

**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF EDUCATION**  
**STATE CHARTER SCHOOL APPEAL BOARD**

IN RE:

Appeal of the IDEA Cyber Charter	:	Docket No. CAB 2008-03
School from the Denial of the Charter	:	
School Application by the Pennsylvania	:	
Department of Education	:	

**I. INTRODUCTION**

This matter comes before the Pennsylvania State Charter School Appeal Board (CAB) on Appeal by the IDEA Cyber Charter School (IDEA) from the denial of its Charter School Application by the Pennsylvania Department of Education (PDE). IDEA applied to PDE to form a Cyber Charter School on October 1, 2007. PDE rejected IDEA's application on January 28, 2008. The Cyber Charter School resubmitted its application in February of 2008, and PDE again denied the application on April 28, 2008. The Cyber Charter School filed this appeal on May 14, 2008.

**II. FINDINGS OF FACT**

1. On October 4, 2007, the PDE received a cyber charter school application from the founding coalition of IDEA.
2. On December 6, 2007, PDE held a hearing to consider the application.
3. On January 28, 2008, PDE denied the application (p. 2 of PDE's Opinion and Order, January 28, 2008).
4. In February 2008, IDEA re-submitted its application.

5. On April 28, 2008, PDE denied the re-submitted application. The second denial indicated the following deficiencies (p.2, PDE Opinion and Order, April 28, 2008):
  - i. IDEA failed to provide sufficient justification to support the reasonableness of the costs associated with a sole source third party contract.
  - ii. IDEA failed to provide supporting details or other creditable information on how it arrived at its enrollment projections used to determine budgeted revenue.
  - iii. IDEA failed to provide adequate information regarding the implementation and funding of technology in its educational program and school operation.
  - iv. The application submitted by IDEA failed to substantively detail how it will meet its obligation to provide special education programs and services to students with disabilities and failed to address key areas of special education policy and procedure. 24 P.S. § 17-1747-A(13).
  - v. IDEA failed to detail how it will accomplish hands-on learning projects in a cyber environment, outline its process for identifying English Language Learners (ELLs), or demonstrate how it will utilize the PA English Language Proficiency Standards (ELPS) to adapt online curriculum for use with ELLs.
6. On May 14, 2008, IDEA filed an appeal with the Charter School Appeal Board.

7. Instead of exercising its right to a hearing on the admission of supplemental information, IDEA submitted its brief and requested that “anything herein that is considered “supplementary” be admitted” (p. 1, Brief of IDEA Cyber Charter School, September 1, 2008). No information therein was explicitly identified as supplementary, and all appendices were identified as having either been submitted in past applications, or were copies of publicly available PDE information submitted as a reference.
8. PDE waived its right to a hearing on the admission of supplemental information, and asked the CAB in its brief to “disregard any and all information now proffered by the applicant [IDEA] under the guise of “supplementary” (p. 1, Brief on Behalf of the Pennsylvania Department of Education, September 15, 2008). PDE failed to identify information the CAB must disqualify.
9. A hearing was held before the CAB on October 1, 2008.
10. IDEA failed to provide adequate information regarding its contract with KCDL.
11. IDEA failed to provide adequate information to substantiate its enrollment research and assumptions.
12. The failures noted in findings ten (10) and eleven (11) are sufficient to constitute an inadequate financial plan.
13. IDEA failed to provide information to thoroughly describe specifically how it will meet its special education obligations in the cyber environment. This failure is sufficient to constitute a failure to adequately address how IDEA would meet special education requirements.

14. IDEA failed to provide information about the technology training of para-educators.
15. IDEA failed to provide information on deployment and ownership of equipment.
16. IDEA failed to provide information on the development and maintenance of technology specifications.
17. IDEA failed to provide adequate information about the technology skills required of administrators, teachers, and staff.
18. IDEA failed to provide adequate information about costs for certain key technology services.
19. The failures noted in findings fourteen (14) through eighteen (18) are **not** sufficient to constitute an inadequate technology plan.
20. IDEA failed to explain adequately how it will identify, account for, and adapt for the needs of English Language Learners and failed to explain how cooperative, hands-on work would be accomplished. These failures are **not** sufficient to constitute an inadequate description of IDEA's curriculum.

### III. CONCLUSIONS OF LAW

1. The present appeal is properly before the CAB, pursuant to the Charter School Law, 24 P.S. §§ 1701-A, *et seq.*
2. The applicable standard of review is not the standard used by appellate courts because the CAB has the authority, under the Charter School Law, to agree or disagree with the findings of PDE (24 P.S. § 17-1746-A(b)(4)).

