



October 18, 2021

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

To Whom It May Concern,

Philadelphia Charters for Excellence (PCE) is an alliance of 75 public, brick-and-mortar charter schools in Philadelphia that believes all parents deserve a choice of quality public school options for their children. PCE was founded in 2011 to unify the City’s charter community, which educates 70,000 students under a shared commitment to accountability, equity and quality. PCE’s members are committed to providing the highest quality education to their students while adhering to the highest standards of fiscal and operational management and public school governance. Please accept the following public comment on behalf of PCE regarding [Regulation #6-349: Charter Schools and Cyber Charter Schools](#).

1. Regulation #6-349 is an improper attempt by the Wolf Administration to bypass the legislative process.

The Pennsylvania Department of Education (PDE) contends the “need” for Regulation #6-349 is because Pennsylvania’s Charter School Law has remained “*largely unchanged since its enactment.*” The lack of legislative action to change or update the Charter School Law is a call to action for the General Assembly, not PDE. The Charter School Law does not give PDE the authority to update laws they view as outdated.

PCE’s recognizes that there are significant updates that must be made to Pennsylvania’s Charter School Law to improve the procedures, standards and accountability for public charter schools and their authorizers (school districts and PDE). Fair and meaningful changes to the Charter School Law could improve relations between public charter schools and their authorizers, and ultimately improve educational services for Pennsylvania students. These changes include preserving charter school funding, creating a legal process for charter amendments, increasing charter term lengths, and streamlining the charter renewal process.

Due to the significant impact that Pennsylvania’s Charter School Law has on the 170,000 students who are served by public charter schools and their families, along with the thousands of educators and staff who are employed by Pennsylvania’s 180+ public charter schools, **PCE opposes the use of the regulatory process to make changes to the Charter School Law.**

Regulation #6-349 creates more, not fewer opportunities for conflict between public charter schools and their authorizers because its provisions were drafted to benefit one side of a complicated dynamic and lacks true compromise.

PCE encourages Governor Wolf and PDE to pull back their proposed charter school regulations and engage the General Assembly in negotiations to craft, pass and enact comprehensive charter reform that is fair and balanced.

2. Regulation #6-349 is based on broad, undefined terms which are not contained in Pennsylvania’s Charter School Law.

Regulation #6-349 is explained as a series of rules that “*sets conditions that emphasize accountability, equity, quality, and transparency.*”

However, none of these cited terms are defined in PA’s Charter School Law or the Pennsylvania’s Public School Code. Over the past six years, the Wolf Administration have taken the liberty to define these terms in ways that justify calls for funding reductions to public charter schools and imposing burdensome mandates on public charter schools. The Department does not have authority to “emphasize” terms and concepts it deems important, while ignoring clear legislative intent for Pennsylvania’s Charter School Law, such as school choice and charter school autonomy.

3. The proposed rules, specifically new requirements for charter applications, significantly undermine charter school independence. In certain respects, the proposed regulations are antithetical to legislative intent.

Pennsylvania’s Charter School Law was enacted to “*provide opportunities to teachers, parents, students, and community members to establish and maintain charter schools that operate independently from the school district structure.*” 24 P.S. § 1701702-A.

School districts regularly and nearly routinely deny charter school applications. In this vein, the legislature created the Charter School Appeal Board (CAB) to act as an impartial judge to regulate authorizer conduct. Without statutory authority, proposed Section 713.2 of Regulation #6-349 creates dozens of new application requirements in pursuit of a “standard application form”. While certain sections of the Charter School Law delegates authority to PDE to develop forms (e.g. 24 P.S. § 17-1728-A – annual reports to be on forms “prescribed by the Secretary”), there is no similar authority granted to PDE to standardize the charter school application process outlined in 24 P.S. §§ 17-1717-A, 17-1719-A.

Even if there was appropriate authority, the proposed “standard” requirements will severely curtail, if not eliminate altogether, the ability of community members to establish a charter school. The proposed Section 713.2 contains dozens of requirements beyond the language of the current Charter School Law which are technical in nature. The proposed regulations would also explicitly permit authorizers to “*require an applicant [to] submit additional information*” beyond the

standard form to be used in a district’s evaluation of the application. This will inevitably result in school districts engaging in a subjective analysis to the detriment of charter applicants.

4. Other specific proposals in Regulation #6-349 are flawed.

The following are PCE’s specific objections to the proposed charter school regulations:

General Provisions

- “Authorizer” definition should also include “local boards of school directors in the case of a regional charter school”
- “Charter school” definition should also include “local boards of school directors in the case of a regional charter school”
- “Educational management service provider” definition is very broadly written and vague, to the point that it could conceivably encompass any individual or business entity that has or intends to have a contract with a charter school. PCE submits that the scope of this definition should be limited to those contractors who contract to provide all or substantially all of a charter’s functions in a given area, e.g.:
 - “Educational management service provider” shall mean a nonprofit or for-profit entity with which a board of trustees of a charter school entity contracts to provide management or operation of all or substantially all of the charter school's functions, or all or substantially all of the charter school's instructional, curricular or administrative functions. The term shall not include a charter school foundation.

