



October 18, 2021

The Honorable George D. Bedwick, Chairman
The Honorable John F. Mizner, Esq., Vice Chairman
Independent Regulatory Review Commission (IRRC)
333 Market Street, 14th Floor
Harrisburg, PA 17101
irrc@irrc.state.pa.us

Re: Pennsylvania Department of Education Proposed Rulemaking No. 6-349, Published September 18, 2021 in the *Pennsylvania Bulletin* (51 Pa.B. 6032)—Charter Schools and Cyber Charter Schools

Dear Chairman Bedwick and Vice Chairman Mizner:

Thank you for the opportunity to comment on Proposed Rulemaking No. 6-349 (“Proposed Rulemaking”) issued by the Pennsylvania Department of Education (“PDE”) and published in the *Pennsylvania Bulletin* on September 18, 2021 (51 Pa.B. 6032) relating to charter schools and cyber charter schools. CSMI, LLC (“CSMI”) is a Pennsylvania consulting group that provides varying support services to governing boards and administrators of educational institutions, including the Chester Community Charter School (“CCCS”) located in the Chester Upland School District, Delaware County, Pennsylvania.

In that capacity, CSMI is principally interested in the PDE’s proposed definition of “educational management service provider”, the requirements PDE seeks to impose on charter schools with respect to “educational management service providers”, and PDE’s analysis (or lack thereof) of these provisions in its Regulatory Analysis Form (“RAF”) submitted to the Independent Regulatory Review Commission (“IRRC”) with the Proposed Rulemaking. CSMI respectfully submits the following comments for consideration by the IRRC, as well as the other stakeholders copied below:

1. PDE’s Proposed Definition of “Educational Management Service Provider” is Overbroad.

PDE proposes requirements relating to “educational management service providers” in Section 713.2 (“Contents of Charter School or Regional Charter School Application”) and Section 713.7 (“Fiscal Management and Audit Requirements”) of its Proposed Regulations. In Section 713.2 of the Proposed Regulations, PDE seeks to mandate the “minimum” categories of information that “authorizers” must include in charter school application forms, including more than a dozen specific categories relating to “educational management service providers” in

subsection (c)(4).¹ Section 713.7(c) of the Proposed Regulations, in turn, would require annual audits conducted by charter schools to specifically include, *inter alia*, “[a] review of the fees charged by any educational management service provider with which the charter school entity has a contract, if applicable.”

The meaning of the term “educational management service provider” is integral to determining and analyzing the scope and potential impacts of the proposed requirements identified above, including with respect to those affected and the burdens imposed on charter schools, in that a charter school would be required to comply with such requirements for each and every “educational management service provider” the charter school has contracted or intends to contract with. In that regard, PDE proposes the following definition in Section 713.1(g) of the Proposed Regulations:

Educational management service provider – a nonprofit or for-profit charter management organization, education management organization, school design provider, business manager or *any other entity or 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.* The term shall not include a charter school foundation.

(Second emphasis added).²

While PDE claims in the RAF that it seeks transparency and accountability with respect to “the for-profit and nonprofit organizations that play a role in the management of charter school entities” (RAF at pp. 3, 13, 14), PDE’s proposed definition of “educational management service provider” is necessarily more expansive than such “for-profit and nonprofit organizations” in that it (1) includes individuals as well as entities and (2) encompasses entities and individuals that do not manage or control charter school operations. Specifically, PDE’s proposed definition goes beyond entities typically regarded as management organizations to include “any other entity or individual that enters into a contract or agreement with a charter school” that can be said to relate to the general and undefined categories listed. This could potentially encompass any entity or individual that contracts with a charter school to provide a wide array of services, which, in turn,

¹ PDE cites Section 17-1719-A of the Pennsylvania Charter School Law (“Charter School Law”), 24 P.S. § 17-1719-A (“Contents of application”), as providing statutory authority for this proposed regulation, but that statutory section does not use the term “educational management service provider” or establish any application requirements related thereto. It is noted, however, that PDE’s proposed application requirements directly correspond to proposed amendments to Section 17-1719-A of the Charter School Law included in Senate Bill No. 27 (2021) (“SB 27”), which is currently referred to the Senate Education Committee, and House Bill No. 272 (2021) (“HB 272”), which is currently referred to the House Education Committee.

