

**ED, CharterRegs**

From: Michele Gutman <mgutman@spectrumcsi.org>
Sent: Monday, October 18, 2021 2:12 PM
To: ED, CharterRegs
Subject: [External] Comments on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools
Attachments: [External] Comments on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools

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To: The Pennsylvania Independent Regulatory Review Commission
333 Market St., 14th Floor
Harrisburg, PA 17101
RA-EDCharterRegs@pa.gov

RE: Regulation #6-349: Charter Schools and Cyber Charter Schools

I am writing to express my opposition to Regulation #6-349: Charter Schools and Cyber Charter Schools as written. I am a member of the Board of Spectrum Charter School, a very small brick and mortar school located in Monroeville, PA. Spectrum was established in about 21 years ago and focuses on special needs students. While I understand and support the goals of transparency and accountability for all public schools, including charter schools, the proposed regulations seem to reflect a bias intended to impede the establishment or success of charter schools and not necessarily to achieve those goals.

I have the following general comments:

- The proposed regulation appears to be an attempt to circumvent the legislative process in some instances.
- The proposed application process should set out not only consistent requirements, but should restrict the districts' ability to use the process in order to discourage or deny an application by the imposition of burdensome requirements that are not necessary.
- One of the apparent assumptions of the proposed rule-making is that charter schools do not use funds wisely and lack attention to equity. This ignores the facts that: charter schools currently conduct yearly audits and abide by right-to-know laws, just as school districts do; on average enroll higher percentages of low-income, Black, Hispanic and special education students than school districts; and led the way in providing continuity of learning during the Pandemic.
- It is reported that for 2020-2021 charter school enrollment grew. Rather than penalize charter schools for their success, we should be focusing on addressing perceived weaknesses in school districts, for example through funding of poorer school districts. They both have a place in a robust education system in Pennsylvania.
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My specific comments follow.

§ 713.1. Definitions.

b) *Charter school* – an independent public school established and operated under a charter from the local board of school directors or board of public education of a school district in which students are enrolled or attend. A charter school must be organized as a public, nonprofit corporation.

• This definition should be consistent with the definition of “charter school” in Section 1703-A of the Charter School Law which in addition to the above, includes: “Charters may not be granted to any for-profit entity.” See 24 P.S. § 17-1703-A.

(g) *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.

• **This definition is far too expansive. Just as school districts do, a charter school may contract with various individuals and entities (both for-profit and nonprofit) to provide a litany of services in support of its program. Further, due to the expansive nature of the definition, the definition appears to capture charter school employees such as a Business Manager employed directly by the school.**

In the “Purpose and Background” section of the Proposed Rulemaking, it states in pertinent part:

Transparency, equity, quality, and accountability in the establishment, governance, and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities – including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities, and authorizers of charter school entities – adhere to the structural norms that maintain the effectiveness of the CSL.

Entities and individuals captured in the proposed definition would include those support management rather than serve as management. Consistent with PDE’s intent, the definition should be limited to the “for-profit and nonprofit organizations that perform management functions within charter school entities, report directly to charter school entities’ boards of trustees and have employees of the charter school entities as direct reports.”

APPLICATION REQUIREMENTS

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

(a) An applicant seeking to operate a charter school or regional charter school shall submit an application on one of the following forms:

(1) The application form created by the Department, which includes the items identified in subsection (c).

• **The application form created by the Department should be drafted by a committee of diverse constituencies with expertise in Charter School Law. Additional language should be added making clear that “nothing shall prevent a charter school applicant from supplementing the application with additional information it believes the authorizer may find beneficial as part of its review.”**

(2) The application form created and adopted by an authorizer of a charter school or regional charter school, which, at a minimum, includes the information identified in subsection (c).

• There should be one standard application throughout the Commonwealth drafted by a committee of diverse constituencies with expertise in Charter School Law. Additional language should be added making clear that “nothing shall prevent a charter school applicant from supplementing the application with additional information it believes the authorizer may find beneficial as part of its review.”