Application Requirements

- PCE opposes the use of applications created by individual authorizers which creates inconsistencies, inequities and abuses of power.
 - PCE supports the creation and required use of a standard charter school application created by the PA Department of Education, but has serious concerns about the items included in § 713.2.(c). A standard form application should provide charter applicants with clear expectations about the charter application process. Section 713.2 of the proposed regulations does the opposite. PDE is expanding the information required in nearly all areas – budget, professional development, curriculum – beyond current caselaw as set forth by CAB and the Courts. The expansion of requirements only creates more opportunities for school districts to deny applications for trivial reasons.
 - Pennsylvania’s Charter School Law requires charter applicants to include a budget and a financial plan with their application, consistent with the requirements of the current law in 24 P.S. § 17-1719-A(9). The proposed regulations expand these basic requirements and would require an applicant to provide several budget documents: one using specific PDE-created accounting codes, one addressing items not covered by the codes and predictions about fund balances. Requiring charter applicants to use school-accounting specific codes is a barrier to entry in the charter school space.
 - Further, the proposed regulations state that the budget information “*includes, but is not limited to*” these items, enabling charter authorizers to require additional, unspecified

budget information. This is an invitation for authorizers to create their own standards, which would hinder transparency and equity - - the exact opposite result that PDE was promoting with the proposed regulations.

- Pennsylvania’s Charter School Law currently requires charter applicants to provide the proposed faculty and plans for professional development in 24 P.S. § 17-1719-A(13). The proposed regulations would require charter applicants to submit information “*that complies with Chapters 4 and 49 [of Title 22]*” and includes projections for full-time equivalent employees in eight (8) different categories and projected special education caseloads. Essentially, the proposed regulations would require charter applicants to predict the future - - there is no conceivable way that a charter applicant will know which students will walk through their school’s doors with such specificity.
- “*Mission, vision, and program overview, including education purpose and demonstrated, sustainable support for the charter school or regional charter school.*” – What is meant by “sustainable support”? By not being deliberately specific, we worry that local authorizers may create unattainable standards for new charter schools.

Enrollment

- The proposed regulations focused on Enrollment is redundant and unnecessary.
 - A lottery enrollment policy is already a required element in the New Charter Application process and is part of PDE’s standard application. This provision now creates the opportunity for confusion with families seeking to enroll their students in public charter schools.
 - The requirements of this proposed regulation would create a scenario where the enrollment policy included in a charter’s application (which is part of the charter agreement) could conflict with this “new policy”. If this occurs, it provides authorizers with the ability to non-renew charters or require that charter schools file an amendment that could be a lengthy and expensive process.

Boards of Trustees

- The proposed regulations dealing with Boards of Trustees is redundant and unnecessary.
 - Charter schools’ board of trustee members have long been acknowledged as public officials – which is already part of Pennsylvania’s Charter School Law.
 - Statements of Financial Interests are not under the jurisdiction of PDE but are under the jurisdiction of Ethics Commission. Hence, there is no corresponding provision in the existing education regulations or the Pennsylvania School Code for school district board members, intermediate unit board members, and career and tech school board members.

Fiscal and Auditing Standards

- Independent audits are governed by national organizations that are experts in this area and the Certified Public Accountants (CPA) who conduct these audits are professionals who are governed by their own standards. PDE’s regulations on Fiscal and Auditing Standards are outside of their scope of expertise and authority.

- The delineation of standards for audits is not included in Section XXIV of the School Code and PDE is not granted the authority to set these standards.
- Like all public schools in the Commonwealth, charter schools are currently required to have an independent audit done after each fiscal year. Certified Public Accountants (CPA) are provided rules and regulations from a number of organizations such as the Governmental Accounting Standard Board (GASB) and the Financial Accounting Standard Board (FASB). To the extent that the proposed regulations expand the requirements of the CPA, it is estimated that these new requirements will cost each public charter school an additional \$5,000 per year.
- Regulation #6-349 is explained as a series of rules that “*sets conditions that emphasize accountability, equity, quality, and transparency*” to that extent, will PDE be promulgating regulations to require these same auditing standards for school districts and intermediate units? School districts and intermediate units receive billions in taxpayer dollars each year – much more than what public charter schools receive – and it would only be equitable to require these same auditing standards for these two public entities.

