



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

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PDE Office of Chief Counsel

February 17, 2022

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Secretary's Office

VIA E-MAIL AND FIRST-CLASS MAIL

Mrs. Patricia Leighow
Chief Executive Officer
SusQ-Cyber Charter School
240 Market Street
Bloomsburg, PA 17815

Re: *SusQ-Cyber Charter School*
Order to Show Cause and Notice of Charges in Support of Nonrenewal of Charter

Dear Mrs. Leighow:

Enclosed please find a true and correct copy of the Order to Show Cause and Notice of Charges in Support of Nonrenewal of Charter (Order to Show Cause), which has been filed with the Pennsylvania Department of Education's Office of the Secretary, and pursuant to which the Department is pursuing, under Sections 1729-A and 1741-A of the Charter School Law (CSL), 24 P.S. §§ 17-1729-A and 17-1741-A, the nonrenewal of the charter for SusQ-Cyber Charter School (SusQ). This notice initiates a formal administrative action pursuant to which the nonrenewal of SusQ's charter may be ordered. As noted in the Order to Show Cause, SusQ must file a written answer to the averments within 20 days.

A formal hearing will be scheduled at a date, time, and location to be provided in a future notice. The hearing will be held before a hearing officer in accordance with the provisions of the Administrative Agency Law, 2 Pa.C.S. §§ 501-508, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*

All filings related to this matter shall be filed with:

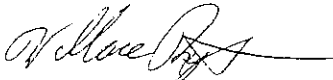
Carol J. Hrobak, Docket Clerk
Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126
Telephone: (717)787-5500
Fax: (717)783-0347

Any documents you file with the docket clerk must also be accompanied by certificate of service and served on counsel for the Department at:

Wallace Rejrat, Assistant Counsel
Julius Zeitlinger, Assistant Counsel
Pennsylvania Department of Education
Office of Chief Counsel
333 Market Street, 9th Floor
Harrisburg, PA 17126
Telephone: (717)787-5500
Fax: (717)783-0347

If you have any questions, you or your attorney may contact counsel for the Department in this matter.

Sincerely,



Wallace Rejrat
Assistant Counsel

Enclosure

cc: Adam Schott, Special Assistant to the Secretary
Sherri L. Smith, Deputy Secretary, Office of Elementary and Secondary Education
Carol J. Hrobak, Docket Clerk

- failure to meet generally accepted standards of fiscal management or audit requirements (24 P.S. § 17-1729-A(a)(3)); and,
- one or more material violations of a condition, standard or procedure contained in SusQ's written charter (24 P.S. § 17-1729-A(a)(1)).

In support the Department states as follows:

BACKGROUND

1. The Department is a Commonwealth agency as defined in the Administrative Agency Law, 2 Pa.C.S. §§ 101 *et seq.*, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1 *et seq.*
2. Pursuant to sections 1741-A–1751-A of the CSL², 24 P.S. §§ 17-1741-A – 17-1751-A, the Department is responsible for reviewing and acting upon charter applications to establish cyber charter schools, in addition to renewing and revoking cyber charter school charters.
3. The Department is responsible for assessing and evaluating cyber charter schools to ensure compliance with the charter, including meeting goals, and applicable statutes and regulations. 24 P.S. § 17-1742-A(1).
4. SusQ was granted its initial charter (1998 Charter) for the period commencing on August 24, 1998, and ending on June 13, 2003, by vote of the Boards of Directors of Berwick Area School District, Milton Area School District, and Bloomsburg Area School District on February 10, 1998, February 17, 1998, and February 23, 1998, respectively.
5. SusQ is currently authorized as a cyber charter school as defined in section 1703-A, 24 P.S. § 17-1703-A.³

² Hereinafter, all statutory references are to the CSL, unless otherwise indicated.

