



## ED, CharterRegs

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**From:** Megan M. Kovacs <mkovacs@smggglaw.com>  
**Sent:** Monday, October 18, 2021 4:56 PM  
**To:** ED, CharterRegs  
**Cc:** Alan T. Shuckrow; Kathryn L. Clark  
**Subject:** [External] Proposed Charter School Regulations  
**Attachments:** Ltr to Div. of Charter Schools re proposed regulations.pdf

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Dear Sir/Madam:

On behalf of Alan Shuckrow and Kathryn Clark, attached please find correspondence regarding comments to the proposed charter school regulations.

Thank you,  
Megan

**Megan M. Kovacs** | *Legal Assistant*



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October 18, 2021

**VIA EMAIL:**

[RA-EDCharterRegs@pa.gov](mailto:RA-EDCharterRegs@pa.gov)

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

Re: *Proposed Charter School Regulations*

Dear Sir/Madam:

Thank you for the opportunity to submit these comments regarding the proposed charter school regulations. AS you can see by the attached chart that we are incorporating as part of our comments, we have carefully reviewed the proposed regulations and find them to be overall not necessary and/or an over-reach into the prerogative of the General Assembly. The chart details comments with each of the proposed regulation sections. Many of the proposals are inconsistent with the Charter School Law or merely duplicative. In the instance of the additional requirements for charter school applications we find them to be unreasonable and stifling of the flexibility that new charter schools need in order to respond to the changing dynamics in education. By requiring so much upfront information the charter school founders will be required to be soothsayers as to future trends. We need only think about the last two years involving the pandemic to know that we need flexibility to best serve students and families. These regulations do nothing to accomplish this and, in our view, are designed to eliminate or at least severely restrict new charter schools from opening. The idea that there would be a standard PDE application but that school districts could have unfettered ability to require additional information borders on a lack of due process for charter applicants.

We have represented a wide range of brick and mortar charter schools from the application process through renewals over the last 18 years and, therefore felt it was important for us to submit these comments.

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Thank you in advance.

Sincerely yours,



Alan T. Shuckrow



Kathryn L. Clark

ATS/mmk  
Attachment

	Current Charter School Law (CSL)	Proposed Regulations	Comments
Definitions			
“Authorizer”	Not defined	Includes the Department as an authorizer for a cyber charter school, but the Department is also an authorizer for a MCSO (multiple charter school organization)	Should include “ <i>or for a multiple charter school organization.</i> ” when talking about the Department as an authorizer.
“Charter School”	Defined	Defined, but slightly different than CSL	These two definitions should be aligned, and the regulation definition should match the statute.
“Charter School Entity”	Not defined	Defined	Unsure why we need a separate definition for a “charter school entity,” and why we wouldn’t just amend the definition of a “school entity” contained in the CSL to include a charter school.
“Charter School Law”	Not defined	Defined	
“Cyber Charter School”	Defined	Defined, but slightly different than CSL	These two definitions should be aligned, and the regulation definition should match the statute.
“Department”	Defined	Defined	Unsure why this is needed?
“Educational Management Service Provider”	Not defined	Defined	Extremely broad – pursuant to this definition, a company that provides speech therapists or similar types of services, would be considered an EMSP... “an . . . individual that enters

			into a contract or agreement with a charter school entity to provide. . . business services. . .”
“English Learner”	Not defined	Defined	Isn’t an “English Language Learner (ELL) a federally defined term? Why is this being defined in a charter school regulation?”
“Multiple charter school organization”	Not Defined	Defined	
“PAsecureID”	Not defined	Defined	
“Regional Charter School”	Defined	Defined, but slightly different than CSL	These two definitions should be aligned, and the regulation definition should match the statute.
“School Code”	Not Defined	Defined	
“secretary”	Defined	Defined	
Application Requirements			
Contents of Charter School Application	Contained in CSL Section 1719-A	Proposed in new Section 713.2	Why is regulation needed when already provided for in statute?
	Does not require a particular form	Requires either a form created by PDE or created by the charter school authorizer	Why is a form needed? Information has been appropriately provided since 1997;
	Does not appear to permit additional information to be required other than what is listed in statute	Section 713.2(b) Allows authorizer to require an applicant to submit additional information wanted by the local school board	Allowing additional information to be required puts a substantial additional burden on charter school applicants – the process can be never ending
	Requires identification of charter school applicant 1719-A(1)	Required identification of charter school applicant 713.2(c)(1)	Already required by statute so why is duplication necessary?

