

**ED, CharterRegs**

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**From:** Jennifer Garman <jgarman@disabilityrightspa.org>  
**Sent:** Monday, October 18, 2021 4:09 PM  
**To:** ED, CharterRegs  
**Subject:** [External] Proposed Rulemaking 006-349  
**Attachments:** Disability Rights Pennsylvania Comments on Proposed Charter School Rulemaking Final 101821.pdf

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Attached please find comments on the proposed Charter School regulations.

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**VIA EMAIL**

October 18, 2021

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

**RE: Request for Comment on Proposed Rulemaking: Chapter 713 of Title 22 of the Pennsylvania Code**

Disability Rights Pennsylvania (DRP) is the federally mandated, state designated Protection and Advocacy (P&A) system for persons with disabilities in Pennsylvania, and it has been providing legal and advocacy services to Pennsylvanians with disabilities for over 40 years. We are pleased to be given the opportunity to comment on the Department's proposed addition to the Pennsylvania Code, which would clarify requirements for Pennsylvania's charter and cyber charter schools. Our comments are below.

**Section 713.2(c)(3)(ii):** DRP questions how a charter school that was prepared to operate a truly randomized admission lottery could possibly provide an accurate projection of the "number of students receiving special education services by primary disability." At best, the charter operator could look at data for different types of disabilities in the surrounding community and make a projection based on that.

However, regardless of whatever type of projection is put forth, a charter operator would have an obligation to meet the special education needs of whomever ended up enrolling at the school, and to adjust staffing and

resource levels accordingly. It is unclear how instructive this projection would be, and the Department must clarify guidance to ensure that if projections prove to be inaccurate, schools still must provide services commensurate with their enrolled students' needs.

**Section 713.2(c)(5)(ii)(C):** DRP requests that the Department provide more specifics about what charter operators should include in their “[p]lans for meeting the needs of . . . students with disabilities[.]” Specifically, we believe charter operators should have to indicate how they will: (1) comply with their Child Find obligations; (2) assess students’ growth and progress and need for new or changed services; and (3) handle student discipline when a child’s behavior is a manifestation of his/her disability.

**Section 713.2(c)(5)(iii):** In addition to the listed ways to assess the achievement of students with disabilities, we also believe charters should create a plan whereby they assess their retention rate for students with disabilities. If many students with disabilities choose to leave a charter for their home school or another charter or private school option, that may suggest the school is failing to meet the needs of students with disabilities. Schools should therefore be made to formulate a plan for how they will assess this during their application process.

**Section 713.2(c)(7)(iii) and (v):** DRP supports the requirements put forth in these subsections related to student discipline. Students with disabilities are often subject to harsher penalties than their non-disabled peers. This is particularly true of students of color who have disabilities when they break school rules. Schools must maintain special discipline procedures for students whose behavior is a manifestation of their disability, and they should be required to track disparities in discipline rates among different student populations.

**Section 713.4: Enrollment Process:** Disability Rights Pennsylvania is supportive of the chapter’s establishment to ensure that charter and cyber schools are held to the same levels of transparency and accountability as traditional public schools. Since the foundation of charter and cyber schools in Pennsylvania, students with disabilities have utilized their services. However, there are much lower levels of enrollment of students with intellectual and developmental disabilities (IDD), especially those with more complex needs, in charter schools than in traditional public school settings.

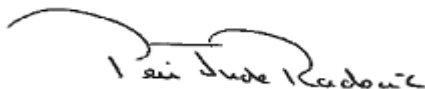
All students must have equal access to charter school education, and we support a more open and transparent enrollment process.

**Section 713.7: Fiscal Management and Audit Requirements:** DRP recommends that specific language be included that promotes fiscal accountability for how special education funding is utilized to support students with IDD by charter and cyber schools. Currently, charter schools do not receive their special education funding based off of the Special Education Funding Formula (SEF), which implemented a tiered funding system for each individual student with IDD and based funding on the student's level of need – the greater the supports and services needed to receive FAPE, the more funding the school district received for that student.

Charter Schools receive funding for special education based on the median percentage of students with intellectual and developmental disabilities in that specific school district. This enables Charter Schools to serve a special education student who would qualify for Tier 1 funding under the SEF but receive funding as if the student is a Tier 2. It is even more concerning that there is no requirement that charter schools must utilize all the special education dollars they receive on special education supports and services. In order to promote fiscal accountability of funding, unspent special education funding should not be used for general expenses of a charter school.

We thank you for your consideration of our concerns and suggestions. Please contact Jennifer Garman, Director of Government Affairs at 717-236-8110 ext. 327 with questions.

Sincerely,



Peri Jude Radecic  
Chief Executive Officer