³ The CSL was amended, effective July 1, 2002, to include a new Subchapter (c), which set forth provisions for the establishment and oversight of cyber charter schools. *See*, Act of June 29, 2002, No. 88, § 14, adding 24 P.S. §§ 17-

6. On or about May 16, 2003, SusQ submitted to the Department an application to renew its charter (2003 Renewal Application).
7. On August 18, 2003, the Department issued an Opinion and Order granting SusQ's 2003 Renewal Application pursuant to section 1741-A(a)(2), 24 P.S. § 17-1741-A(a)(2).
8. Upon approval of the 2003 Renewal Application, a written charter, which incorporated SusQ's 2003 Renewal Application and the Department's request for additional information and SusQ's compliance with the request for additional information, for the period commencing June 16, 2003, and ending on June 30, 2008 (2003 Charter), was signed by the Secretary of Education and each member of SusQ's Board of Trustees pursuant to section 1745-A(f)(3). 24 P.S. § 17-1745-A(f)(3).
9. On October 1, 2007, SusQ submitted to the Department an application to renew its charter (2007 Renewal Application).
10. The Department granted the 2007 Renewal Application and a written charter, which incorporated SusQ's 2007 Renewal Application for the period commencing July 1, 2008, and ending on June 30, 2013 (2008 Charter), was signed by the Secretary of Education and each member of SusQ's Board of Trustees pursuant to section 1745-A(f)(3). 24 P.S. § 17-1745-A(f)(3).
11. On October 1, 2012, SusQ submitted to the Department an application to renew its charter (2012 Renewal Application).
12. On January 15, 2015, the Department issued a Decision (2015 Decision) granting SusQ's 2012 Renewal Application pursuant to section 1741-A(a)(2), 24 P.S. § 17-1741-A(a)(2).⁴

1741-A to 17-1751-A. The Department was granted the authority and responsibility to renew or not renew the charter of a charter school that provided instruction through the Internet or other electronic means and was previously approved under section 1717-A or 1718-A of the CSL. 24 P.S. § 17-1741-A(a)(2).

⁴ The Department notified SusQ that "persistent failure to meet . . . academic performance benchmarks" may form the basis for revocation or nonrenewal of its charter. *See 2015 Decision, Appendix A at v.*

13. Upon approval of the 2012 Renewal Application, a written charter, which incorporated SusQ's 2012 Renewal Application and any previous applications approved by the Department as modified by the 2012 Renewal Application, for the period commencing July 1, 2015, and ending on June 30, 2020 (2015 Charter), was signed by the Secretary of Education and each member of SusQ's Board of Trustees pursuant to section 1745-A(f)(3).⁵ 24 P.S. § 17-1745-A(f)(3).

14. On September 30, 2019, SusQ submitted to the Department an application to renew its charter (2019 Renewal Application).

SUSQ FAILS TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE.

Statewide Assessments

15. SusQ's performance on statewide assessments has consistently been below the statewide average for all public schools.

16. As SusQ serves only students in grades 9, 10, 11, and 12, analysis of student achievement is based on Keystone end of course exams in Algebra I, Literature, and Biology.

17. 40.00% of SusQ's students scored proficient or advanced on the 2016 Algebra I Keystone Exam.

18. 68.20% of Pennsylvania students scored proficient or advanced on the 2016 Algebra I Keystone Exam.

19. 63.16% of SusQ's students scored proficient or advanced on the 2016 Literature Keystone Exam.

20. 76.80% of Pennsylvania students scored proficient or advanced on the 2016 Literature Keystone Exam.

⁵ A written charter continues in existence until an authorizer takes formal action to renew or not renew the charter through the issuance of a notice and commencement of a hearing, even when the term of the charter has expired. *Cnty. Acad. of Philadelphia Charter Sch. v. Philadelphia Sch. Dist. Sch. Reform Com'n*, 65 A.3d 1023, 1030 (Pa. Cmwlth. 2013).

21. 26.32% of SusQ's students scored proficient or advanced on the 2016 Biology Keystone Exam.
22. 65.80% of Pennsylvania students scored proficient or advanced on the 2016 Biology Keystone Exam.
23. 28.57% of SusQ's students scored proficient or advanced on the 2017 Algebra Keystone Exam.
24. 63.40% of Pennsylvania students scored proficient or advanced on the 2017 Algebra Keystone Exam.
25. 50.00% of SusQ's students scored proficient or advanced on the 2017 Literature Keystone Exam.
26. 72.70% of Pennsylvania students scored proficient or advanced on the 2017 Literature Keystone Exam.
27. 35.71% of SusQ's students scored proficient or advanced on the 2017 Biology Keystone Exam.
28. 63.40% of Pennsylvania students scored proficient or advanced on the 2017 Biology Keystone Exam.
29. 30.00% of SusQ's students scored proficient or advanced on the 2018 Algebra I Keystone Exam.
30. 65.20% of Pennsylvania students scored proficient or advanced on the 2018 Algebra I Keystone Exam.
31. 50.00% of SusQ's students scored proficient or advanced on the 2018 Literature Keystone Exam.