	Requires name of proposed charter school 1719-A(2)	Requires name of proposed charter school 713.2(c)(2)	Already required by statute so why is duplication necessary?
	Requires a list of the grade or age levels to be served by the school 1719-A(3)	Requires that for each grade or age level proposed, the applicant provide additional information: (1) projected overall enrollment; (2) projected number of students receiving special education services by primary disability; (3) projected number of ELL; (4) projected composition of population of students by race, ethnicity and economically disadvantaged; 713(c)(3)(i)-(iv)	Other than what is required in the statute, unknown how a charter applicant would even have knowledge of this information; law prohibits school from seeking this type of information from prospective students so there is no way to even obtain this information – it would be pure speculation on the part of the applicant
	Requires a description of the proposed governance structure of the charter school, including a description and method for the appointment of the board of trustees. 1719-A(4)	Requires a description of the proposed governance structure of the charter school, including: (1) copy of the articles of incorporation; (2) copies of by-laws /other agreement for general governance of charter school; (3) organizational chart showing lines of authority and reporting among board of trustees, administrators, staff, and any educational management service provider which school has contracted or <b>intends to contract</b> ; (4) description of the roles	Besides the obvious expansion into an enormous amount of additional required information, the issues here are that some of the information is difficult to define let alone potentially provide. Schools are required to provide information about entities they “intend to contract” with – how does a school that has not yet received approval to operate know who it intends to contract with? Furthermore, the school is required to describe the role and responsibilities of “any

		<p>and responsibilities of the board of trustees, administrators, charter school foundation, and any other entities shown in the organizational chart – including a description of the process for appointing/electing trustees; description of role/responsibility of CEO; name of foundation <b>“or other entity with which the school will be associated”</b> and its financial status; (5) standards for the trustees performance including compliance with all applicable laws; (6) if contracting or “intending to contract with” an educational management service provider, then also must include thirteen (13) additional separate items; (7) if the school is going to have any “affiliated business entities” including a foundation, then must provide a disclosure of any existing or “potential” conflicts of interest. 713.2(c)(4)(i)-(vii)</p>	<p>entity with which the school will be associated.” – it is unknown what this phrase even means, in addition to the fact that the school hasn’t been approved yet. The school is also required to disclose “potential” conflicts – all of these items are speculative and difficult to articulate at this stage of school development, but allows the charter school authorizer broad ability to deny the application based on alleged deficiencies in these areas.</p>
	<p>Requires information on the mission and education goals of the school; the curriculum to be offered; the methods for assessing whether students are</p>	<p>Requires detailed information on the mission and education goals of the charter school at 713.2(c)(5)(i)-(iii). This includes</p>	<p>The concern with requiring information that gets too detailed is (1) again, the school is not yet open, so it can be difficult to provide</p>

	meeting educational goals; all at 1719-A(5)	information on “sustainable support;” detailed information on the curriculum to be offered including the instructional delivery model for all planned subjects, “pedagogical learning approach,” and plans for meeting the needs to at-risk students; detailed information about methods of assessing whether students are meeting educational goals;	detailed information, particularly regarding special needs students, when it is only theoretical. Second, since a school cannot amend its charter once it is approved, it is difficult to provide such detailed information prior to opening because should a school determine that, in practice, a different or slightly adjusted method is better suited for the students, then the school is in violation of its charter. But to change anything this specific, the school will require an amendment, which is typically not approved.
	The statute requires the school’s admission policy and criteria for evaluating the admission of students which must comply with the requirements of section 1723-A; this is at 1719-A(6)	Same as statutory requirements, but in addition, requires that the school list an enrollment capacity by grade level as well as a description of how the school will make prospective students aware of the school. 713.2(c)(6)(i)-(iii)	This new regulatory section has now embedded a grade level cap into the charter school law which does not exist. Again, because it will be part of the application, for a school to go beyond what they list in the application they will need to seek an amendment.
	Requires procedures regarding the suspension and expulsion of students, which must comply with section 1318	Requires more specific description of suspension and expulsion procedures, including an explanation of the proposed “philosophy”	Much of the regulations deal with requirements that are already contained in other statutes – section 1318 of the school code contains



