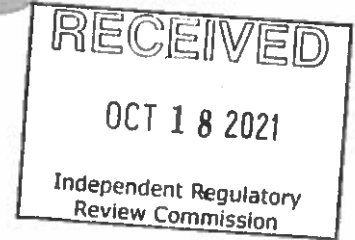


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October 18, 2021

Pennsylvania Department of Education  
Division of Charter Schools  
333 Market Street  
3<sup>rd</sup> Floor  
Harrisburg, PA 17126



*Via email: [ra-edcharterregs@pa.gov](mailto:ra-edcharterregs@pa.gov)*

Re: Proposed Regulations – #6-349 Charter Schools and Cyber Charter Schools

Dear Pennsylvania Department of Education:

Commonwealth Charter Academy (CCA) submits the following comments in response to the Pennsylvania Department of Education's proposed regulations, #6-349 Charter Schools and Cyber Charter Schools.

**Background**

CCA is an independent, K through 12 public cyber charter school authorized by the Pennsylvania Department of Education (PDE) pursuant to the Charter School Law, 24 P.S. § 17-1701-A *et seq.* CCA is accredited by the Middle States Association Commissions on Elementary and Secondary Schools – the gold standard in measuring and advancing school improvement.

CCA is recognized throughout the state and nation as a leader in K through 12 online education. CCA currently has the largest number of enrolled students among all cyber charter schools in Pennsylvania, and is are the third largest public school entity in the state.

In 2018, CCA launched CCAWorks, a multi-faceted program to introduce and prepare students for high-demand, family-sustaining careers that meet the growing needs of Pennsylvania employers and communities.

Since first opening its *virtual* doors in 2003, CCA has received many honors and distinctions, most recently as a 2021 United States Department of Education Green Ribbon School (one of only 27 schools across the country to receive this recognition) and as a recipient of the 2021 Governor's Award for Environmental Excellence through the Pennsylvania Department of Environmental Protection.

Applying nearly 20 years of experience in designing, innovating, and delivering an online education, CCA has reviewed the proposed regulations and is requesting the following comments be considered and addressed by the department and made part of the permanent record.

## General Comments

- PDE should seek to only implement the Charter School Law, 24 P.S. § 17-1701-A *et seq.*, (Article XVII-A (Charter Schools) of the Public School Code), as enacted by the General Assembly, not circumvent the legislative process by putting in place additional requirements, which is only reserved for the Pennsylvania General Assembly. *See* 24 P.S. §§ 17-1732-a(c) and 17-1751-A.
- PDE’s statement that the Charter School Law has “remained largely unchanged since its enactment” is inaccurate and misleading. The General Assembly has addressed various critical areas of the Charter School Law since its initial enactment in 1997 and the addition of Subarticle (c) (Cyber Charter Schools) in 2002, including provisions relating to powers of charter school entities, facilities, enrollment, school staff, funding for charter school entities, and formation of multiple charter school organizations. Moreover, the General Assembly has amended other requirements in the Public School Code, 24 P.S. § 1-101 *et seq.*, that apply to charter school entities, and by doing so created or clarified the responsibilities of charter school entities. Furthermore, the State Board of Education and PDE have promulgated and revised regulations that address the responsibilities of charter school entities, including curriculum requirements under 22 Pa. Code Chapter 4 and special education requirements under 22 Pa. Code Chapter 711.
- PDE fails to address the requirements for charter school authorizers to act on requests for renewals of charter schools and cyber charter schools.
- The proposed regulations in no way mention nor do they address the responsibilities under the Charter School Law of charter school and cyber charter school authorizers and school district payers.
- The final regulations in no way should address areas or topics that have not been included in the proposed regulations.
  - Pursuant to the Commonwealth Documents Law, 45 P.S. § 1102 *et seq.*, “The agency text of any administrative regulation or change therein as finally adopted may contain such modification to the proposed text as published pursuant to section 201 as do not enlarge its original purpose, but modifications which enlarge the original purpose of a proposal as published under section 201 shall be republished thereunder prior to final adoption by the agency.” 42 P.S. § 1202.
  - To the extent that PDE seeks to move forward with final regulations that are more restrictive or costlier to charter schools and cyber charter schools or that would address additional requirements than what are contained in the proposed regulations, PDE should publish the revised regulations as proposed regulations. Even without changes to meet the threshold under section 202 of the Commonwealth Documents Law, due to the nature of the regulations and novel action by PDE to issue general regulations to implement the Charter School Law, PDE should proceed under an Advanced Notice of Final Regulations (ANFR) and seek renewed public comments on those revisions for 30 days before proceeding to final regulations.
- PDE does not fully address the actual need for these regulations or the concerns it seeks to address. By its own statement, “For charter school entities that already align policies and practices with the [Charter School Law], the Department expects charter school entities will rely on currently established procedures.”

- The regulatory action proposed by PDE fails under the considerations for approval set forth in section 5.2 of the Regulatory Review Act, 71 P.S. § 745.5b.