3. The Commonwealth Court has found that the proper standard of review that is to be applied by the CAB in charter denial cases is to be "*de novo.*" *West Chester Area School*
4. The Charter School Law allows the CAB to accept information to supplement the record if the information was previously unavailable (24 P.S. § 17-1746-A(b)(1)). *District v. Collegium Charter School*, 760 A.2d 452 (Pa.Cmwlt. 2000).
5. The scope of the CAB's review of PDE's denial of a charter is limited to the deficiencies identified in PDE's resolution to deny the Charter School's application.
6. The criteria that the CAB must evaluate in making a decision in a cyber charter school case is set forth in 24 P.S. § 1745-A(f), as follows:
  - a. The demonstrated, sustainable support for the charter school plan by teachers, parents or guardians and students.
  - b. The capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter.
  - c. 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.
  - d. The extent to which the application meets the requirements of section 17-1747-A.

- e. The extent to which the cyber charter school may serve as a model for other public schools.
7. Section 17-1747-A incorporates the requirements of Section 1719-A of the Charter School Law.
8. The Charter School Law requires that a cyber charter school submit a financial plan as part of its application. 24 P.S. § 17-1719-A(9).
9. The CAB has held that the financial plan must be sound. *In re: David P. Richardson Academy Charter School, CAB 2001-8.*
10. The Charter School Law requires that a cyber charter school submit adequate information about how it will meet its special education requirements. 24 P.S. § 1745-A(f), 24 P.S. § 1747-A(13).
11. The Charter School Law requires that a cyber charter school submit information about its technology, to include the amount of student online time, the manner in which instruction will be delivered, identification of the technology which will be provided, technical support, privacy and security measures, and frequency and manner of communication. 24 P.S. § 1747-A.
12. The Charter School Law requires that a cyber charter school submit information substantiating its ability “to provide comprehensive learning experiences to students under the charter.” 24 P.S. § 1745-A(f)(ii).
13. The Charter School Law requires applications to include “[t]he curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4.” 24 P.S. § 17-1747-A.

#### IV. DISCUSSION

##### A. Evidentiary Issues

The Charter Law allows that the CAB “may allow the department, the cyber charter school applicant or the board of trustees of a cyber charter school to supplement the record if the supplemental information was previously unavailable.” 24 P.S. § 17-1746-A. In the instant case, the CAB will accept all information submitted by IDEA in its brief and reply brief for the following reasons:

1. IDEA identifies all appended brief material as either having been submitted in past application packets to PDE (and therefore as being a part of the record), or as being publicly-available PDE information submitted as a reference for the CAB. PDE does not dispute this characterization.
2. PDE points, in a very general way, to substantive information in the brief as having been available but not otherwise submitted to PDE; PDE, therefore, asserts that the CAB should find this information to be impermissible as supplemental information (p. 4, Brief on Behalf of the Pennsylvania Department of Education, September 15, 2008).
3. Because PDE does not demonstrate that any information in the IDEA brief may be characterized as impermissible supplemental information, the CAB finds that the information in the brief is reasonably characterized as permissible supplemental information and/or as description, clarification, and argument.  
  
This finding does not, however, alter the CAB’s determination that PDE properly denied IDEA’s cyber charter school application.

## **B. Discussion of Application Denial**

PDE discusses the deficiencies of IDEA's application under the headings of finance and budget, technology, special education, and curriculum. CAB discussion will follow the same format for ease of reference.

### **1. Financial Plan**

A cyber charter school applicant is required to describe its financial plan in order, in part, to demonstrate the financial viability of the proposed cyber charter school (24 P.S. § 17-1719 A(9)), and to substantiate "[t]he capability of the cyber charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students under the charter" (24 P.S. § 1745-A(f)(ii)). IDEA fell short in its providing viability and establishing the soundness of its financial plan in three important ways in the instant case.

First, PDE was unable to substantiate IDEA's assertions regarding the reasonableness of costs and the assignment of benefits inherent in the contracting relationship with KCDL because of a lack of documentation, including documentation regarding comparative pricing (PDE Brief, p. 4; CAB Hearing Transcript p.16-17). The importance of this contract to the success of the cyber charter school required clarity on these points (CAB Hearing Transcript, p. 16), and IDEA does not provide that clarity.

Second, PDE was unable to discern the reasonableness of the pricing structure of the KCDL contract due to a lack of documentation regarding comparative pricing (PDE brief, p. 4; CAB Hearing Transcript p. 17). PDE expressed concern about the equity of the structure because KCDL would be under contract to take a percentage of revenues, but would be providing substantially fewer services (specifically, curriculum services) to



grades K-5 (CAB Hearing Transcript, p. 17). Inadequate information was provided by IDEA in response.

Finally, IDEA provided minimal information about its enrollment research and assumptions in its application material (PDE brief, p. 5). IDEA's enrollment projections, which bear directly upon the financial viability of the proposed cyber charter school, cannot be confidently substantiated or relied upon.

