



October 18, 2021

BY EMAIL ONLY (rseely@pa.gov)
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Pennsylvania Department of Education
Division of Charter Schools
333 Market Street, 3rd Floor
Harrisburg PA 17126

Re: **Regulation #6-349-Charter Schools and Cyber Charter Schools**
Agency Name: Department of Education
IRRC No. 3315

Dear Mr. Seely;

Please accept this letter as comments submitted on behalf of three brick and mortar public charter school systems, Propel Schools, Mastery Schools Network and KIPP Philadelphia Schools. These public charter school systems are committed to furthering the efficient, effective, and equitable role of public charter schools in the future of educating Pennsylvania's youth. Together these three schools educate approximately 25% of all brick-and-mortar public charter school students in Pennsylvania pre-COVID-19 pandemic.

These comments are submitted in response to proposed regulation #6-349 Charter Schools and Cyber Charter Schools. Because none of these schools operate a cyber charter school entity, these comments will only be focused on elements of the proposed regulations that are addressed to the operation of brick-and-mortar charter school entities. Each of the comments is addressed below in a fashion that corresponds to the proposed regulation associated with the comment.

Section 713.1: Definitions.

The definitions included in the proposed regulation at Section 713.1 are at odds with the definitions contained in Section 1703-A of the Charter School Law (herein after referred to as "CSL") either because the regulation definitions are different from the statutory definitions or because the regulation definitions exceed the definitions in statute. These concerns must be addressed in the regulation so that the regulation is harmonized with the statutory framework.

The terms "charter school", "cyber charter school", and "regional charter school" are defined by the CSL. The proposed regulation includes additional language in its definition of these terms that is inconsistent with the intended the statutory framework and should not be included.

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By way of example, the proposed regulation definition adds to the statutory definition of the term “charter school” the clause “or board of public education of a school district.” The regulations should adopt the definitions contained in and consistent with statute.

The regulation proposes the adoption of the term “English learner.” Federal law defines an “English Learner” by the United States Elementary and Secondary Education Act (ESEA) section 8101 (20), as amended by Every Student Succeeds Act (ESSA). The definition contained in the regulation does not mirror the Federal definition and is therefore likely preempted by Federal law because of the inconsistency. The regulation should adopt a definition of English Learner that mirrors federal law.

The proposed regulatory definitions also contain ambiguities which will make regulatory compliance difficult. By way of example, the term “authorizer” is not defined in the CSL but is defined in the regulation. The regulatory definition permits the “Department” (Pennsylvania Department of Education) to authorize cyber charter schools only, but under the CSL the “Department” may be an authorizer of a multiple charter school organization. This ambiguity should be corrected by including the Department as an authorizer for multiple charter school organizations because current law grants the Department such authority.

Finally, the definitions in the proposed regulations may be overly broad which would also make regulatory compliance difficult. By way of example, the term “educational management services provider” includes “any...individual that enters into a contract or agreement with a charter school entity to provide educational design, business services, management or personnel functions or to implement the charter. Under this definition, a company that provides speech therapists could be considered an “educational management service provider” as could a certified public accounting firm that was tasked with auditing the financial documents of the charter school entity. This defined term and all proposed defined terms in the regulation should be reviewed to ensure that they are not overly broad and capable of being implemented with regulatory compliance by a charter school entity.

Therefore, we strongly urge that the definitions of these regulations be revisited, and the language redrafted to bring the definitions into compliance with state and federal law. We also strongly encourage the redrafting of the defined terms to be done to ensure that the terms are neither ambiguous nor overly broad and capable of being enforced.

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Section 713.2: Content of Charter School or Regional Charter School Applications.

The proposed regulation contained in Section 713.2 seeks to regulate charter school applications. The charter school application process and its contents are already specifically established as a matter of law in Section 1719-A of the CSL. Section 1719-A contains seventeen (17) paragraphs designed to standardize all the information that is to be submitted for a charter school to apply for authorization as a charter school with the local school board of directors.

This regulation exceeds the plain language requirements of the application process set forth in Section 1719-A. The proposed regulation contains eighty-one (81) paragraphs and subparagraphs that identify information required to be submitted for a charter school to apply for authorization versus the seventeen contemplated by the legislature when the CSL was adopted. *This regulatory expansion of the application contents and process is a clear invasion by the regulation into the legislative process and should be rejected.*

Further, the application form required by Section 713.2 can be created by the Department which includes information relating to the eighty-one (81) paragraphs and subparagraphs or the form can be created and adopted by the authorizer of the charter school, which must contain, *at a minimum*, the eighty-one paragraphs and subparagraphs contained in the proposed regulation. Nothing would prohibit the authorizer from including any other qualifications to its application process which could render the application process, as well as the outcome, arbitrary and capricious.

The regulation is silent on who is responsible to select the form to be used for application. This ambiguity risks rejection of the application for failure to use the proper form. Pennsylvania statute does not authorize the creation of such a form and certainly does not authorize the delegation of the creation of such a form to an authorizer who may require additional information to be submitted that was not intended by statute. Therefore, this proposed regulation should be rejected.