² Section 17-1703-A of the Charter School Law, 24 P.S. § 17-1703-A (“Definitions”), does not contain a definition of “educational management service provider.” It is noted, however, that PDE’s proposed definition directly corresponds to the proposed definition of “educational management service provider” set forth in SB 27 and HB 272, except that PDE’s proposed definition deletes the word “comprehensive” immediately preceding the word “management.”

would require the charter school to comply with Sections 713.2(c)(4) and 713.7(c)(2) of the Proposed Regulation for each and every such entity or individual.³

The breadth of PDE's proposed definition is likewise not limited by the language of the proposed requirements in Sections 713.2(c)(4) and 713.7(c)(2) of the Proposed Regulations, which apply generally to all persons and entities falling under the expansive definition of "educational management service provider" without regard to the nature or extent of the service(s) actually being provided to the charter school. Far from providing needed clarity, PDE's proposed requirements instead give rise to inconsistencies. For example, Section 713.2(c)(4)(vi) of the Proposed Regulations *mandates without exception* that a charter school contracting with *any* "educational management service provider" provide "(A) Evidence of the educational management service provider's record in serving student populations, including demonstrated academic achievement and growth" and "(B) Demonstrated management of nonacademic school functions...", even though PDE's expansive definition of "educational management service provider" is not limited to persons and individuals performing such functions or serving in such capacities. PDE's proposed application requirements are therefore inconsistent with PDE's own proposed definition as drafted.

Accordingly, PDE's proposed definition of "educational management service provider" is overbroad on its face or, at best, ambiguous and unclear. This overbreadth is further addressed in the comments below, which demonstrate that PDE's proposed definition is markedly different from the definition used by another state PDE claims to "mirror", and likewise represents a departure in form and usage from a definition already contained in Title 24 of the Pennsylvania Statutes (albeit not in the Charter School Law provisions) as well as multiple model statutes and the statutes of other states. To avoid the unintended consequences that could flow from an overbroad and ambiguous definition of "educational management service provider", which consequences PDE failed to acknowledge or address in its RAF, any definition must be clearly worded so as to encompass only those entities actually tasked with management or control over charter school operations, as further discussed below.

2. PDE's RAF Failed to Address the "Definitions" in Section 713.1 of the Proposed Regulations.

Pursuant to Section 745.5 of the Regulatory Review Act ("RRA"), 71 P.S. § 745.5, the RAF submitted with PDE's Proposed Rulemaking was required to address *all* provisions of its Proposed Regulations under the enumerated statutory criteria. PDE's RAF, however, is devoid of any substantive discussion regarding the "definitions" set forth in Section 713.1 of the Proposed Regulations, including the basis for the proposed definitions, their impact(s), or how they compare to definitions used in other states. This is not an insignificant oversight where PDE seeks to define terms not defined in the Charter School Law and where PDE's proposed "definitions" are integral to determining the meaning, scope and potential impacts of PDE's Proposed Regulations. As a

³ Relating to this discussion, please see the questions in Comment No. 5 below (entitled "Questions for PDE") seeking clarification from PDE regarding the intended meaning and scope of its proposed definition of "educational management service provider" and its proposed regulations related to "educational management service providers."

result, PDE's failure to analyze its proposed "definitions" calls into question PDE's entire regulatory analysis and inhibits the regulatory review process, including the ability of interested persons, the IRRC and the Committees to fully understand, comment on, and seek revisions to the Proposed Rulemaking.