		of student discipline, a copy of the student code of conduct, an explanation of the due process procedures; a description of how parents will be advised if students are struggling; and a description of how the school will address disparities in implementation of discipline practices among student groups. 713.2(c)(7)(i)-(v)	requirements relating to disciplining students and due process is also a legally required process that cannot be altered. In addition, to require charter schools to assess and “systematically address disparities in the implementation of discipline” which school districts have no such similar requirement seems patently disingenuous at attempting to get at the problem of disparities in discipline
	Requires information about the manner in which community groups will be involved in the charter school planning process	Requires information about the manner in which community groups will be involved in the charter school planning process. 713.2(c)(8)	Why is there a need for identical requirements in the regulations?
	Requires the financial plan for the charter school and the provisions which will be made for auditing the school	Requires the financial plan and the provisions which will be made for auditing the school, including a proposed five year general fund budget by account code, the anticipated sum of revenues and expenditures not accounted in the account codes, and the budgeted fund balance for the proposed first year of operation and unrestricted fund balance for each year of the charter term. 713.2(c)(9)(i)-(iii).	The additional specific and speculative information required by the regulations does not add to the knowledge of the charter authorizers because it is all made up information since they are seeking “fake” budgets for a school five years into the future that has not yet even been approved. It is inconceivable how a decision for approval could be made on this type of information

	<p>Information on procedures for reviewing complaints of parents</p>	<p>Information for reviewing and “addressing” complaints of parents. 713.2(c)(10)</p>	<p>The addition of the word “addressing” is interesting. As anyone who has worked with a school entity knows, not every complaint of a parent can be addressed. Just look at the masking debate right now. How can a school “address” the complaint of a parent who does not want their child to wear a mask? There should be a procedure to make certain there is a complaint process in place and that all complaints are reviewed, but the word “addressed” is almost akin to “resolved,” and there is no way a school can promise it will resolve all parent complaints</p>
	<p>Requires a description of and address of the physical facility in which the school will be located and the ownership of the facility and any lease arrangements. At section 1719-A(11)</p>	<p>Requires the same, but also specific information including whether the facility will be leased or owned, anticipated monthly mortgage or lease payments, and any estimated additional monthly payments (such as utilities), how the facility is suitable for a proposed school, and the square footage for each space where instruction of students will occur and a description of how that</p>	<p>The specific requirements of the regulation directly contradict caselaw on facilities (cite cases) that do not require specific information on the school facility</p>

		space will be used. 713.2(c)(12)(i)-(v)	
	Information on the proposed school calendar	Same; 713.2(c)(11)	Need for identical provisions?
	The proposed faculty and a professional development plan	Specific information about the proposed faculty and professional development plan including the number of projected full time employees for pupil personnel, instructional personnel, administration, business office, transportation, public health, operations and management; the “caseloads of staff for students receiving special education services at appropriate levels to ensure FAPE;” 713.2(c)(13)(i)-(iii)	What is requested – the estimated number of employees for the 1 <sup>st</sup> year? 2 <sup>nd</sup> year? When school is fully operational? You cannot open a school and be completely up and running in the first year – it takes a few years. In addition, how is the school to know the number of special education students it will have to know the caseload and number of staff it will need? And again, in what time frame? The 1 <sup>st</sup> year? A 5-year period?
	Whether any agreements have been entered into with the local district for participation in extracurricular activities. 1719-A(14)	Same; 713.2(c)(14)	Why is there a need for identical requirements in the regulations?
	A criminal history record for all individuals who will have direct contact with children 1719-A(15)	Same; 713.2(c)(15)	Why is there a need for identical requirements in the regulations?
	An official child abuse clearance statement 1719-A(16)	Same; 713.2(c)(16)	Why is there a need for identical requirements in the regulations?
	How the school will provide adequate liability insurance for the charter school, its employees and the board of trustees; 1719-A(17)	Same as CSL, but adds a requirement to provide a description of the type and level of insurance coverage the school will obtain; 712.3(c)(17)	Specific information is not necessary or required; a school may not know the level of insurance it <i>will</i> get;
Enrollment	1723-A provides that if more students apply than the number of slots, then students are	713.4(a)-(d) requires the school to enact a policy to ensure random	