(b) An authorizer may require an applicant submit additional information for the local board of directors to evaluate the application in accordance with section 1717- A(e)(2) of the Charter School Law (24 P.S. § 17-1717-A(e)(2)).

• Allowing districts require applicants to submit additional information so long as the request is “in accordance with section 1717-A(e)(2) of the Charter School Law” effectively affords districts the ability to shut down the process by creating an overly burdensome application that it could change with no notice. Each district should be required to utilize PDE’s standard form application to be drafted by a committee of diverse constituencies with expertise in Charter School Law. While districts should be required to utilize PDE’s standard form application, they should not be prevented from allowing the applicant to supplement the application with additional information it believes the district may find beneficial as part of its review.

c) The application forms in subsection (a) must, at a minimum, include the following: (

(3) For each grade or age level proposed to be served by the charter school or regional charter school:

(i) Projected overall enrollment.

• This should be limited to the proposed charter term

(ii) Projected number of students receiving special education services by primary disability. Students may only be counted in one disability category .

• This is impossible to project as it would not be possible to predict the disability category of students not yet enrolled at the time of the application preparation/submittal and doing so would serve no meaningful purpose. Additionally, any projection of the charter school applicant’s special education population should be limited to the proposed charter term.

(iii) Projected number of English Learners.

• At a minimum, this should be limited to the proposed charter term, moreover, given the requirements that the charter school accept applicants subject to its charter and use a lottery system it does not seem possible to project such enrollment.

(iv) Projected composition of the student population by race, ethnicity, and students who are economically disadvantaged.

• While projecting an applicant’s economically disadvantaged population may be feasible, projecting race and ethnicity would not. Given that such data relating to grade eligible students is not easily disaggregated by communities within districts and that charter schools generally draw from multiple districts, any such projection would be wholly unreliable. Again, it seems that requiring such information would be inconsistent with the requirement that a charter school must accept applicants and/or use the lottery process.

(4) Proposed governance structure of the charter school or regional charter school, including:

(C) A description of any additional administrative staff who may be employed by the charter school or regional charter school and a description of their roles and responsibilities.

• This is overly broad and would arguably require job descriptions of low level administrative staff who may be (but will not necessarily be) employed by the charter school including but not limited to secretarial staff, attendance clerks, enrollment officers and PIMS reporting specialists. This should be limited to the Principal of the charter school and anyone else, other than the Board of Trustees, to whom the Principal and/or chief executive officer reports.

(D) Name of any foundation or other entity with which the school will be associated and its financial status (for example, an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3))).

• A charter school applicant cannot name an organization and relationship that does not yet exist. Moreover, as written, a charter school applicant would be required to name all entities with which the school will be associated. That is an impossibility. Further as written, this may be interpreted to mean that any source of income, including philanthropic donors must be named. However, such associations may not exist at the time the application is prepared and moreover, such information is not necessary to advance the purported goals of the regulation.

(iii) An organizational chart showing the proposed governance structure of the charter school or regional charter school, including lines of authority and reporting among the board of trustees, administrators, staff, and any educational management service provider with which the charter school or regional charter school has contracted or intends to contract.

Does this requirement apply to all charter schools or solely those which contract with an educational management service provider?

(6) Admission policy, including:

(ii) Enrollment capacity by grade level.

• **This should be stated as “Projected enrollment capacity by grade level” if at all.**

(7) Procedures regarding suspension or expulsion of students, including:

ii) A copy of the charter school’s or regional charter school’s Student Code of Conduct.

• **The financial burden on an applicant is already extreme. Adding requirements such as the drafting of a Student Code of Conduct prior to receipt of a charter almost ensures that the price of submission is too high for grassroots organizations.**

(iii) An explanation of due process procedures that will be followed prior to administering any exclusionary discipline, including specifics for students with disabilities.

Such procedures should be developed by the Administration once the charter is granted. The procedures will be required to comply with all relevant federal and PA requirements.

