \text{ per eligible student} = \$98,280.$$

Further, while the Applicant includes a preliminary line of credit (LOC) term sheet for a startup loan of \$250,000, the term sheet does not include any identifying information—e.g., letterhead, a name or signature—regarding the lender. As a result, it is unclear whether the LOC is final, whether the potential lender is in good standing, and whether any potential conflicts of interest exist. Notably, the terms of the LOC require monthly interest-only payments, with principal on demand—meaning that the lender can call the amount borrowed due at any time. Given that the LOC states the collateral will be a 1st lien security interest in accounts receivable, inventory, machinery and equipment, furniture and fixtures, and general intangibles, an inability to pay could have a serious impact on the Applicant’s daily operations (Revised Application, Exhibit K). Finally, it is unclear whether the budget includes interest payments under the terms of the LOC (*Id.*).

Despite the inclusion of the LOC term sheet, the Applicant fails to detail or budget for any startup costs that will be incurred as the school prepares to open, including rent, utilities, marketing, curriculum development, recruitment, and personnel. Accordingly, it is impossible to know what expenses the Applicant expects to incur prior to opening, and whether those costs are reasonable. Relatedly, it cannot be known whether the proposed \$250,000 LOC is commensurate with any startup costs.

Further, the Applicant’s estimations around key areas of expenditure are incomplete and internally inconsistent, making it impossible to confirm whether budget projections and assumptions are reasonable. For example:

- Employee Salaries: The Revised Application references a “budget target percentage” for compensation and notes that averages in the Lehigh Valley, as well as statewide, will be considered when determining this percentage (Revised Application, p. 88). When asked during the November 12, 2020 Hearing what the percentage is and how it will be set, a representative of the Applicant stated, “We have some sort of number to work with. Obviously, we know that a more experienced teacher would receive more compensation than a teacher in his first year, so we come up with an average cost for that” (Transcript, p. 99). Given the lack of detail in responses provided during the November 12, 2020 Hearing, as well as in the Revised Application, it is impossible to confirm that these assumptions are reasonable.

⁴ Instead, it appears the Applicant budgeted an amount based on 100 percent eligibility: 260 students x 100% eligibility x \$700 per eligible student = \$182,000.

In addition, salary costs for certain positions included in the staffing plan are not included in the budget (Revised Application, Exhibit K). Calculations of salaries of all proposed faculty and staff members included in the budget appear to derive from a separate personnel spreadsheet incompletely populated by the Applicant (*Id.*). Some salaries were absent from the personnel spreadsheet and, therefore, omitted from the budget. For example:

- **Assistant Principal(s):** With a base wage of \$75,000, the Applicant intends to have one position in FY 2023 and two positions in FYs 2024 through 2026. Even without accounting for raises or inflation, this results in as much as \$150,000 being omitted from the budget annually; see Table 3, below.

Table 3: Assistant Principal Salary Costs Omitted from Budget

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
# of Positions	0	1	2	2	2
Salary Costs Omitted	\$0	\$75,000	\$150,000	\$150,000	\$150,000

- **Data Specialist(s):** With a base wage of \$65,000, the Applicant intends to have one position in each of FYs 2023 and 2024 and two positions in each of FYs 2025 and 2026. Even without accounting for raises or inflation, this results in as much as \$130,000 being omitted from the budget annually; see Table 4, below.

Table 4: Data Specialist Salary Costs Omitted from Budget

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
# of Positions	0	1	1	2	2
Salary Costs Omitted	\$0	\$65,000	\$65,000	\$130,000	\$130,000

These salary costs are not included in the Applicant’s proposed budget; however, they add to overall actual expenses and, therefore, reduce actual operating surpluses and estimated fund balances by the same amounts.

Other areas where the Applicant neglects to include the full cost of all expenditures in the budget, or presents conflicting or incomplete information, are as follows:

- **Facility Maintenance:** The Applicant does not sufficiently discuss the plan for maintaining its proposed facility on daily (custodial) and extended (facility maintenance) schedules, which is compounded by a discrepancy between the Revised Application’s narrative and the Letter of Intent (LOI) included as an exhibit to the Revised Application. Specifically, the LOI states that the tenant is responsible for janitorial services and the landlord is responsible for utilities and all other premises maintenance (Revised Application, Exhibit M). The Revised Application’s narrative contradicts the LOI, stating

that “custodial and facility maintenance are included in the lease” but also that “custodial services will be contracted out and provided by a vendor. Custodial services will include daily cleaning of office spaces, common space, and bathrooms. Trash will be collected daily by custodial service staff and disposed of by the landlord” (Revised Application, pp. 79-80).