For instance, and compounding the overbreadth concerns discussed herein, PDE proposes an expansive definition of "educational management service provider"—a term not defined in the Charter School Law—without providing any explanation or analysis in the RAF of the basis and intent of its proposed definition, the persons and entities encompassed and affected thereby, or how similar terms are defined in other states. In addition to PDE's failure to address the proposed definition itself, it is clear that PDE failed to properly account for the true scope and impact of its proposed definition, including those affected thereby, in completing the RAF with respect to the matters required under Section 745.5 of the RRA. (*See, e.g.*, RAF at §§ 12, 15, 16, 17, 18, 19, 20, 22, 23, 24, 26.)

By way of specific example, PDE failed to account for its definition of "educational management service provider" in asserting in Section 12 of the RAF that Colorado's regulation prescribing the contents of charter school applications "*mirrors*" PDE's proposed application requirements. (RAF at p. 3 (emphasis added).) While there are some facial similarities between Colorado's regulation at 1 CCR § 302-1-4.00 and Section 713.2 of PDE's Proposed Regulations, Colorado's regulation is markedly different based on Colorado's comparatively tailored definition of "education management provider":

"Education Management Provider" means a nonprofit, not-for-profit, or for-profit entity that contracts with an Institute Charter School to provide, manage, or oversee all or substantially all of the Educational services provided by the Institute Charter School.

1 CCR § 302-1-2.00(5). Thus, whereas PDE's definition of "educational management service provider" broadly encompasses any "entity or individual" that contracts with a charter school to provide any service falling within a list of general and undefined categories, Colorado's definition of "education management provider" is specifically limited to an "*entity*" providing "*all or substantially all*" of a charter school's "*educational services*." As a result, compared to PDE's proposed regulation, Colorado's regulation is less expansive, clearer, applies differently, imposes less burdens on charter schools, and affects a smaller universe of persons and entities.⁴

Had PDE addressed its proposed "definitions" in the RAF as required, PDE would have recognized that its proposed charter school application requirements do not, in fact, "mirror" Colorado's regulation.⁵ If it is PDE's intention to "mirror" Colorado's regulation, however, it

⁴ PDE similarly failed to address or account for definitional differences with respect to all other regulations from different states identified in Section 12 of the RAF. (*See* RAF at pp. 3-9.) This includes the charter school application requirements in Massachusetts, which PDE also claims "mirror" PDE's proposed application requirements. (RAF at p. 4.)

⁵ While likewise not addressed in the RAF, PDE's proposed charter school application requirements also do not "mirror" Colorado's in that there is a direct statutory basis for both Colorado's definition of "education

would go a long way for PDE to emulate Colorado’s definition of “education management provider.” In any event, this specific example demonstrates how PDE’s failure to address or account for its proposed “definitions” in the RAF impacted its entire regulatory analysis.

3. PDE’s Proposed Definition of “Educational Management Service Provider” is Inconsistent with the Public School Code and the Laws of Other States.

PDE also failed to address in the RAF that its proposed definition of “educational management service provider” is inconsistent with an existing Pennsylvania statutory definition set forth in the Public School Code, albeit not in the provisions comprising the Charter School Law. Specifically, Section 5-501(b) of the Public School Code provides, in pertinent part:

(b) A board of school directors may satisfy the requirement set forth in subsection (a) [(relating to establishment and operation of elementary schools)] by any of the following:

...

(3) Contracting with an education management service provider to *operate* a school building. For purposes of this paragraph, “education management service provider” shall mean a for-profit education management organization, nonprofit charter management organization, school design provider, business manager or *any other partner entity* with which a school district contracts to provide educational design, business services, *comprehensive management* or personnel functions. The term shall not include a charter school foundation.