(iv) A description of how parents or guardians will be advised of students struggling in academic, social, emotional, or behavioral performance.

• **This type of communications strategy is developed by the charter school’s senior leadership (i.e. CEO and Principal). These individuals are almost always not employed by the charter school at the time of application. Generally speaking, interviews for these positions do not occur until after receipt of the charter. Therefore, it is inappropriate to include this very specific requirement as part of the charter application. Moreover, such policies often reflect Board Policies which would be developed by the Board subsequent to issuance of the charter.**

(v) A description of how the charter school or regional charter school will assess and systematically address disparities in implementation of discipline practices among student groups.

• **This process is developed by the charter school’s senior leadership (i.e. CEO and Principal). These individuals are almost always not employed by the charter school at the time of application. Generally speaking, interviews for these positions do not occur until after receipt of the charter. Therefore, it is inappropriate to include this very specific requirement as part of the charter application. Again, there also should be some general input from the Board.**

(9) The financial plan for the charter school or regional charter school and the provisions for auditing the school under section 437 of the School Code (24 P.S. § 4-437) and this Chapter. This includes, but is not limited to:

(i) A proposed 5-year general fund budget by account code, in accordance with the Department's Chart of Accounts for PA Local Educational Agencies, that includes revenues and expenditures.

•The spreadsheet with codes must be made available to the charter school applicant as part of the application. Further, it should be acknowledged that this is simply a "proposed" budget given that charter schools do not control the amount of income per student as this is set based upon the rates for the school districts from which the students come.

(iii) The budgeted fund balance for the proposed first year of operation and unrestricted fund balances for each year of the charter term.

• It is unreasonable to expect that a charter school budgets a fund balance in its first year of operation. Also, it should be acknowledged that these are simply "proposed" budgets subject to change based upon actual revenue and expenditures.

(10) Procedures for reviewing and addressing complaints from parents, guardians, and families regarding the operation of the charter school or regional charter school.

• Such procedures should be developed by the CEO and/or Principal based upon the various relevant legal requirements after issuance of the charter.

(v) Safety protocols for the facility.

• While it is appropriate to require information regarding safety protocols generally, specifics would not be determined until the facility is fit for occupancy and the charter school's senior leadership has had an opportunity to develop its own safety plan (portions of which may be confidential).

(13) The proposed faculty and a professional development plan for the proposed faculty of the charter school or regional charter school that complies with Chapters 4 and 49 (relating to academic standards and assessment and certification of professional personnel), including:

(i) The number of projected full time equivalent employees in each of the following categories:

1. (A) Pupil personnel.
2. (B) Instructional personnel.
3. (C) Administration.

4. (D) Business office.
5. (E) Transportation.
6. (F) Public health.
7. (G) Operations.
8. (H) Management.

• **A number of these categories capture some of the same positions (e.g. Administration and Management). Any category needs to be carefully defined.**

(ii) Caseloads of staff for students receiving special education services at appropriate levels to ensure a free appropriate public education (FAPE) as required by Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities).

• **Neither statute nor Chapter 711 include or require case load requirements for staff of charter school students receiving special education services and this application requirement should be stricken. The provision of a FAPE is appropriately done on an individualized basis.**

(14) A description and copies of agreements or plans with the charter school's or 14 regional charter school's authorizer to allow the school's students to participate in extracurricular activities within the authorizing school district.

• **Charter school authorizers are not required to enter into these agreements or plans with charter school applicants and therefore they are, almost without exception, nonresponsive to any request to do so. Agreements or plans with an applicant should not be required as part of a charter applicant.**

(15) The criminal history record, pursuant to section 111 of the School Code (24 P.S. § 1-111), for all individuals who will have direct contact with students.

• **Note that all such individuals may not have been hired at the time of Charter application and thus cannot be provided. However, such information is required prior to hiring of such individuals.**

(16) An official clearance statement regarding child injury or abuse from the Department of Human Services, as required by 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools), for all individuals who will have direct contact with students.