	<p>selected on a random basis from a pool of qualified applicants who meet the eligibility criteria and who have submitted an application by the deadline; allows the school to give preference to a parent who has actively participated in the development of the charter school and to siblings of students presently enrolled in the school; allows the limiting of admission to a particular age group or grade, a targeted population, or an area of concentration; states that enrollment shall not be subject to a cap;</p>	<p>selection of students if there are more applications than seats; this policy must be part of the application and renewal application; must be on the website; must describe the method to effectuate random selection; must describe how the school will ensure public notice of the selection process; must detail any optional enrollment preferences and describe the order in which the preferences are implemented and any weighting associated with the preferences; must outline any admission limitations such as a targeted group sch as at-risk students, or areas of concentration; requires enrollment information to be included in the annual report and published on the school’s website, including information about the number of total applicants, the number of qualified applicants, number of students offered enrollment and number of students enrolled</p>	
<p>Board of Trustees</p>	<p>1715-A(11) provides that trustees of a charter school are public officials; 1716-A(c) requires the Board of Trustees to comply with the Sunshine Act;</p>	<p>713.6(a)-(f) provides that trustees of a charter school are public officials subject to the Public Official and Employee Ethics Act;</p>	<p>Trustees have been considered “public officials” and subject to the Public Official and Employee Ethics Act since the</p>

		the remainder of the sections restate provisions of the Public Official and Employee Ethics act	enactment of the CSL and section 1715-A(11); having the regulation state that they are subject to it does not change anything, as these requirements have already been in place for decades
Fiscal and Auditing Standards	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” 1729-A(3);	The regulations take this reason for non-renewal and turn it into a requirement, demanding that the school’s financial statements be prepared in accordance with GAAP, and the school obtain an independent financial audit. Further, the regulations specifically address what must be in the audit at 713.7(c)(1)-(5);	Schools already have their financial statements and audits conducted in this manner; not provided for in statute; does school district have regulation outlining what need to be in its audit? Should be the same for both district and charter school
Redirection Process	1725-A(a)(5) provides for a redirection process when a district fails to make payment to the charter school;	713.8(a)-(c) simply restate what is already in the CSL; 713.8(d) begins new requirements for redirection requests not contained in the CSL – request must be on a form created by PDE, and contain 11 items of mandatory information about the student; now limits when requests may be submitted (between the 15 <sup>th</sup> and 25 <sup>th</sup> of each month); limits requests to only the months submitted, i.e., cannot be continuing and must	This process limits when charters can file a request and adds to the paperwork requirement as requests must continually be submitted;

		submit a new request for additional months;	
School Staff	1724-A(d) of the CSL requires that a charter school employee shall be provided the same health care benefits as the employee would be provided if they were employed by the local district. The district may require the charter school to provide the same terms and conditions with regard to health insurance as the district's CBA to include employee contributions to the district's health benefits plan;	713.9 is in place to "implement" the requirement that charter schools provide the same health care benefits as district schools. States that the charter must demonstrate that the benefits are "meaningfully similar" to those offered by the local school district and requires the charter to do one of the following: provide benefits in each of the categories as described in 42 U.S.C. §18022(b) with substantially similar cost-sharing structure and plan type; provide health care coverage funded by the charter school in an amount not less than the contribution provided by the charter school's authorizer for the most selected health care plan available; contribute to a tax-advantaged account which the employee may use to purchase health care coverage in an amount not less than the charter school's authorizer; The charter school must present the benefit plan enrollment options to employees with a comparison of what	The provisions of the CSL did not require that the benefits be exactly the same and the regulation is requiring identity by making the costs be identical and requiring charters to provide a comparison. This was not contemplated by the statute and the Department is without authority to require this by regulation.

		they would have been offered if they were district employees; the comparison must contain a required statement	
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