



PSBA
Pennsylvania School Boards Association
Est. 1895

October 15, 2021

Sent via email

The Pennsylvania Independent Regulatory Review Commission
333 Market St, 14th Floor
Harrisburg, PA 17101

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

Comments Regarding Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools

On behalf of the more than 5,000 school directors and administrators governing the state's school districts, intermediate units and career and technology centers, the Pennsylvania School Boards Association (PSBA) is submitting the following comments on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools.

Meaningful charter school reform is the top legislative priority for PSBA and its members. School districts are now spending an estimated \$3 billion dollars of taxpayer resources on mandatory charter school tuition payments. To be clear, PSBA is not, and has never advocated for the elimination of charter schools or cyber charter schools as a form of school choice. What PSBA and its members have been asking for is that charter schools be subject to the same level of accountability and transparency demanded of traditional public schools and that charter schools are paid fairly.

We recognize the limited reach of the regulatory process to substantially address much-needed charter school reforms, but generally support the proposed regulations, with some recommended revisions, as we view the proposed regulations as a step in the right direction.

§ 713.2. Contents of Charter School or Regional Charter School Application

The proposed regulations would require an applicant seeking to open a charter school to submit either the application form created by PDE or the application created by the local school district. PSBA supports the regulations allowing local authorizing school districts to develop their own charter school application, but the regulations contain no requirement that the charter school applicant use the locally created application, if one has been developed. However, the regulations would allow the local authorizing school district to seek additional information from a charter school applicant who may choose to use the standard application form developed by PDE.



PSBA believes it is imperative that any charter school application, or list of items to be included in a charter school application, be a non-exhaustive list. Local authorizing school districts should be permitted to seek additional information to evaluate a charter school application based on the unique characteristics of the school district or communities to be served by the charter school.

Based on the listing of items to be addressed in a charter school application under the proposed regulations, we offer the following thoughts:

- The listing of items to be included under the mission and educational goals of the charter school under subparagraph (c)(5) could benefit from a reference to the curriculum and academic standards listed in the current Chapter 4 regulations. This would ensure that charter school applicants include information on how they plan to meet the standards set by Chapter 4.
- Although subparagraph (c)(12) would require a charter school applicant to submit information on the charter school's physical facilities, the applicant would only be required to submit "anticipated" expenses without any evidence or support from the property owner/landlord as to the true facility costs that would be incurred by the applicant. We would recommend adding an indication of an agreement between the applicant and the owner/landlord that
 - There is an intent to allow the property to be used for a charter school;
 - What the lease arrangements are or would be: including rent, utilities, taxes, etc.; and
 - When the lease might begin.

A final or signed lease would not be required, but applicants should be required to provide some indication that the applicant has an adequate facility available to them and that the applicant can afford the facility and any necessary renovations based upon its anticipated funding from local, state and federal sources.

- Subparagraph (c)(13)(ii) requires an applicant to submit information related to caseloads for special education staff to ensure FAPE as required by Chapter 711. However, Chapter 711 does not include caseload requirements for charter school special education programming, unlike the requirements in Chapter 14 for school districts (see 22 Pa. Code §14.105(c)). This would leave applicants and authorizers unsure as to what would be an "appropriate level" to ensure FAPE.

While the proposed regulations contain numerous forward-looking requirements, in terms of whether the charter applicant has engaged in sufficient planning to begin operating, the regulations do not contain any requirements related to a charter renewal application or other backward-looking provisions intended to evaluate the charter school's performance over the term of its charter. PSBA believes that the regulations should provide guidance on what the renewal process should entail, including the development of a renewal application.

§ 713.4 Random Selection Policies for a Charter School or Regional Charter School and § 713.5 Random Selection Policies for a Cyber Charter School

The proposed regulations would require charter schools and cyber charter schools to develop a policy outlining its process for randomly selecting students for enrollment if demand exceeds available seats in the school. This is a laudable goal and a necessary endeavor. Ensuring public notice of the policy will only help with transparency. However, the regulations do not provide guidance or standards for what a random selection process should look like, leaving open the possibility of concerns about equity and accessibility.

We have significant concerns with the provisions of 713.5(a), which essentially states that a cyber charter school cannot restrict enrollment based on number of seats unless such terms are agreed to with PDE as part of a written charter. This essentially prohibits a cyber charter school from recognizing its staffing or resource limitations and restricting the number of students it can serve.

§ 713.6 Requirements for Boards of Trustees

PSBA supports these regulatory provisions as an attempt to further ensure that charter school trustees are considered public officials under state law and that trustees adhere to reasonable standards of ethics and transparency.

§ 713.7 Fiscal Management and Audit Requirements

As recipients of more than \$3 billion in public taxpayer money, PSBA supports efforts to ensure that charter schools are subject to generally accepted standards of fiscal management and audit requirements.

We believe that subsection (b) is too limited in its description of how a charter school entity may satisfy the requirement to adhere to generally accepted standards of fiscal management and audit requirements. The proposed regulations only require two things:

- Preparing financial statements in accordance with GAAP; and
- Obtaining an independent annual financial audit that follows governmental accounting standards and auditing standards.

However, subsection (b) does not address what happens if those two standards are satisfied, but the auditors find other areas of significant deficiencies or material violations of those standards. We would recommend that this language be clarified to indicate that material problems noted in audits would also be evidence of violations of generally accepted standards of fiscal management.