32. 72.70% of Pennsylvania students scored proficient or advanced on the 2018 Literature Keystone Exam.
33. 18.18% of SusQ's students scored proficient or advanced on the 2018 Biology Keystone Exam.
34. 64.40% of Pennsylvania students scored proficient or advanced on the 2018 Biology Keystone Exam.
35. 44.44% of SusQ's students scored proficient or advanced on the 2019 Algebra I Keystone Exam.
36. 63.30% of Pennsylvania students scored proficient or advanced on the 2019 Algebra I Keystone Exam.
37. 50.00% of SusQ's students scored proficient or advanced on the 2019 Literature Keystone Exam.
38. 71.50% of Pennsylvania students scored proficient or advanced on the 2019 Literature Keystone Exam.
39. 18.18% of SusQ's students scored proficient or advanced on the 2019 Biology Keystone Exam.
40. 63.20% of Pennsylvania students scored proficient or advanced on the 2019 Biology Keystone Exam.

Adjusted Cohort Graduation Rate

41. SusQ's 5-year Adjusted Cohort Graduation Rate (ACGR) has consistently been below other Pennsylvania cyber charter schools and the statewide average for public schools with a grade 12.
42. SusQ's 2012-2013 5-year ACGR was 29.3%.

43. Pennsylvania cyber charter schools' 2012-2013 5-year ACGR was 65.9% and the statewide average was 84.3%.
44. SusQ's 2013-2014 5-year ACGR was 37.6%.
45. Pennsylvania cyber charter schools' 2013-2014 5-year ACGR was 67.5% and the statewide average was 88.5%.
46. SusQ's 2014-2015 5-year ACGR was 39.2%.
47. Pennsylvania cyber charter schools' 2014-2015 5-year ACGR was 65.5% and the statewide average was 87.1%.
48. SusQ's 2015-2016 5-year ACGR was 44.7%.
49. Pennsylvania cyber charter schools' 2015-2016 5-year ACGR was 67.4% and the statewide average was 89.4%.
50. SusQ's 2016-2017 5-year ACGR was 38.2%.
51. Pennsylvania cyber charter schools' 2016-2017 5-year ACGR was 63.9% and the statewide average was 89.3%.
52. SusQ's 2017-2018 5-year ACGR was 57.1%.
53. Pennsylvania cyber charter schools' 2017-2018 5-year ACGR was 63.3% and the statewide average was 88.5%.
54. SusQ's 2018-2019 5-year ACGR was 43.1%.
55. Pennsylvania cyber charter schools' 2018-2019 5-year ACGR was 61.6% and the statewide average was 88.9%.
56. SusQ's 2019-2020 5-year ACGR was 37.5%.
57. Pennsylvania cyber charter schools' 2019-2020 5-year ACGR was 62.5% and the statewide average was 89.5%.

58. In December 2018, SusQ was designated as a Comprehensive Support and Improvement (CSI) school on the basis of ACGR pursuant to the Every Student Succeeds Act (ESSA) (Public Law 114-95, 129 Stat. 1802) and Pennsylvania's ESSA Consolidated State Plan.

59. CSI is a designation applied to schools facing the most significant challenges in academic achievement, student growth, and other areas. Specifically, CSI schools are the lowest-performing 5 percent of a state's Title I schools⁶, as well as any high school with an ACGR of 67% or less.

60. While SusQ must raise its ACGR to at least 67 % to exit CSI, the school's ACGR has sharply declined.

Attendance

61. A school's regular attendance rate is the percentage of students enrolled in a school for 60 or more school days who are present 90 percent or more of these school days.

62. Student attendance at SusQ has consistently been below the statewide average for all public schools in Pennsylvania.

63. SusQ's attendance in school year 2015-2016 was 41.7%; the statewide average was 86.2%.

64. SusQ's attendance in school year 2016-2017 was 35.4%; the statewide average was 85.4%.

65. SusQ's attendance in school year 2017-2018 was 49.3%; the statewide average was 85.8%.

66. SusQ's attendance in school year 2018-2019 was 49.3%; the statewide average was 85.8%.

⁶ SusQ does not receive Title I funds and, therefore, was not included in the calculation for the lowest performing 5 percent of Title I schools.