24 P.S. § 5-501(b)(3) (emphasis added).

PDE has materially departed from this already existing Pennsylvania statutory definition by replacing the term “partner entity” with the language “entity or individual” and also by deleting the word “comprehensive” preceding the word “management.” The language “or any other partner entity” in Section 5-501(b)(3) of the Public School Code is meaningful in that it denotes a substantial and interconnected relationship with the school,⁶ particularly when read together with

management provider” in the regulation at 1 CCR § 302-1-2.00(5) and Colorado’s charter school application requirements related to “education management providers” in the regulation at 1 CCR § 302-1-4.00(1)(r). Specifically, Colorado’s regulatory definition of “education management provider” directly corresponds to a statutory definition of that term, *see* C.R.S. § 22-30.5-103(3.5), and Colorado’s regulatory charter school application requirements related to “education management provider[s]” are identical to statutory application requirements for “education management provider[s]”, *see* C.R.S. § 22-30.5-106(1)(s). Pennsylvania’s Charter School Law, on the other hand, does not define the term “educational management service provider,” nor does Section 17-1719-A of the Charter School Law include any application requirements related to “educational management service providers.”

⁶ As relevant here, the term “partner” is defined as “one associated with another especially in an action” and also “a member of partnership especially in business.” <https://www.merriam-webster.com/dictionary/partner>. The term “partnership”, in turn, is defined as “a legal relation existing between two or more persons contractually

the language “for-profit education management organization, nonprofit charter management organization, school design provider, business manager,” which indicates that a “partner entity” is akin to these specifically enumerated entities.⁷ 24 P.S. § 5-501(b)(3). As explained by the Pennsylvania Supreme Court, “[u]nder our statutory construction doctrine *ejusdem generis* (‘of the same kind or class’), where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. *Steele v. Statesman Insurance Co.*, 607 A.2d 742 (Pa. 1992); *Summit House Condominium v. Commonwealth*, 523 A.2d 333 (Pa. 1987).

By replacing “partner entity” with “entity or individual,” in addition to deletion of the word “comprehensive,” PDE’s proposed definition of “educational management service provider” disassociates the general language from the specific types of entities enumerated, which results in the overbreadth issues discussed above. This over-broadening is compounded by the manner in which PDE uses “educational management service provider” in Sections 713.2(c)(4) and 713.7(c)(2) of the Proposed Regulations, which term appears generally without context or connection to the nature or quality of the services actually being provided. Section 5-501(b)(3) of the Public School Code, on the other hand, appropriately uses the term “education management service provider” in the context of being contracted to “operate” a school, denoting actual management or control over school operations.

Importantly, the definition of “education management service provider” set forth in Section 5-501(b)(3) of the Public School Code is consistent with definitions set forth in at least two model statutes as well as the laws of multiple other states, including with respect to use of “partner entity” in the manner discussed above. By way of non-exhaustive examples:

- The model statute published by the National Alliance for Public Charter Schools defines “education service provider” as a “for-profit education management organization, nonprofit charter management organization, or any other partner entity with which a charter public school contracts for educational program implementation or comprehensive management.” Available at <https://www.publiccharters.org/publications/model-law-supporting-high-quality-charter-public-schools> (§ III(7)).
- The model statute published by the American Legislative Exchange Council (“ALEC”) defines “education service provider” as a “for-profit education management

associated as joint principals in a business” and also “a relationship resembling a legal partnership and usually involving close cooperation between parties have specified and joint rights and responsibilities.” <https://www.merriam-webster.com/dictionary/partnership>.

⁷ For example, the report PDE itself cites on page 20 of the RAF describes a “charter management organization” (sometimes referred to as an “education management organization” where the entity is for-profit as opposed to nonprofit) as an organization that “will control every aspect of the school’s operations, including curriculum, personnel policies, operating policies and finances. The critical feature is the direct control of operations.” J.L. Woodworth, *et al.*, *Charter Management Organizations*, CREDO, Stanford University, 2017, at p. 2. Excluded from this definition are “[o]rganizations which contract with charter schools to provide only a small portion of operations, such as physical therapy or speech therapy....These types of contract services do not involve the management and operation of the school overall.” *Id.* at p. 3.

organization, a non-profit charter management organization, school design provider, or any other partner entity with which a public school intends to contract for educational design, implementation, or comprehensive management.” Available at <https://www.alec.org/model-policy/amendments-and-addendum-the-next-generation-charter-schools-act/> (§ 3(G)).