### **Section 713.1 (Definitions)**

- The proposed definition of “educational management service provider” is legally and practically incorrect. In practice, charter school entities contract with educational management service providers for services that allow for *several* of the day-to-day functions for management and operation of the charter school – curriculum, business services, personnel services, facilities management, etc. Under PDE’s proposed definition, an entity may be considered an “educational management service provider” if any *one* of these functions is contracted to an outside entity or individual, irrespective of the scope of the work or cost of services in comparison to the school’s total operations or budget.

### **Section 713.2 (Contents of Charter School or Regional Charter School Application)**

- This requirements in this section extend well beyond those prescribed by the General Assembly and codified in the Charter School Law (24 P.S. §§ 17-1718-A and 17-1719-A).
- Many of the details required to be included in the application may be difficult or impossible to estimate or know at the time of the application and have little or no bearing on the potential for the applicant to meet the requirements of the Charter School Law or provide comprehensive learning experiences for students of the Commonwealth or other factors allowed for evaluation of a charter school application. *See* 24 P.S. § 17-1717(e)(2).

### **Section 713.3 (Contents of Cyber Charter School Application)**

- This requirements in this section extend well beyond those prescribed by the General Assembly and codified in the Charter School Law (24 P.S. §§ 17-1719-A and 17-1747-A).
- Many of the details required to be included in the application may be difficult or impossible to estimate or know at the time of the application and have little or no bearing on the potential for the applicant to meet the requirements of the Charter School Law or provide comprehensive learning experiences for students of the Commonwealth or other factors allowed for evaluation of a charter school application. *See* 24 P.S. § 17-1745(f)(1).

### **Section 713.4 (Random Selection Policies for a Charter School or Regional Charter School)**

- The General Assembly has already codified prescribed actions to be taken when more students apply to a charter school than the number of attendance slots available. *See* 24 P.S. § 17-1723-A.
- Paragraph (b) uses the term “applicant”; however, the term is not defined.

- The General Assembly has already codified that a charter school cannot discriminate in its admission practices. *See* 24 P.S. § 17-1723-A (b)(1)
- PDE sets forth extensive and costly requirements for charter school applicants; however, the department fails to address the requirements for authorizers to timely and fairly review and act on the applications.
- PDE fails to address the requirements for timeliness of charter renewals.
- PDE fails to address how enrollment limits, or enrollment caps, will not have a disparate impact on minority and low-income families who seek these school choice opportunities for their children.

#### **Section 713.5 (Random Selection Policies for a Cyber Charter School)**

- Paragraphs (d)(1) and (d)(2) use the term “applicants”; however, the term is not defined.
- PDE sets forth extensive and costly requirements for cyber charter school applicants; however, it fails to address the requirements for the department to timely and fairly review and act on the applications.
- PDE fails to address the requirements for timeliness of cyber charter renewals.
- PDE fails to address how enrollment limits, or enrollment caps, will not have a disparate impact on minority and low-income families who seek these school choice opportunities for their children.

#### **Section 713.6 (Requirements for Boards of Trustees)**

- Paragraph (b) requires each member of a charter school entity board of trustees to “file a statement of financial interest for the preceding calendar year with the board of trustees of the charter school entity, with the State Ethics Commission, and each authorizer of the charter school entity”; however, this creates new requirements that exceed those in the Charter School Law and what is required of school district board of directors, who must file a statement of financial interests with only the local political subdivision (school district). Moreover, it creates an unnecessary paperwork requirement as the documents are already available to charter school authorizers and the State Ethics Commission upon request.
- This section is unnecessary because trustees of a charter school are considered public officials and therefore are bound by the Public Official and Employee Ethics Act, 65 Pa.C.S. §§ 1101 *et seq.*

#### **Section 713.7 (Fiscal Management and Audit Requirements)**

- This section addresses areas that are already in practice and required under the Public School Code, and are therefore unnecessary in the regulations.
  - Section 218 of the Public School Code requires that charter school entities comply with the same annual financial reporting and auditing requirements that apply to school districts. 24 P.S. § 2-218.
  - Section 437 of the Public School Code requires annual audits of the charter school entity’s accounts in the same manner that is required for school districts. 24 P.S. § 4-437.

- Section 1729-A(3) of the Charter School Law/Public School Code requires that charter school entities adhere to generally accepted standards of fiscal management and audit requirements. 24 P.S. §§ 17-1729-A(3) and 17-1749-A(a)(1).

