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**Independent Regulatory
Review Commission**

March 18, 2022

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

Dear Chairman Bedwick and Honorable Commissioners,

On behalf of the Pennsylvania Coalition of Public Charter Schools' (PCPCS) brick and mortar and cyber public charter school members, as well as the close to 170,000 public charter students across the Commonwealth of Pennsylvania, PCPCS is submitting the following comments on the Pennsylvania Department of Education's (PDE) Final-Form Regulation # 6-349: Charter Schools and Cyber Charter Schools.

While PCPCS recognizes that reform is needed to the Charter School Law (CSL), the vehicle for this reform must be through the democratic legislative process and this attempt to rule by regulation is unconstitutional.

This document will focus on criterion¹ that your Commission utilizes to review proposed regulations: (1) Statutory Authority and Legislative Intent; (2) Economic Impact; (3) Public Welfare; and (4) Public Health and Safety.

We oppose this charter school regulation and we ask the Independent Regulatory Review Commission (Commission) to disapprove of this regulation.

Statutory Authority and Legislative Intent

The Secretary Ortega and PDE do not have the statutory authority to do this regulation because they have interpreted the statute too broadly and have given themselves legislative authority. This final-form regulation puts educational outcomes of Pennsylvania students at risk and circumvents the necessary and deliberative legislative process of the General Assembly. PDE is circumventing the legislative process, the final-form is far outside the realm of providing clarifications to the CSL, and creates policy changes that create new law. These changes to the CSL must be addressed through legislation via the democratic legislative process.

¹ What is IRRC?, <http://www.irrc.state.pa.us/contact/what-is-irrc.cfm>

The will of the People of Pennsylvania is best reflected via the member officials they have elected in the General Assembly. Reform is best conducted by the legislative process. On Tuesday, March 15, both the Pennsylvania House and Senate Education Committees voted to send letters² to this Commission, disapproving of the final-form regulation.

An example of going beyond clarifying the CSL and PDE's statutory authority includes expanding minimum requirements in charter school applications (sections 713.2) to include information that is impossible for a charter applicant to predict at the time of application submission, including the numbers of English Language Learners, special education students, and race and ethnicity of students to be served by the school. While reform is needed for the applications, this regulation oversteps the legislature. PCPCS encourages a standard uniform application and process across the Commonwealth.

Economic Impact

The final form regulation will have a detrimental economic impact on the charter school community.

One-size-does-not-fit-all in education, and that also extends to health care benefits. Though PDE did eliminate a lot from Section 713.9 on health benefits, using a charter school's administrative building in the school district it is geographically located is not workable. Charter schools should be allowed flexibility to negotiate on health care benefits offered to staff. This is an attempt to bankrupt charters, as charters already receive 25% less funding on average³, and charters cannot raise taxes/revenue to compensate for any rising costs of healthcare premiums. PDE did not conduct calculations as to the financial burden and obstacles this would cause the charter school community, particularly smaller charter schools that cannot leverage its size and staffing levels in the same manner that a school district can when negotiating benefits.

While PDE has calculated that they will save approximately \$60,000 annually with the redirection process (Section 713.8) changes, the equivalent of less than 10 minutes of its annual budget, the change does not solve the redirection disputes. These disputes involve tuitions that tally in the hundreds of thousands of dollars, amounts that have threatened the closure of charter schools due to egregious behaviors from school districts and charter schools not able to pay their bills.

Per the CSL, school districts are to make 12 equal monthly payments to charter schools; however, that is not happening. There have been lawsuits that have happened over the last several years for lack of payment. There is an "economic" as well as "public interest" to impose

² House Education Committee (Majority)

<http://www.repsonney.com/News/27463/Latest-News/Education-Committee-Sends-Letter-Recommend-Disapproval-of-Charter-School-Regulations-Sonney-Says>; Senate Education Committee (Majority)

http://www.irrc.state.pa.us/docs/3315/COMMENTS_LEGISLATIVE/3315%2003-15-27%20SLN%20ED%20COM1%20DISAPPROVAL.pdf

³ Lost Quarters, <https://www.youtube.com/watch?v=fcQkzE2T1IA>

regulations, but no action to focus on both sides of the public interest: public charter schools and public school districts.