- West Virginia’s charter school statute defines “education service provider” as a “public or private nonprofit or for-profit education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management.” W. Va. Code § 18-5G-2.
- Kentucky’s charter school statute defines “education service provider” as an “education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management.” KRS § 160.1590.
- Indiana’s charter school statute defines “education service provider” as a “for profit education management organization, nonprofit charter management organization, school design provider, or any other partner entity with which a charter school intends to contract for educational design, implementation, or comprehensive management.” Burns Ind. Code Ann. § 20-24-1-6.1.
- Wyoming’s charter school statute defines “education service provider” as a “for-profit or nonprofit education management organization, charter management organization, or any other partner entity that a charter school contracts with for educational program implementation or for comprehensive management.” Wyo. Stat. § 21-3-302.

These statutory sources thus further demonstrate PDE’s departure from an existing Pennsylvania statutory definition and similar definitions commonly used in other states.

Section 5-501(b)(3) of the Public School Code is further consistent with the above statutory sources based on its use of “education management service provider” in the specific context of being contracted to “operate” a school. Importantly, these statutory sources set forth charter school application requirements that are substantially similar to those proposed by PDE, except that the term “education service provider” (as defined in the bullets above, respectively) is used in concert with other language reinforcing that the requirements apply only with respect to entities that manage or control charter school operations.

- The charter school application requirements set forth in the model statute published by the National Alliance for Public Charter Schools provide, in pertinent part: “In the case of a proposed charter public school that intends to contract with an education service provider *for educational program implementation or comprehensive management*, the application shall additionally require the applicants to....” Available at <https://www.publiccharters.org/publications/model-law-supporting-high-quality-charter-public-schools> (§ VI(1)(K)) (emphasis added).

- While not specific to application requirements, the model statute published by ALEC provides, in pertinent part, that a charter school has the power to “contract with an education service provider *for the management and operation of the public charter school* so long as the school’s Board or Commission retains oversight authority over the school...” Available at <https://www.alec.org/model-policy/amendments-and-addendum-the-next-generation-charter-schools-act/> (§ 6(H)(1)(c)) (emphasis added).
- The charter school application requirements in West Virginia’s charter school statute provide, in pertinent part: “If the applicant intends to contract with an education service provider *for educational program implementation or comprehensive management*, the application shall additionally require the application to provide the following information with respect to the educational service provider...” W. Va. Code § 18-5G-8(c) (emphasis added).
- The charter school application requirements in Kentucky’s charter school statute provide, in pertinent part: “If the public charter school intends to contract with an education service provider *for educational program implementation or comprehensive management*, the application shall additionally require the application to....” KRS § 160.1593(4) (emphasis added).
- The charter school application requirements in Indiana’s charter school statute provide, in pertinent part: “If a proposed charter school intends to contract with an education service provider *for substantial educational services, management services, or both educational services and management services*, the request for proposals shall require the applicants to provide the following....” Burns Ind. Code Ann. § 20-24-3-2.5 (emphasis added).
- The charter school application requirements in Wyoming’s charter school statute provide, in pertinent part: “In the case of proposed charter school that intends to contract with an education service provider *for educational program implementation or comprehensive management*, the application shall additional require the applicant to....” Wyo. Stat. § 21-3-307(a)(xxiv) (emphasis added).