### **Section 713.8 (Redirection Process)**

- The department seeks to codify in regulations its current practice; however, even these current practices extend beyond PDE’s statutory authority by adding additional requirements and unreasonable timelines, such as the amount of information required to be included about each student when submitting redirection requests.
  - Furthermore, PDE fails to recognize the extraordinary costs incurred by charter school entities in complying with its existing and proposed redirection processes. Charter school entities currently comply with these requirements because failing to do so will result in delay or denial of payment; however, the cost of the existing requirements, as incorporated into the proposed regulations, must be properly calculated as part of the rulemaking process.
- Although PDE creates extensive paperwork requirements for charter school entities to seek redirection, it fails to address the issue that many school districts do not provide a public calculation of their rates under section 1725-A(a)(2) and (3) of the Charter School Law (as calculated on form PDE-363), which creates confusion and uncertainty for charter school entities. *See* 24 P.S. § 17-1725-A(a)(2) and (3). Moreover, school districts may revise rates throughout the school year without explanation, leading to further confusion and disagreement.
- Approximately 25 percent of school districts fail to make payments to charter school entities and are using the redirection process out of convenience and in direct violation of their statutory duty under section 1725-A(5) of the Charter School Law. PDE’s redirection costs are not the result of charter school entities; these costs are a direct result of school districts not adhering to their statutory responsibilities.
- PDE fails to address the penalties that can be applied to school districts and school district administrators that fail to comply with their payment responsibilities under section 1725-A of the Charter School Law. Receipt of revenue by a charter school entity is delayed by two or more months when a school district fails to make payment to a charter school entity and the charter school entity is forced to seek redirection from PDE.
- As noted in the Pennsylvania Auditor General’s August 2016 Performance Audit Report of PDE that focused on Charter School Payment Appeals, 857 appeals were filed by school districts with PDE as a result of charter schools seeking redirection for the period of January 1, 2011, through December 31, 2015; of this amount, 630, or 74 percent, “remain in open status with minimal action by PDE...”
  - The Auditor General also noted that as of the time period of the audit, the days an appeal remained in open status ranged from a low of six days to a high of 1,323 days.
  - The Auditor General further noted that “[l]ack of follow-up by PDE has resulted in minimal action for more than 2 years for 36% of the General appeals in open status” and “[a]ppeals have remained in the hearing process for almost 3 1/2 years without any follow-up by PDE to determine the status of the appeals.”

- Since the time of the report, PDE has failed to post on its public website or make any announcement of decisions on charter school redirection appeals, which results in continued disputes between school districts and charter school entities on matters that have been or could have been resolved by the department pursuant to the authority and responsibility already granted to it under law.
- The timelines put forward by PDE are difficult to determine and adhere to as well as impose an undue burden on charter schools.
- Paragraph (d)(2) uses the term “Source of Tuition Rate”; however, PDE does not explain how the source is to be identified or whether documentation is required in addition to naming the source. A dispute regarding the application of this provision could lead to delays in payments for charter schools,
- Paragraph (e) only addresses redirection requests for the months of July through May, but fails to address redirection requests for the month of June. *See* 24 P.S. § 17-1725-A(a)(5) (“Payments shall be made to the charter school in twelve (12) equal monthly payments, by the fifth day of each month, within the operating school year.”)

### **Section 713.9 (Health Care Benefits)**

- Under the proposed regulations, coverage would be out of compliance in the example where a charter school entity employee pays more for a specific treatment than a school district employee; however, different health treatments will align with different plan design facets, such as deductibles, coinsurance, and copayments. Within just one benefit plan, it is not uncommon for specific services and procedures to have completely unique employee cost requirements.
- Based on the reading of the proposed rules, the plan would be considered out of compliance if a charter school entity employee paid more for any one service or procedure than a school district employee.
- The proposal that the charter school entity health plan would have to be designed to account for every single service and procedure is onerous and unreasonable. Conceptually, a charter school entity’s health plan could clearly be more valuable than a local school district plan when considered on the whole, but still require a higher payment for a specific service or procedure.
- Beyond plan design elements like deductible, coinsurance, and copayments, benefits can vary significantly through different utilization management programs, such as a prescription drug plan with a more restrictive formulary or additional prior authorization protocols. It is unclear how PDE would consider these issues. It is also unclear how one would analyze whether a health benefit offers a more restrictive network of providers, which could have an impact on the value of the benefits offered.
- School districts may offer different benefit plans for different collective bargaining groups (e.g. educational staff, support staff, etc.). PDE fails to address how this would be addressed under the regulations.
- A negotiated contract between a school district and its collective bargaining units balances both salaries and health care benefits. Focusing only on health care benefits without considering salaries is an incomplete comparison and could result in inaccurate data and misleading information.

- The regulations fail to consider that charter school entities are not at the bargaining table when a school district and its collective bargaining units negotiate health care benefits, plan design, and costs. Therefore, charter school entities could be forced to comply and pay for expenses in which they had no input, infringing upon the independent nature of charter school entities. In fact, some charter school entities could be better positioned to provide health care benefits to their employees that are less costly and more robust.

As thoroughly detailed in the aforementioned comments, PDE's proposed regulations would impose additional costs and be an overreach of its current statutory authority in implementing the Charter School Law.

I look forward to PDE addressing the above-noted concerns to ensure that barriers are not put in place for students and families to access charter schools and cyber charter schools.

Sincerely,



Thomas D. Longenecker  
President and CEO