The totality of the financial and economic impact of the final-form regulation on the charter school community across the Commonwealth is a mystery. The “modest costs” to the charter school community PDE claims are inaccurate and do not take into account all of the variables at play. PDE says that they have “not been provided evidence of how these regulations would negatively impact charter schools” yet they refuse to take into account evidence provided in testimony and public comment or conduct robust calculations on the negative impact on the entire public charter school community.

Additionally, Governor Wolf’s recent proposed PDE budget request⁴ to the General Assembly requests a cut of \$373 million in charter school funding. His proposal includes “savings” to school districts by cutting⁵ special education and cyber education funding. At the same time, school district surpluses are close to \$2 billion and charter schools currently receive \$3,000 less, not the same and certainly not more, per-pupil funding than district-operated schools⁶.

Public Welfare

PA public charter schools kept teaching during the pandemic. Recent enrollment numbers show that more parents are choosing charter schools. For 2020 - 2021, PA cyber and brick and mortar charter school enrollment grew by 22,696 students or 15%⁷. Now, almost 1 out of every 10 students in a public school attends a public charter school, with that number hitting 1 out of 3 students in cities such as Philadelphia. Parents voted with their feet and chose public charter schools for their students. What’s more, enrollment has almost doubled in the last 10 years.

The overall response from the charter community is negative towards this regulation. According to PDE, 223 public comments and 1,557 form letters were received during the 30-day public comment period in fall 2021. Of that count, over 1,000 comments were submitted in disapproval of this regulation. On Monday, October 18, 2021, PCPCS submitted robust comments on the proposed regulation. They can be found here⁸ and we know that IRRC has read them. The concerns and suggestions presented in our comments or those from the charter school community were largely left unaddressed and ignored in the final-form regulation.

⁴ Commonwealth Budget 2022 - 2023, February 8, 2022,

<https://www.budget.pa.gov/Publications%20and%20Reports/CommonwealthBudget/Pages/default.aspx>

⁵ PDE, Legislative Proposal Comprehensive Charter School Law Reform Savings, Estimated Charter School Reform Savings (Excel), February 8, 2022, <https://www.education.pa.gov/K-12/Charter%20Schools/CharterPolicyReform/Pages/LegisProposal.aspx>

⁶ Pennsylvania Department of Education (PDE), Summaries of AFR Data, AFR Data Files, 2018-2019

⁷ National Alliance for Public Charter Schools, “VOTING WITH THEIR FEET: A STATE-LEVEL ANALYSIS OF PUBLIC CHARTER SCHOOL AND DISTRICT PUBLIC SCHOOL ENROLLMENT TRENDS”,

<https://www.publiccharters.org/our-work/publications/voting-their-feet-state-level-analysis-public-charter-school-and-district>

⁸ PCPCS Comments on Proposed Regulation #6-349, October 18, 2021,

http://www.irrc.state.pa.us/docs/3315/COMMENTS_PUBLIC/3315%2010-22-21%20PA%20Coalition%20of%20Public%20Charter%20Schools.pdf

There was no collaboration with the proposed regulated community on this rulemaking like there is supposed to be. A short 30-day public comment period in fall 2021 is not enough time for sufficient feedback on a very broad-sweeping regulation that will impact 170,000 students, students on waitlists, and their families, and school communities.

We asked for more public forums, hearings, or engagements to cultivate negotiated rulemaking collaboration with representatives of parties who will be affected significantly by the regulation. Those never happened.

The U.S. Department of Education could be used as a model⁹ to follow, where meetings are facilitated by a neutral third-party and work collaboratively with parties to come to a consensus. Once consensus is achieved, a Notice of Proposed Rule-Making (NPRM) is issued followed by a public comment period; if no consensus, the agency decides on whether to do rulemaking or not. There was no consensus reached on the proposed and now final-form regulation among all parties and this is contrary to the public interest.