These statutory sources, coupled with the General Assembly’s definition and use of “education management service provider” in Section 5-501(b)(3) of the Public School Code, further demonstrate the inadequacy of PDE’s proposed definition of “educational management service provider” and its related charter school application requirements. PDE appears to be attempting to implement the charter school application requirements set forth in these statutory sources—as revealed by comparison to the language of Section 713.2(c)(4) of the Proposed Regulations—except that PDE has altered the definition and usage of “educational management service provider” to effectively encompass any entity (or individual) that contracts with a charter

school to provide services, irrespective of whether the entity (or individual) actually manages or controls charter school operations.⁸

The statutory sources discussed above, as well as the Colorado regulation PDE claims to “mirror”, provide PDE with a clear roadmap for correcting the deficiencies inherent in the overbroad proposed definition of “educational management service provider” and its usage in the Proposed Regulations. It is therefore respectfully submitted that PDE should have no issue revising its Proposed Regulations accordingly, which should be disapproved absent such revisions.

4. PDE Does Not Have Statutory Authority to Impose Charter School Application Requirements.

Any concerns regarding the content of the charter school application requirements set forth in Section 713.2 of the Proposed Regulations are moot to the extent that PDE is without statutory authority to promulgate any such requirements in the first place. As statutory support for its proposed application requirements, PDE cites to its general authority to promulgate regulations under Section 17-1732-A(c) of the Charter School Law, 24 P.S. § 17-1732-A(c), and claims that it seeks to implement the statutory application requirements set forth in Section 17-1719-A of the Charter School Law, 24 P.S. § 17-1719-A. (See RAF at p. 2; Proposed Rulemaking at p. 6.) Section 17-1719-A of the Charter School Law, however, does not grant PDE any authority to impose minimum application requirements on “authorizers”, mandate use of specific application forms by “authorizers”, or dictate the specific information that must be provided by a charter school applicant in order to satisfy the seventeen (17) categories enumerated in Section 17-1719-A.

To the extent PDE claims to have implied regulatory authority to implement Section 17-1719-A of the Charter School Law, that claim is belied by the fact that local boards of school directors (not PDE) have exclusive authority to accept, review and approve charter school applications under Section 17-1717-A of the Charter School Law, including with respect to whether “the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.” See 24 P.S. § 17-1717-A; see also 24 P.S. § 17-1703-A (definitions of “charter school” and “regional charter school”). PDE has no authority, express or implied, to usurp the authority or limit the discretion of local boards of school directors.

It is only with respect to *cyber charter schools* that PDE is afforded any authority with respect to review and approval of an initial charter school application, including with respect to whether an applicant has satisfied the statutory application requirements. See 24 P.S. § 17-1745-

⁸ It is important to note, however, that PDE is attempting to implement by **regulation** charter school application requirements that are typically implemented by **statutory enactment**, as demonstrated by the model statutes and state statutes discussed above, as well as the Colorado statute that provides a direct statutory basis for the Colorado regulations that PDE claims to “mirror” on page 3 of the RAF. To reiterate, Section 17-1719-A of the Pennsylvania Charter School Law does not use the term “educational management service provider” or establish any charter school application requirements related thereto. Instead, the only “statutory language” that corresponds to PDE’s proposed definition of “educational management service provider” and charter school application requirements is set forth in the proposed legislation at SB 27 and HB 272, which has not and may never be enacted by the General Assembly.

A; *see also* 24 P.S. § 17-1703-A (definition of “cyber charter school”). PDE is likewise afforded authority to review and approve an application by two or more existing charter schools to consolidate into a multiple charter school organization (“MCSO”) under Section 17-1729.1-A of the Charter School Law, but even in that instance, PDE does not have any role in reviewing or approving the relevant charter schools’ initial charter school applications, which is reserved for the charter schools’ respective local boards of school directors. *See* 24 P.S. § 17-1729.1-A.

Perhaps more importantly with respect to the MCSO provisions in Section 17-1729.1-A of the Charter School Law, which PDE failed to acknowledge or address in the RAF, is that the General Assembly expressly granted PDE authority to not only “develop and issue a standard application form that multiple charter school organization applicants must submit” but also to include in that standard application form “[a]ny other information as deemed necessary by [PDE].” 24 P.S. § 17-1729.1-A(c). Section 17-1719-A of the Charter School Law, on the other hand, does not include any such express grant of authority or similar language. As the Pennsylvania Supreme Court has repeatedly held:

[W]here the legislature includes specific language in one section of the statute and excludes it from another, the language should not be implied where excluded. Moreover, where a section of a statute contains a given provision, the omission of such a provision from a similar section is significant to show a different legislative intent.