Redirection Process

- The proposed regulations for the Redirection Process are clearly not meant to “clarify” the process clearly outlined by the Charter School Law but to impose a new process that is outside of the Pennsylvania Department of Education’s jurisdiction. The following are examples of this overstep:
 - The proposed regulations under the Redirection Process leaves out a very important clause in the Charter School Law - “*Payments shall be made to the charter school in twelve (12) equal monthly payments...*” (24 P.S. § 17-1 725-A(a)(5)). If the goal of PDE’s proposed regulations is to “clarify” the redirection process outlined in the Charter School Law, then this must be included.
 - The proposed regulations require charter school entities to submit payment requests to the school districts “*no later than ten (10) days before the fifth of each month*” which is not a requirement imposed on charter schools in the Charter School Law and a clear overstep in PDE’s authority.
 - PDE attempts to create a standard of what the General Assembly meant by “*If a school district fails to make a payment to a charter school as prescribed in this clause...*” (24 P.S. § 17-1 725-A(a)(5)). The proposed regulations would interpret this part of the law as a school district not making a payment to a charter school by the fifth of the month, but it excludes instances where school districts make a payment in this timeline but deliberately shortchange a charter school. Under the proposed regulations, it doesn’t appear that the charter school entity would have any recourse to seek assistance by PDE as long as they receive some amount by the fifth of the month.
 - The Charter School Law is clear that if a school district fails to make a monthly payment to a charter school “*the secretary shall deduct the estimated amount, as documented by the charter school, from any and all State payments made to the district...*” (24 P.S. § 17-1 725-A(a)(5)). It does not say in the Charter School Law that

PDE or the Secretary has any discretion over whether or not these payments are withheld by the district, the law is clear that *“the secretary SHALL”* make the deduction.

- The Charter School Law does not require a charter school entity to fill out a form in order to obtain a redirection from PDE and the proposed regulations are clearly meant to create additional red-tape and burdensome mandates on public charter schools who are trying to obtain the funding that rightly belong to their students.
- The proposed regulations will delay payments to public charter schools by requiring charters to wait ten (10) days after a school district fails to make their legally required tuition reimbursement payments. Like school districts, public charter schools have monthly infrastructure expenditures but, unlike school districts, they don't receive their local and state revenue directly. When school districts break the law and refuse to send their tuition reimbursement payments it creates a significant strain on charter schools, and the proposed regulations only delay those payments by requiring that redirection requests must only be made *“between the 15th and 25th of each month”*.

School Staff

- The proposed regulations that pertain to School Staff go far beyond the scope of the Charter School Law and creates inequities between school districts and public charter schools as employers. The following are examples of PDE's overreach:
 - The proposed regulations require public charter schools to determine *“the most-selected health care plan available to the employees of the charter school's authorizer”* in order to provide the equivalent to their employers. How does PDE propose each charter school access this information? Why do the regulations not require school districts to provide this information to their local charter schools? There are some school districts that refuse to make their state mandated charter school payments, what makes PDE believe that these same districts will willingly provide their employee-benefit information? This will just be one more unrealistic mandate to create additional burdens on public charter schools.
 - The proposed regulations would require public charter schools to provide the following statement to every employee - *“UNDER PENNSYLVANIA LAW, CHARTER SCHOOLS, REGIONAL CHARTER SCHOOLS. AND CYBER CHARTER SCHOOLS ARE REQUIRED TO PROVIDE THE SAME HEALTH CARE BENEFITS TO THEIR EMPLOYEES AS THEY WOULD BE PROVIDED IF THEY WERE EMPLOYEES OF THE LOCAL DISTRICT. IF YOU BELIEVE THE PLAN OPTIONS MADE AVAILABLE TO YOU ARE NOT COMPARABLE TO THOSE OFFERED BY YOUR LOCAL DISTRICT, YOU MAY FILE A COMPLAINT WITH THE AUTHORIZER OR AUTHORIZERS OF THE CHARTER SCHOOL. REGIONAL CHARTER SCHOOL, OR CYBER CHARTER SCHOOL.”* This statement is in no way required by the Charter School Law, nor is it the duty of the authorizer to handle any complaint made by employees of a charter school. Furthermore, the Charter School Law School districts are not required to provide this statement to their employees, so why would public charter schools need to provide it to their staff? Does PDE plan to promulgate



regulations for school districts to require this same language be provided to their employees?

Philadelphia Charters for Excellence (PCE) is available to PDE to discuss this letter, our recommendations and concerns. **Again, PCE is calling on PDE and Governor Wolf to pull back the proposed charter school regulations, and work with the public charter school community to see charter reform pass through the General Assembly.**

Sincerely,

A handwritten signature in black ink that reads 'Scott Peterman'. The signature is written in a cursive, flowing style.

Scott Peterman,
Executive Director
Philadelphia Charters for Excellence (PCE)