A further concern about adopting this regulation is that the expansion of information contained in the application process could make the renewal process of a charter school entity difficult if not impossible.

Section 713.4: Admissions Policies of Charter Schools and Regional Charter Schools

Section 713.4 seems to be aimed at transparency in decision making relating to the enrollment of students when the number of available seats at a charter school is exceeded by the number of students seeking to attend that charter school entity. Transparency is something that everyone can and should support. However, §713.4(c)(2) requires a charter school to submit its

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policy relating to admissions be included in any renewal application of the charter school entity. No renewal application is required by law or by these proposed regulations. Section 1729-A clearly establishes the basis for a local school board of directors to nonrenew a charter school at the end of the term of the charter if it determines that the charter has engaged in noncompliance with its charter or other cause established by that section. The local school board of directors relies on the annual reports required by Section 1728-A for information relating to the decision to nonrenew a charter school charter. *Because no renewal application process is authorized by law, none can be required by a regulation and this subparagraph should be rejected.*

Section 713.6: Members of Charter School Entity’s Board of Trustees.

This regulation establishes charter school trustees as “public officials.” Trustees of charter school entities have been considered “public officials” and subject to the Public Official and Employee Ethics Act since the enactment of the CSL. While this regulation is cumulative and likely unnecessary, there is no objection to the inclusion of this regulation.

Section 713.7: Charter Schools to meet Generally Accepted Standards of Fiscal Management & Auditing.

This regulation establishes a requirement demanding that the charter school’s financial statements be prepared in accordance with GAAP and the school obtain an independent financial audit as defined in the regulation. Under the current framework of the CSL, one of the listed reasons for nonrenewal or termination of a charter is the “failure to meet generally accepted standards of fiscal management or audit requirements.” While not provided for in statute, most schools are already engaged in these practices and accordingly there is no objection not the inclusion of this regulation.

Section 713.8: Redirection of School District Subsidies to Charter School Entities.

§713.8(d) of the proposed regulation exceeds the requirements for redirection requests currently contained in the CSL. The proposed regulation requires that a request must be: on a form created by PDE; contain eleven (11) mandatory pieces of information about the student; limited to be submitted only between the 15th and 25th of each month; and limited to requests only for the

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months submitted. These requirements are inconsistent with those currently required under the CSL. *The expansion is an intrusion into the legislative function and should be accordingly rejected.*

Section 713.9: Charter School Employee Health Benefits.

This regulation attempts to address a practical challenge in the CSL relating to employee benefits. Section 1724-A of the charter school law requires a charter school to provide the “same benefits as the employe(e) would be provided if he or she were an employe(e) of the local district.” The goal of this legislative language was to ensure that charter school entities were able to attract well qualified and motivated employees who would provide quality educational experiences to students. To attract such qualified employees, it was necessary for the legislature to ensure the benefits received by charter school employees were provided at the same “terms and conditions” as the public-school employees and at the same “employee contributions” rates as the public-school employees.

However, providing such benefits could not be the “same” in reality because of the practical implications that faced charter school entities, namely charter schools do not have the same number of employees as a public-school entity and therefore are not able to take advantage of economies of scale when negotiating with a health insurer or similar provider.

The proposed regulation goes to far in attempting to address the treatment of same benefits packages for charter school employees and public-school employees. Firstly, the regulation attempts to define “the same health care benefits” as benefits that are “meaningfully similar”. This is not authorized by statute and should be rejected.

The regulation then goes on to adopt parameters for the types of benefits that must be provided by a charter school and a requirement that the charter school must provide employer contribution rates at the rate of the “most selected health care plan available to the employees of the charter school’s authorizer.” These requirements are inconsistent with the legislative authority contained in the CSL to require charter schools to provide such benefits. For these reasons, the current regulation should be rejected in favor of a more narrowly tailored regulation that empowers the charter schools to meet their statutory mandate or in the alternative *reject the regulation in its entirety because the Department is without authority to amend a statutory requirement by regulation and the proposed regulation invades the legislative prerogative.*

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Conclusion

While we agree that a regulation can be adopted to implement a statute, the Department of Education's proposed regulations go beyond efficient implementation. As demonstrated above, this regulation package expands departmental authority beyond that granted by the Charter School Law. Therefore, the proposed regulations should be rejected as an intrusion into the legislative function. The Department can cure the proposed regulations by more narrowly tailoring their scope to that which is authorized by statute. The General Assembly was clear in enacting the Charter School Law. The Act was and is intended to provide school choice options for students who desire an alternative to a traditional public school. Our conclusion is, and we hope your conclusion will be, that the proposed regulations should be redrafted in a narrower sense that implements the statutory provisions of the Charter School Law more accurately.

Respectfully Submitted;

Tina Chekan, CEO
Propel Schools

Jessica Cunningham-Akoto, CEO
KIPP Philadelphia Public Schools

Scott Gordon, CEO
Mastery Schools