67. SusQ's attendance in school year 2019-2020 was 61.8%; the statewide average was 85.8%.

SUSQ FAILS TO MEET THE GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT OR AUDIT REQUIREMENTS.

End-of-Year Audits

68. SusQ is persistently delayed in completing end-of-year audits.

69. SusQ's Fiscal Year (FY) 2014-2015 (FY ending June 30, 2015) audit was not completed until February 19, 2016; more than seven months after the end of the fiscal year.

70. SusQ's FY 2015-2016 (FY ending June 30, 2016) audit was not completed until May 3, 2017; more than 10 months after the end of the fiscal year.

71. SusQ's FY 2016-2017 (FY ending June 30, 2017) audit was not completed until July 16, 2018; more than 12 months after the end of the fiscal year.

72. SusQ's FY 2017-2018 (FY ending June 30, 2018) audit was not completed until November 18, 2019; more than 16 months after the end of the fiscal year.

73. SusQ's FY 2018-2019 (FY ending June 30, 2019) audit was not completed until October 15, 2020; more than 15 months after the end of the fiscal year.

74. As of the filing of these charges, the FY 2019-2020 (FY ending June 30, 2020) audit has not been completed and the status of the FY 2020-2021 audit is unknown.

75. SusQ does not employ a business manager.

76. Between FY ending June 30, 2019, and FY ending June 30, 2020, SusQ changed the designations for fund balances.

77. SusQ's audited financials for FY ending June 30, 2019, show \$300,000 in committed fund balance, but a negative unassigned fund balance of \$213,841, and a total fund balance of \$86,159.

78. SusQ's draft financials for FY ending June 30, 2020, show the entire fund balance of \$396,150 as unassigned.

79. SusQ failed to provide Board minutes evidencing amendments or modifications of the committed fund balance, by formal action, in accordance with established policy.

Financial Accounting and Reporting Standards

80. The Governmental Accounting Standards Board (GASB) financial accounting and reporting standards are used by state and local governmental entities that follow Generally Accepted Accounting Principles (GAAP).

81. The Financial Accounting Standards Board (FASB) financial accounting and reporting standards are used by public and private companies and not-for-profit organizations that follow GAAP.

82. In March, 2016, GASB issued Statement Number 82 related to pension plans (GASB Statement No. 82) effective for reporting periods beginning after June 15, 2016.

83. GASB Statement No. 82 requires employers that participate in cost-sharing, multiple-employer pension plans to report their proportionate share of the net pension liability on the statement of net position of the government-wide and proprietary fund financial statements.

84. FASB does not require employers that participate in cost-sharing multiple-employer pension plans to report their proportionate share of the net pension liability on the statement of net position of the government-wide and proprietary fund financial statements.

85. SusQ contributes to a government cost-sharing, multiple-employer defined benefit pension plan administered by the Pennsylvania Public School Employees' Retirement System.

86. Prior to fiscal year ending June 30, 2019, SusQ used GASB standards.

87. Effective for the fiscal year ending June 30, 2020, SusQ adopted FASB standards.

88. For fiscal year ending June 30, 2019, SusQ had a net pension liability of \$1,248,000.
89. SusQ did not separately report its net pension liability for fiscal year ending June 30, 2020.
90. SusQ's switch from GASB to FASB obscures its pension liability.
91. The Department is required to conduct a comprehensive review of a charter school's operations over its charter term, including its financial operations, prior to granting a five-year renewal of the charter. 24 P.S. § 17-1742-A.
92. SusQ switched from GASB standards to FASB standards for fiscal year ending June 30, 2020 preventing the Department from conducting an accurate comparison of SusQ's financial operations from fiscal year ending June 30, 2015 through fiscal year ending June 30, 2021.

SUSQ'S GOVERNING BOARD IS IN VIOLATION OF ITS WRITTEN CHARTER.

93. SusQ's Local Board Policy #005 states that the membership of the Board of Trustees is established pursuant to the By-Laws and that the Board shall be made up of nine members.
94. SusQ's Bylaw 2.2 states that the Board shall consist of nine members.
95. SusQ's Board of Trustees is currently made up of four members and has not had a full complement of members for some time.

GROUND FOR NONRENEWAL OF SUSQ'S CHARTER UNDER SECTION 1729-A(a) OF THE CSL, 24 P.S. § 17-1729-A.