Further, auditors do not address all of the areas that have been found by the State Charter School Appeal Board (CAB) to violate generally accepted standards of fiscal management, so having audits conducted and maintaining financial statements in accordance with GAAP are not the only things that should be required to determine compliance with subsection (a). For example, a charter school's failure to pay bills in a timely manner and failure to make

PSERS payments in a timely manner are examples of fiscal mismanagement that would not necessarily be uncovered by an auditor or included by an auditor in a public report.

With respect to subsection (c), the list of what should be included in audits is helpful and not currently addressed by many auditors; however, the list does not address many other concerns or provide much guidance or standards. For example:

- There are no requirements that the charter school have any particular financial policies in place for auditors to then ascertain if the charter school is in compliance with its own standards. The charter school's financial policies might be woefully inadequate or may not exist at all but there is no standard for what should exist in every charter school for the auditor to then evaluate.
- Item (c)(1) requires a review of the charter school's enrollment records but there is nothing to indicate what types of enrollment records are required to be maintained. What is the auditor supposed to review to determine if there is support for the charter school's invoices? What if the records only reflect supportive information and not the full gamut of information available such as residency information?
- There are no requirements for audits to address non-payment or delayed payments of bills and why this occurred.
- Audits could also check to make sure Statements of Financial Interest are properly and timely filed by all charter school trustees and public employees.

§ 713.8 Redirection Process

Although the redirection process provided in the proposed regulations largely mirrors the current procedures used by PDE, we have several concerns with the proposed regulations on subsidy redirection.

The proposed regulations would only provide a school district with 10 calendar days to receive an invoice from a charter school, review it, and make payment before the charter school can seek redirection from PDE. That does not provide districts with sufficient time to review and verify enrollment and residency data on invoices for charter schools, especially in school districts with significant numbers of charter schools submitting invoices that contain information on hundreds of students. In many school districts, the staffing resources to meet the 10-day requirement is just not there. Further, school district policy may require school board approval of invoices or payments before payments can be made, thereby making it more difficult to meet the 10-day requirement.

Subsection (a) would also require a charter school to submit a payment request for a month before the month ends. This does not allow for proper accounting of enrollment changes that may happen at the end of each month. We recommend that this timeline be adjusted to enable proper accounting of enrollments.

Subsection (d) requires submission of specific information for each student enrolled in a charter school on a form to be created by PDE. One of the items on the form is "date enrollment notification form was sent to school district of residence." Presently, there is no

requirement in the Charter School Law (CSL) for brick-and-mortar charter schools to send enrollment notification forms to school districts. There is such a provision in the cyber charter school portion of the CSL in section 1748-A(a). We recommend adding this requirement in the regulations to ensure school districts receive enrollment notification forms for all brick-and-mortar charter schools.

We would also seek clarification on the reference to the “tuition rate used by the charter school” in subparagraph (d)(2). Would this require a charter school to show how it calculated the rates used, e.g. thru a 363 form?

We would also recommend that subsection (g) include a requirement for the charter school to include proof that the payment request was provided to the school district and when. Charter schools should also be prohibited from changing the amount being sought thru the redirection from what had originally been submitted to the district for payment. In addition, the regulations should require charter schools to notify school districts when a subsidy redirection request is submitted to PDE to avoid duplicate payments being made once a redirection request is submitted. Duplicate payments may have serious financial implications for the district’s cash flow.

The regulations fail to address a key component of what we consider to be part of the redirection process - the reconciliation process outlined in section 1725-A(a)(6) of the CSL. The reconciliation process should be a necessary component of any proposed regulations dealing with subsidy redirections. School districts should be afforded the right to challenge payment requests and/or documentation received from a charter school as part of the request when it has reason to believe the amount and/or information is incorrect. Additionally, the regulations do not include a requirement for PDE to verify the accuracy of a redirection request which we believe to be an important step.

§ 713.9 Health Care Benefits

We recognize that the requirement for charter school employees be provided the “same health care benefits” as those of the authorizing school district under section 1724-A(d) of the CSL is an issue which would benefit from providing clarity.

The current wording of subsections (b) and (c) would necessitate an authorizing school district disclosing information to the charter school entity about:

- The most-selected health care plan available to school district employees;
- The contribution provided by the school district for the most-selected health care plan”; and
- Health care benefit plan enrollment options and comparison information.

One additional point that could be clarified is the intervals at which such information would need to be provided to the charter school to ensure that the charter school would be in compliance with the regulations.

The requirement in section 713.9(b) that a cyber charter school provide the same health care benefits as the school district in which the cyber charter school's administrative office is located could allow a cyber charter school to strategically move their administrative office to an area of the state with where health care benefit plans are more advantageous to them.

Under section 713.9(d), employees of a charter school who believe that the health care benefits being offered by the charter school are not comparable to those of the authorizing school district are supposed to file a complaint with the authorizing school district.

However, it is unclear what an authorizing school district could do about the situation and places another administrative burden on authorizing school districts.

We are also concerned with the language in subsection (e), as not being necessary. Section 1728-A of the Charter School Law already grants authorizing school districts ongoing access to charter school records; therefore, this provision may be unnecessary.

The proposed regulations also do not include any requirement for the charter school to certify or demonstrate that the plans being offered are meaningfully similar to those of the authorizing school district. The regulations could require charter schools to certify or demonstrate that their health care benefit offerings are within a given dollar or percent range as the average cost of the health care plans of the authorizing school district(s) or of the school districts with students enrolled in the case of a cyber charter school.

The regulations also do not take into account the ability of charter school employees to organize and collectively bargain for health care benefits. Should charter school employees choose to organize and negotiate salaries and benefits, it raises the question of whether the requirements of section 713.9 should be waived in those instances.