Further, PDE indicated that IDEA failed to provide information about the legitimacy of proposed costs of certain vital technical services like internet and website services (p. 6, PDE Opinion and Order, April 24, 2008). PDE characterizes this as a failure of IDEA's technology plan. PDE also indicated that IDEA failed to account for transportation costs in its special education planning (CAB Hearing Transcript, p. 15), and characterizes this as a failure of its special education plan. Both of these deficiencies are also relevant to and bear upon the soundness of IDEA's financial plan.

The failure to provide sufficient information to support the proposed cyber charter school's financial viability through a sound financial plan bears upon an evaluation under 24 P.S. § 1745-A(f)(ii), and is a failure to comply with application requirements, including 24 P.S. § 17-1719 A(9). The CAB finds that the budgetary information contained in the record fails to meet the requirements of the Charter School Law.

## **2. Technology**

The Charter School Law requires that prospective cyber charter schools provide information about the logistics and implementation of the technology to be employed in their plans, as outlined in 24 P.S. § 17-1747-A. PDE found that the IDEA application

and re-submission did not adequately address all of these details (PDE Opinion and Order, April 24, 2008, p.2). We disagree.

Specifically, PDE indicated that IDEA failed to provide information regarding how all para-educators would be trained and assessed, who would own equipment and how technology specifications were developed, what skills would be required of administrators, teachers and staff, or the costs for certain key services like internet access (PDE Opinion and Order, April 24, 2008, p. 5-6). This information is not relevant or directly responsive to application requirements listed in 24 P.S. § 17-1747 A.

The CAB finds that the PDE's determination that IDEA failed to meet the proposed cyber charter school's application obligations regarding technology under 24 P.S. § 17-1747 A, is not supported by the record.

### **3. Special Education**

Under 24 P.S. § 17-1747-A(13), an application to establish a cyber charter school must include "[t]he provision of education and related services to students with disabilities, including evaluation and the development and revision of individualized education programs." PDE found that the IDEA application failed to set forth a plan describing its special education program in sufficient detail (PDE Opinion and Order, April 24, 2008, p. 2). We agree.

Specifically, IDEA's submitted material regarding special education obligations reiterates those obligations, but does not address in detail how IDEA will meet those obligations under the law. IDEA does not elucidate how it will provide for transportation services or for transition services, or how its special education obligations will be met in the cyber environment. This information is directly relevant and responsive to

application requirements listed in 24 P.S. § 17-1747 A., and also bears upon an evaluation of the cyber charter school's "capability ..., in terms of support and planning, to provide comprehensive learning experiences to students under the charter" ( 24 P.S. § 1745-A(f)(ii)).

The CAB finds that the PDE's determination that IDEA failed to provide the information as requested by PDE, regarding the provision of special education which is a failure to meet the proposed cyber charter school's application obligations under 24 P.S. § 17-1747 A, is supported by the record.

#### **4. Curriculum**

The Charter School Law requires applications to include "[t]he curriculum to be offered and how it meets the requirements of 22 Pa. Code Ch. 4 (relating to academic standards and assessment) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 4" ( 24 P.S. § 17-1747-A). PDE found that IDEA's application fell short in this area in two ways.

Specifically, PDE found that IDEA failed to explain adequately how it would identify, account for and adapt for the needs of English Language Learners (PDE Opinion and Order, April 24, 2008, p. 3). IDEA also failed to explain how hands-on, cooperative work would be accomplished (PDE Opinion and Order, April 24, 2008, p. 3). This information, however, is not relevant or directly responsive to application requirements listed in 24 P.S. § 17-1747 A. We do not believe any failure in this regard bears heavily upon an evaluation of the cyber charter school's "capability ..., in terms of support and planning, to provide comprehensive learning experiences to students under the charter" ( 24 P.S. § 1745-A(f)(ii)).

Thus CAB rejects PDE's determination that IDEA's explanation of how it would meet curriculum requirements, fails to satisfy IDEA's application obligations under 24 P.S. § 17-1747 A.

## **V. CONCLUSION**

By its failure to submit information requested regarding its financial plan and special education plan, IDEA's application has failed to completely meet the requirements of 24 P.S. § 17-1747-A. By failing to provide adequate information about its financial plan and special education plan, IDEA has not shown that it has the capacity to offer a comprehensive learning experience to all students who might be admitted, as required by 24 P.S. § 1745-A(f). In all other respects, the Application does comply with the Charter School Law. For these reasons, the decision of PDE to deny the IDEA Charter School Application is upheld.

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**ORDER**

**AND NOW**, this 16th day of January 2009, based upon the foregoing and the vote of this Board<sup>1</sup>, the Appeal of the IDEA Cyber Charter School is **DENIED** and the Charter School Application Denials of the Pennsylvania Department of Education are hereby **AFFIRMED**.

For the State Charter School Appeal Board,

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Preston C. Green  
Chairman Pro Tempore

<sup>1</sup> At the Board's November 25, 2008 meeting, the appeal was denied by a vote of 0-5 with members Akers, Barker, Reeves, Shipula, and Green voting to deny the appeal.