PDE is the sole authorizer¹⁰ of public cyber charter schools in the Commonwealth. PDE is not a clean hands player in this process. At the Senate Appropriations Hearing on the PDE proposed 2022 - 2023 budget¹¹, PDE confirmed that 11 of 14 cyber charter schools are still up for renewal and PDE blamed new applications and a small staff for the delay.

Public Health and Safety

This final-form regulation may lead to additional closures of schools, many of whom are small, single site, minority operated and attended charter schools. This will reduce not increase school choice options for families, as well as disrupt continuity of student learning, communities, and families. When it comes to the health, safety, and welfare of our students, some of the top issues why parents choose charter schools for their children, this regulation could place students back into a bad situation that is not in their best interest. This regulation could also create a strain on other educational entities and schools receiving these displaced students, which has an impact on all of our Commonwealth students. Additionally, a study in New York found that public charter schools generally report substantially fewer school safety problems than district-run schools¹².

Again, no calculations or substantial analyses were conducted by PDE on this matter in the final-form.

⁹ U.S. Department of Education, The Negotiated Rulemaking Process for Title IV Regulations - Frequently Asked Questions, https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08_neg-reg-faq.html

¹⁰ PDE, <https://www.education.pa.gov/K-12/Charter%20Schools/Pages/default.aspx>

¹¹ Senate Appropriations Hearing on the PDE proposed 2022 - 2023 budget, March 10, 2022.

<https://www.pasenate.gov.com/blog/department-of-education-part-1/> and <https://www.pasenate.gov.com/blog/department-of-education-part-2/>

¹² Corey A. DeAngelis, "Multiple Studies Find Charter Schools Are Safer Than District-Run Schools", Reason Foundation, <https://reason.org/commentary/multiple-studies-find-charter-schools-are-safer-than-district-run-schools/>

Public charter schools serve a majority of minority students as well as economically disadvantaged students. This regulation could result in regulating charter schools right out of the marketplace of educational choice options for PA students, including the most vulnerable.

This regulation could have a negative impact on minority operated charter schools and make it harder, and possibly impossible, for new schools to open.

Conclusion

This regulation must eschew picking winners and losers in K-12 public education. This final-form regulation would harm the 170,000 Pennsylvania students enrolled in public charter schools and the tens of thousands of students who are on a waitlist to attend one of these schools.

“The Department does not anticipate any greater cost or adverse effect to the charter school entity community as a whole, because of this final-form rulemaking” – there is not enough calculations or analyses by PDE in the final-form to come to this conclusion and this does not reflect the comments from the public.

We must ensure that all students, regardless of their socioeconomic backgrounds and school enrollments, get the taxpayer funding afforded them by current law. This regulation misses that mark, which is why the Wolf Administration (executive branch) should work with the elected officials in Harrisburg (legislative branch) to pass legislative reforms that help both public district schools and public charter schools, and do not harm our public education system and our students.

Therefore, PCPCS respectfully requests the Commission to exercise your independence to disapprove of the Pennsylvania Department of Education’s Final-Form Regulation # 6-349: Charter Schools and Cyber Charter Schools.

Thank you for considering our request and for the opportunity to provide public comment.

Sincerely,

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cc. The Honorable Jake Corman, Senate President Pro Tempore
The Honorable Kim Ward, Senate Majority Leader
The Honorable Jay Costa, Senate Minority Leader
The Honorable Patrick Browne, Majority Chairman - Senate Appropriations Committee
The Honorable Vincent Hughes, Minority Chairman - Senate Appropriations Committee
The Honorable Scott Martin, Majority Chairman - Senate Education Committee
The Honorable Lindsay Williams, Minority Chairman - Senate Education Committee
The Honorable Bryan Cutler, Speaker of the House
The Honorable, Kerry Benninghoff, House Majority Leader
The Honorable Joanna McClinton, House Minority Leader
The Honorable Donna Oberlander, House Majority Whip
The Honorable Jordan A. Harris, House Minority Whip
The Honorable Stan Saylor, Majority Chairman - House Appropriations Committee
The Honorable Matthew Bradford, Minority Chairman - House Appropriations
Committee
The Honorable Curt Sonney, Majority Chairman - House Education Committee
The Honorable Mark Longiotti, Minority Chairman - House Education
Committee