Further, there is a variance between the lease costs listed in the Revised Application’s LOI and the budget. The LOI quotes a cost of \$10,500 per month (\$14 per square foot) on a “modified gross basis with CPI escalator” (Revised Application, Exhibit M), which, when calculated, equates to \$126,000. The submitted budget, however, includes \$257,400 in rent costs in FY 2022, with a note regarding assumptions used stating the LOI was used to calculate a figure of \$13 per square foot (Revised Application, Exhibit K). (If there is a new LOI with a revised rate or monthly quote, it was not submitted with the budget.) The LOI also states that the Applicant will receive one year of abated/free rent (the LOI lists June 1-May 31, 2021, as the LOI is from the original submission).⁵ If this is in fact the intention, the Revised Application’s FY 2022 budget should not contain building rent costs.

- Insurance Costs: There are discrepancies between budgeted expenses related to insurance and the rate quote included in the Revised Application. The Applicant’s budget includes two insurance-related line items: (1) Property, General Liability; and (2) All Other. In total, insurance-related costs are expected to increase from just over \$43,000 in FY 2022 to more than \$63,000 in FY 2026. According to the budget narrative, the Applicant uses a base of \$18,000 for Property, General Liability and a base of \$12,000 for All Other insurances. A 0.15 percent increase, year-over-year, is driven by an increase in revenues. According to the rate quote, the estimate is just under \$26,000 per year; it is unclear why the two sources do not align.
- Student Technology: During the November 12, 2020 Hearing, a representative of the Applicant indicated that the Technology Services line item contains costs associated with staff professional development as well as student technology (Transcript, pp. 101-102). The Applicant further represented that “technology is spread all over the budget” (Transcript, p. 105). With no clarification provided during the November 12, 2020 Hearing or in the Revised Application, it is impossible to know how much of the Technology Services line item is for student technology and where other student technology costs are budgeted. Accordingly, it is unclear whether budgeted expenditures for student technology are sufficient or reasonable.

In addition, the Revised Application includes a list of hardware and software (Revised Application, p. 51); further detail is provided in the Revised Application, Exhibit E. It is unclear, however, whether the budget has been amended to account for the proposed hardware and software.

⁵ The LOI reads “June 1 through May 31st, 2021” but it is assumed that “June 1” refers to 2020.

Next, it is unclear whether the budget accounts for any consumables and Internet subsidies (including hotspots and other necessary equipment). Relatedly, while the Revised Application references the anticipated provision of Internet subsidies, no Internet subsidy schedule was provided; nor is there any indication of the amount or frequency of payments.

Finally, the Technology Support section of the Revised Application continues to be silent on a planned refresh cycle or plans regarding repair and replacement for equipment and whether the budget accounts for such costs (Revised Application, pp. 47-51; Revised Application, Exhibit K).

II. The Applicant fails to demonstrate long-term organizational viability.

While the submitted budget does not rely on one-time revenues to fund recurring expenditures, a general but significant additional finding is the Applicant’s failure to demonstrate ongoing financial sustainability. As one example, the Applicant’s proposed budget includes an operating surplus in each year; however, fund balances generated by the surpluses fall short of the Government Finance Officer Association’s (GFOA) recommended levels by between \$200,000 and nearly \$700,000 in any given year for the first five years of operation.⁶ See Table 5, below.

Table 5: Projected Fund Balances as Compared to GFOA Recommendations

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Budgeted Fund Balance	\$36,428	\$351,792	\$699,756	\$1,100,683	\$1,565,157
2 Months' Revenues	\$732,514	\$973,935	\$1,258,936	\$1,550,277	\$1,848,085
2 Months' Expenditures	\$726,443	\$921,374	\$1,200,942	\$1,483,456	\$1,770,673
Range of Fund Balance	(\$690,015)	(\$569,582)	(\$501,186)	(\$382,773)	(\$205,516)
Shortfall	(\$696,086)	(\$622,143)	(\$559,180)	(\$449,594)	(\$282,928)

Further, the Applicant fails to plan for budget contingencies in the event actual revenues are less than projected, an especially concerning finding considering the lack of a start-up budget. The insufficient projected fund balance margins undermine the Applicant’s long-term organizational viability.