I. FAILURE TO MEET THE REQUIREMENTS FOR STUDENT PERFORMANCE SET FORTH IN 22 PA. CODE CH. 4 AND/OR SUSQ'S WRITTEN CHARTER (24 P.S. § 17-1729-A(A)(2)).

96. Paragraphs 1-67 are incorporated herein by reference.
97. A proper standard for measuring academic performance of a charter school is to compare the charter school's performance against similar schools as a whole. *Truebright Science Academy Charter Sch v. Philadelphia Sch. Dist.*, 115 A.3d 919, 923 (Cmwlth. Ct. 2015).

98. ESSA requires states to design and implement systems for holding schools accountable for student outcomes, with particular focus on narrowing outcome gaps for historically underserved populations. 20 U.S.C. § 6311.

99. These accountability systems must account for academic achievement and graduation rate measures.

100. Moreover, ESSA requires states to designate any public high school—regardless of Title I status, and irrespective of performance on other indicators—that fails to graduate one third or more of their students for CSI, the most intensive of three federally-prescribed accountability designations.

WHEREFORE, SusQ's performance on statewide assessments, inability to graduate students, and inability to secure attendance constitute failures to meet the requirements for student performance and SusQ's charter should not be renewed.

II. FAILURE TO MEET THE GENERALLY ACCEPTED STANDARDS OF FISCAL MANAGEMENT OR AUDIT REQUIREMENTS (24 P.S. § 17-1729-A(A)(3)).

101. Paragraphs 1-14, 68-92 are incorporated herein by reference.

102. Section 218 of the School Code specifically requires chief school administrators of cyber charter schools to submit a signed statement certifying that the audited financial statements of the cyber charter school have been properly audited no later than December 31st of each year. 24 P.S. § 2-218(b).

103. Failure to efficiently and timely complete necessary audits jeopardizes the financial stability of an organization.

104. SusQ discontinued using financial accounting and reporting standards of local governmental entities.

WHEREFORE, SusQ's persistent delays in completing audits and switch from GASB standards to FASB standards constitute failures to meet generally accepted standards of fiscal management or audit requirements and SusQ's charter should not be renewed.

III. SUSQ HAS VIOLATED A MATERIAL TERM CONTAINED IN THE WRITTEN CHARTER (24 P.S. § 17-1729-A(A)(1)).

105. Paragraphs 1-14, 93-95 are incorporated herein by reference.

106. The CSL has set forth a statutory scheme regarding, *inter alia*, the authorization of a cyber charter school's material terms, including the proposed governance structure of the charter school. *Discovery Charter Sch. v. Sch. Dist. Of Phila.*, 166 A.3d 304, 319-320 (Pa. 2017).

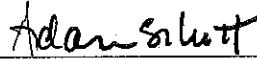
107. Section 1747-A incorporates the provisions of section 1719-A for an applicant seeking to establish a cyber charter school, specifically, information regarding "[t]he proposed governance structure of the charter school, including a description and method for the appointment or election of members of the board of trustees." 24 P.S. §§ 17-1719-A(4), 17-1747-A.

WHEREFORE, SusQ's failure to designate, seat, and maintain the requisite number of Board of Trustee members, as set forth in the written charter, constitutes a violation of a material term contained within its charter and SusQ's charter should not be renewed.

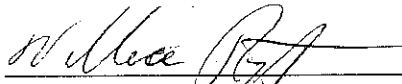
CONCLUSION

For the reasons set forth above, and for any additional reasons that may be presented at the hearing scheduled in connection with this Notice, SusQ's charter should not be renewed.

Respectfully submitted,



Adam A. Schott, Special Assistant to the Secretary



Wallace Rejrat, Assistant Counsel

I.D. No. 314058

Julius E. Zeitlinger, Assistant Counsel

I.D. No. 327863

Pennsylvania Department of Education

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Date filed: February 17, 2022

CERTIFICATE OF SERVICE

I, Wallace Rejrat, Assistant Counsel, Office of General Counsel assigned to the Pennsylvania Department of Education, hereby certify that on February 17, 2022, I have caused to be served a copy of the foregoing Order to Show Cause and Notice of Charges in Support of Nonrenewal of Charter by E-mail, and First-Class mail, postage prepaid, on the following parties or counsel of record:

Mrs. Patricia Leighow
Chief Executive Officer
SusQ-Cyber Charter School
240 Market Street
Bloomsburg, PA 17815
pleighow@susqcyber.org


Wallace Rejrat