In re Vencil Appeal of Pa. State Police, 152 A.3d 235, 244 (Pa. 2017) (quoting *Fonner v. Shandon, Inc.*, 724 A.2d 903, 907 (Pa. 1996)); *see also Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”). Adhering to the principles of statutory construction, the General Assembly’s express grant of authority to PDE to impose application requirements for MCSOs under Section 17-1729.1-A without similarly granting PDE authority to impose application requirements for charter schools under Section 17-1719-A demonstrates that the General Assembly did not intend for PDE to have such authority.

Accordingly, especially when coupled with PDE’s lack of authority to review and approve charter school applications, which authority is expressly reserved for local boards of school directors under Section 17-1717-A of the Charter School Law, the absence of language in Section 17-1719-A expressly granting PDE authority to impose charter school application requirements demonstrates that Section 713.2 of PDE’s Proposed Regulations is without statutory authority and contrary to the intention of the General Assembly. It is therefore respectfully submitted that Section 713.2 of the Proposed Regulations should ultimately be disapproved, regardless of any attempted revisions by PDE, which would be futile due to a fundamental lack of authority.

5. Questions for PDE

In addition to the comments above, which are intended to stand on their own, CSMI respectfully directs the following questions to PDE seeking clarification regarding PDE’s proposed definition of “educational management service provider” in Section 713.1(g) of the Proposed

Regulations and PDE's proposed audit requirement set forth in Section 713.7(c)(2) of the Proposed Regulations:

- (a) What is the meaning of the language "charter management organization" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (b) What is the meaning of the language "education management organization" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (c) What is the meaning of the language "school design provider" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (d) What is the meaning of the language "business manager" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (e) What is the meaning of the language "to provide" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (f) What is the meaning of the language "educational design" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (g) What is the meaning of the language "business services" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (h) What is the meaning of the language "management" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (i) What is the meaning of the language "personnel functions" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (j) What is the meaning of the language "implement the charter" as used by PDE in Section 713.1(g) of the Proposed Regulations?
- (k) What services can an "entity or individual" contract to provide to a charter school without being regarded as an "educational management service provider" as defined by PDE in Section 713.1(g) of the Proposed Regulations?
- (l) Under what circumstances would an "individual" be regarded as an "educational management service provider" as defined by PDE in Section 713.1(g) of the Proposed Regulations?
- (m) Would teachers, administrators and administrative staff that enter into employment contracts with a charter school be regarded as an "educational management service provider" as defined by PDE in Section 713.1(g) of the Proposed Regulations? Why or why not?

(n) What is the meaning of the language “review of the fees charged” as used by PDE in Section 713.7(c)(2) of the Proposed Regulations?

(o) What is the nature and extent of the “review” required in order for a charter school to comply with Section 713.7(c)(2) of the Proposed Regulations?

(p) What is the nature and extent of the information that must be included in an audit report in order for a charter school to comply with Section 713.7(c)(2) of the Proposed Regulations? Stated differently, in what manner must the “fees charged by any educational management service provider” be “addressed” in an audit report in order for a charter school to comply with Section 713.7(c)(2) of the Proposed Regulation?

This list of questions is non-exhaustive and is not intended to limit or summarize the comments above or serve as a substitute means for PDE to respond to the comments above.

* * *

Based on the foregoing, it is respectfully submitted that PDE’s Proposed Rulemaking is deficient with respect to key provisions of the Regulatory Review Act, exceeds PDE’s statutory authority, and is contrary to the intention of the General Assembly. We thank the IRRC and its staff for its consideration of CSMI’s comments and remain available to discuss these matters in further detail as needed.

Sincerely,



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cc:

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