Finally, adequate planning and support requires an applicant to clearly state who will be responsible for finance and accounting functions. The individuals performing these functions must be qualified and experienced in charter school finance and accounting, and there must be enough individuals performing the work to allow for adequate segregation of accounting duties. The Applicant fails to ensure that the individuals performing finance and accounting functions are qualified and experienced in charter school finance and accounting.⁷ Moreover, the proposed

⁶ GFOA recommends that, at a minimum, entities maintain unrestricted budgetary general fund balances of no less than two months of regular general fund operating revenues or expenditures.

⁷ In the Applicant’s original submission, the proposed treasurer did not appear to meet these requirements. In the Revised Application, that person is still listed as a founding board member, though the title of “treasurer” was removed (Revised Application, pp. 60-61). The Applicant did not identify an alternative treasurer.

staffing plan appears to delegate all finance and accounting functions to a single employee (the Business Office Manager), rendering the maintenance of proper internal controls difficult if not impossible (Revised Application, p. 73).⁸

Executive Education fails to provide accurate, complete, and internally consistent expenditure and revenue plans, while continuing to exhibit long-term financial vulnerability through inadequate contingencies and controls. Accordingly, the Revised Application is denied.

Criterion 3: Executive Education fails to evince that its planned programs will enable students to meet standards under 22 Pa. Code Ch. 4.

As discussed in the Background section, Executive Education’s failure to include or make legible certain required information impacted the Department’s evaluation of the Revised Application, with especially significant implications for this criterion.⁹ Specific findings are as follows:

I. Executive Education’s Revised Application is silent on key aspects of educational technology planning, infrastructure, and delivery.

Section 1747-A requires a cyber charter applicant to detail “the technology, including types of hardware and software, equipment and other materials which will be provided by the cyber charter school to the student;” “the technical support that will be available to students and parents or guardians;” and “the privacy and security measures to ensure the confidentiality of data gathered online” 24 P.S. § 17-1747-A(a)(6),(9), (10), and (12).

Notwithstanding these requirements, the Applicant fails to address previously noted deficiencies in the areas of budgetary support for technology costs and parent reimbursements/stipends. Relatedly, the Revised Application is silent on policies and procedures to include parent responsibilities and reimbursement for technology-related expenses, technical support service levels, or connectivity.

II. Executive Education fails to adequately outline required staffing and professional development plans.

Educator effectiveness is the most significant in-school influence on student learning. Accordingly, any meaningful evaluation of an applicant’s preparedness to support students in

⁸ In addition to the Business Office Manager, the proposed staffing plan includes one Administrative Assistant in FY 2022, increasing to three positions by FY 2026; however, in describing the primary duties of this role, the Applicant makes no mention of finance or accounting functions.

⁹ As identified below in Criterion 4, the Applicant’s failure to provide a legible, articulated K-12 curriculum prevented the Department from fully evaluating key components of proposed school programming, necessitating a negative finding (Revised Application, pp. 10-22, Exhibit A).

meeting state standards requires careful attention to plans to identify, support, and retain highly effective educators. 24 P.S. §§ 17-1719-A(13), 17-1747-A.

Executive Education’s proposal remains deficient in these areas. While the Applicant has “started to screen and interview potential candidates” (Revised Application, p. 93) and states that there are “five founding teachers that have agreed to have their name released to the public in support of the cyber charter school,” the Applicant does not provide any other information about the positions for which these teachers may be employed, if they are to be employed at all (*Id.*). Similarly, the Applicant indicates that an additional 32 teachers and professional staff have agreed to be employed but fails to provide any further information regarding these positions. Further, the Applicant provides conflicting evidence with regards to its student-to-teacher ratio (*Id.*, pp. 5 and 87) and provides an estimate for teachers/learning facilitators (17 positions) (*Id.*, p. 69) and special education teachers (three positions) (*Id.* p. 71), while escalating estimates for other “staff” (*Id.*, pp. 86-87); however, the Applicant fails to indicate how these proposed staffing levels match enrollment projections.

Finally, the Applicant acknowledges the requirement to submit a Professional Development Plan without providing information that would allow for its evaluation (Revised Application, p. 87). For example, Exhibit P, identified as a “tentative” Professional Development schedule, provides just eight days of planned programming during July—falling far short of the Act 48 requirements for ongoing professional development for all professional staff. Similarly, the requirement of a teacher induction plan is mentioned but without specificity (*Id.*).

III. Executive Education outlines practices that are inadequate to meet the needs of vulnerable student populations.

A cyber charter school’s statewide catchment requires an applicant demonstrate readiness to serve a wide range of student populations including historically underserved groups such as English learners and students receiving special education services.

In terms of English learner programming, cyber charter schools are required to “provide a program for each student whose dominant language is not English for the purpose of facilitating the student’s achievement of English proficiency and the academic standards under § 4.12 (relating to academic standards). Programs under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction” (22 Pa. Code § 4.26).

Perpetuating deficiencies from the Application, Executive Education provides no evidence of a process by which their program will be regularly evaluated and adjusted to ensure that English learners are overcoming language barriers (Transcript, p. 50), fails to plan for implementation of bilingual instruction across grades (*Id.*, p. 52), and acknowledges that it is unsure of plans to verify that bilingual instructional staff possess proficiency in both academic English and in the partner language of the bilingual teacher (*Id.*).

Likewise, the Applicant continues to demonstrate misunderstanding of significant requirements concerning special education services, including procedures and processes required under the Individuals with Disabilities Education Act and 22 Pa. Code Ch. 711. Specific deficiencies are noted in the areas of eligibility determinations, positive behavioral supports including the use of manifestation determination and functional behavioral assessments, a process for the identification of surrogate parents, assistive technology, and the inclusion of a process that parents would follow to request an Independent Educational Evaluation (Revised Application, p. 25; Student/Parent Handbook). Further, the Applicant continues to propose admissions policies that fail to properly account for procedures related to Individualized Education Programs for children who transfer between public agencies in the same state in accordance with 34 C.F.R. § 300.323(f) (Transcript, pp. 57-58; Revised Application, p. 84).

Executive Education’s Revised Application omits important details on professional staffing and disregards both federal and state requirements in outlining policies for vulnerable student groups. For these reasons, the Revised Application is denied.

Criterion 4: Executive Education’s Revised Application is non-compliant with requirements of section 1747-A.

The CSL requires any charter school application to meet standards set forth at section 1719-A, while an application for a cyber charter school must meet additional standards under section 1747-A. Executive Education’s Revised Application reflects deficiencies from both sections, summarized in Table 6, below.

Table 6: Missing and Deficient Application Elements¹⁰

CSL-required contents of a charter school application. 24 P.S. §§ 17-1719-A, 17-1747-A	Revised Application
Section 1719-A(5): “[T]he curriculum to be offered and the methods of assessing whether student are meeting educational goals.” Section 1747-A(1): “The curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4”	The Applicant fails to provide an articulated K-12 curriculum based on Chapter 4 (Revised Application, pp. 10-22). Further, the Revised Application relies heavily on vendor content and provides no evidence of independent verification by the Applicant (<i>Id.</i> , Exhibit A).
Section 1719-A(13): “The proposed faculty and a professional development plan for the faculty of a charter school.”	The Revised Application’s Professional Development Plan is noncompliant with Act 48, Section 2. Specifically, the Applicant did not provide details on what professional development would be available, who would attend, the number of hours per session, or

¹⁰ Additional details on deficiencies listed in Table 6 are discussed above in Criterion 3.

CSL-required contents of a charter school application. 24 P.S. §§ 17-1719-A, 17-1747-A	Revised Application
	the number of sessions per school year (Revised Application, pp. 27-28, Exhibit P). In addition, the Applicant neglects to include a final teacher induction plan (<i>Id.</i> , p. 87).
Section 1747-A(9): “ <i>The technical support that will be available to students and parents or guardians.</i> ”	Policies and procedures related to technical support are not defined, and the topic of technical support is only nominally addressed (Revised Application, p. 49).

The CSL sets forth application requirements that pertain to all charter school applicants (section 1719-A) and additional requirements for cyber charter school applicants (section 1747-A). As noted above, Executive Education’s Revised Application reflects deficiencies from both sections of the statute, evidencing a basic failure to plan. Accordingly, the Revised Application is denied.

Criterion 5: Executive Education fails to substantiate that it will serve as a model for other public schools.

The CSL is premised on increasing learning opportunities for students and ensuring public accountability for meeting academic standards. Bearing these considerations in mind, the Department must evaluate a cyber charter school applicant, in part, on whether it might serve as a model for other public schools statewide, including Pennsylvania’s existing 14 cyber charter schools.

In the absence of Charter Appeal Board (CAB) or court decisions concerning what makes for a “model,” the Department turns to the dictionary for a straightforward definition: “*An example for imitation or emulation.*” *Model Definition*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/model> (last visited June 10, 2021).

Based on the deficiencies discussed above under criteria 1, 2, 3, and 4, along with the analysis that follows, Executive Education does not merit imitation or emulation.

As outlined in the Department’s January 28, 2021, decision, the most appropriate standard for determining whether one public school might serve as an example for imitation or emulation by another begins with the 2015 reauthorization of the federal Elementary and Secondary Education Act (ESEA), alternatively termed the Every Student Succeeds Act (ESSA). The ESSA required states to design and implement systems for holding all public schools—traditional and charter, brick and mortar and virtual—accountable for a wide array of student outcomes, in particular the narrowing of outcome gaps for historically underserved populations (20 U.S.C. § 6311). These accountability systems must incorporate academic achievement, graduation rate, and non-

academic measures such as regular attendance. State education agencies must regularly assess school performance against these measures to designate schools for support and potentially more intensive interventions.

Such designations currently impact all 14 of Pennsylvania’s cyber charter schools, with ten of these schools carrying Comprehensive Support and Improvement (CSI) designations, indicating performance among the lowest five percent of all public schools statewide that receive Title I-Part A funds.¹¹ Despite the significant overlap between the state’s existing cyber charter sector and federal accountability designations, together with the fact that Executive Education’s existing brick and mortar charter school carries an ESSA accountability designation,¹² the Applicant exhibits limited understanding of ESSA requirements¹³ and provides no meaningful basis for proposed achievement and other goals outlined in the Revised Application.

To begin, the Applicant has in fact lowered its aims between its initial (2020) and revised proposals (Application, pp. 7-8; Revised Application, pp. 7-9). For example, the Applicant indicates that, by the second year of school operations, half its students will achieve a score of Proficient or Advanced on the “Reading PSSAs” (which the Department presumes is a reference to the English Language Arts assessment) versus a goal of 65 percent proficiency by year one in the Application. The applicant justifies this reduction by calculating a presumed midpoint between statewide proficiency rates and rates produced by existing cyber charter schools. Setting aside that the methodology ignores the state’s established federally approved achievement goals, the Applicant appears to have calculated proficiency rates for “cyber charter school students” by instead averaging proficiency rates for each of the state’s existing cyber charter schools. Given that these cyber charter schools have widely disparate enrollments, from roughly 100 students to more than 16,000, a simple average of school-level achievement rates does not yield an accurate picture of the sector’s student achievement.¹⁴

The Applicant employs this same random methodology for proficiency on other state assessments, English learner progress measures, and high school graduation rate. With respect to graduation rate, the Applicant indicates that “at the end of year 5,” or 2026, it will post a four-year adjusted cohort graduation rate of 71.9 percent, barely evading the 67 percent threshold that automatically classifies a public school for CSI, the most intensive school improvement category

¹¹ See Pennsylvania Department of Education (2019) for accountability designation lists, available at: <https://www.education.pa.gov/K-12/ESSA/Pages/Accountability.aspx> (last visited June 10, 2021).

¹² Executive Education Academy Charter School was designated for Targeted Support and Improvement status in Fall 2019 based on low performing student groups.

¹³ During the November 12 Hearing, Department staff asked the Applicant to describe Executive Education’s understanding of federal accountability under the ESSA. A representative of the Applicant answered: “I’m going to say I don’t have enough information at this time to answer that question effectively” (Transcript, p. 78).

¹⁴ See Pennsylvania Department of Education (2021), available at: <https://www.education.pa.gov/DataAndReporting/Enrollment/Pages/PublicSchEnrReports.aspx> (last visited June 10, 2021).

under the ESSA. More crucially for the outcomes of individual students, the Applicant’s proposed Year Five graduation rate goal is more than 18 percentage points behind the state’s federally approved long-term goal (90 percent) for that same year.

Whatever the design, the Applicant’s proposed academic goals are undermined by a non-academic one: that Executive Education will achieve a “high retention rate” that involves retaining “a minimum of 50% of students” year over year while simultaneously raising enrollment levels by at least 100 students annually (Revised Application, p. 9). While it is unclear how Executive Education is treating graduating students in the design of its retention goals, it is obvious that the Applicant presumes significant fluctuations in student enrollment. (It is further unclear why the Applicant privileges attracting significant numbers of new students over a more rigorous approach to retaining current ones.)

As a final note, notwithstanding the Department’s concerns that the Applicant’s proposed student outcomes are too low to merit the granting of a charter, it is also the case that student achievement data reported by the Applicant’s *existing* charter school suggest that the proposed goals are likely unrealistic; see Table 7, below. As one public commenter, a nationally recognized expert on the effects of charter schools, noted: “I do not observe convincing evidence . . . that the [Applicant] will provide the substantial and robust synchronous instruction that is surely needed to maintain student engagement and promote learning” (Transcript, Exhibit 5). The Department concurs.

Table 7. Applicant’s Proposed and Existing Achievement Levels¹⁵

Achievement Goals (% of all students scoring Proficient or Advanced)	Proposed: Executive Education Cyber¹⁶	Existing: Executive Education Academy Charter School
<i>Pennsylvania System of School Assessment</i>		
English Language Arts	50%	41.4%
Mathematics	27%	16.5%
Science	57%	52.9%
<i>Keystone Exams</i>		
Literature	Applicant does not propose subject-specific goals for high school grade span assessments and instead estimates that “50% of EECCS students	53.9%
Algebra		22.1%
Biology		25.3%

¹⁵ See Pennsylvania Department of Education for school-level results, available at: <https://www.education.pa.gov/DataAndReporting/Assessments/Pages/PSSA-Results.aspx> (last visited June 10, 2021); and, <https://www.education.pa.gov/DataAndReporting/Assessments/Pages/Keystone-Exams-Results.aspx> (last visited June 10, 2021).

¹⁶ Revised Application, pp. 7-9.

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Achievement Goals (% of all students scoring Proficient or Advanced)	Proposed: Executive Education Cyber¹⁶	Existing: Executive Education Academy Charter School
	will demonstrate proficiency on their Keystone Exams or passing grades on courses associated with the Keystone Exams and completion of an alternative assessment.”	

Executive Education exhibits limited knowledge of federally required measures for school improvement; sets academic outcomes that are unsupported by existing, rigorous measurement systems; envisions dramatic student turnover year over year; and fails to demonstrate that its proposed outcomes are realistic in the context of the performance of its existing charter school. These findings—together with findings from criteria 1, 2, 3, and 4—demonstrate that Executive Education is not a model for other public schools, including cyber charter schools. Accordingly, the Revised Application is denied.

Conclusion

The Department must evaluate a cyber charter school application, whether initial or revised, against five statutorily enumerated criteria. Based on the Revised Application, the Applicant's failure to address key elements of testimony during the November 12, 2020 Hearing, and written comments submitted in accordance with the required public notice of the hearing, the Department finds significant deficiencies for each criterion. These deficiencies—individually, collectively, and in any combination—are cause to deny the Revised Application.

Executive Education may appeal this decision to the State Charter School Appeal Board within 30 days of the date of the mailing of the decision. 24 P.S. §§ 17-1745-A(f)(4) and 1746-A. A copy of any such appeal must be served on the Department at the following address:

Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333

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



Noe Ortega
Acting Secretary of Education

Date mailed: June 10, 2021