• **Again, it is likely that all individual s may not have been hired prior to Charter submittal given the charter process it is likely that hiring cannot be finalized until the charter is issued.**

ENROLLMENT

§ 713.4. Random Selection Policies for a Charter School or Regional Charter School.

(a) Within three (3) months of the effective date of this Chapter or upon the granting of a charter, a charter school or regional charter school must enact a policy, approved by its board of trustees, to ensure random selection of students for enrollment should more students apply to the charter school or regional charter school than the number of attendance slots available.

• This section and (b) below appear to conflict.

(b) In the case of a charter school or regional charter school applicant, the proposed policy ensuring random selection of students for enrollment must be included in the contents of the application pursuant to section 1719-A(6) of the Charter School Law (24 P.S. § 17-1719- A(6)).

(2) Be included in any renewal application of a charter school or regional charter school.

• What is the purpose of this requirement? Above there is a requirement that the policy be posted on the charter school’s publicly accessible website. A charter school should not be made to “reapply” for a charter every term. The Charter School Law does not state conditions for renewal. It states conditions for nonrenewal. See 24 P.S. § 17-1729-A.

(4) Describe how the charter school or regional charter school will ensure public notice of the selection process. Such notice must be posted on the charter school’s or regional charter school’s publicly accessible website in a language that students and parents can understand or, if not practicable,

(d) A charter school or regional charter school shall include in the annual report submitted under section 1728-A of the Charter School Law (24 P.S. § 17-1728-A) and shall, at least annually, publish, on its publicly accessible website the following information:

(1) Number of total applicants to the charter school or regional charter school for the most recent school year.

• This serves no purpose other than to cause additional administrative work for the charter school and should therefore be stricken.

(2) Number of qualified applicants as determined by the charter school or regional charter school for the most recent school year.

• This serves no purpose other than to cause additional administrative work for the charter school and should therefore be stricken.

(3) Number of students offered enrollment by the charter school or regional charter school for the most recent school year.

• **This serves no purpose other than to cause additional administrative work for the charter school and should therefore be stricken.**

(4) Number of students enrolled by the charter school or regional charter school for the most recent school year.

• **This serves no purpose other than to cause additional administrative work for the charter school and should therefore be stricken. The Annual Report already reflects average daily enrollment.**

BOARDS OF TRUSTEES

§ 713.6. Requirements for Boards of Trustees

Generally, the requirements set forth below are duplicative of existing requirements and it is unclear what purpose is being served by enacting additional language regarding these requirements.

(a) Each member of a board of trustees of a charter school entity is a public official subject to the Public Official and Employee Ethics Act (65 Pa.C.S. §§ 1101-1113).

• **Section 1715-A(11) already states that “[t]rustees of a charter school shall be public officials” and therefore there is no need for this provision.**

(b) In accordance with 65 Pa.C.S. § 1104 (relating to statement of financial interests required to be filed), each member of a board of trustees of a charter school entity shall file a statement of financial interest for the preceding calendar year with the board of trustees of the charter school entity, the State Ethics Commission, and each authorizer of the charter school entity. The member shall file the statement of financial interest no later than May 1 of each year the member holds the position and no later than May 1 of the year after a member leaves the position. If the member was appointed or selected after May 1, the member shall file a statement of financial interest in accordance with this section within 30 days of appointment or selection.

• **There should be no requirement that the statement of financial interest form be sent to the Ethics Commission. The Ethics Act does not require charter school board members to submit these forms to the Ethics Commission and therefore they will be disregarded upon submission. Failure to submit to the Ethics Commission would not result in a violation of the Ethics Act nor would it even be tracked by the Ethics Commission.**

(c) No member of a board of trustees of a charter school entity may participate in the selection, award, or administration of any contract in violation of 65 Pa.C.S. § 1103 (relating to restricted activities) or if the member has a conflict of interest as that term is defined in 65 Pa.C.S. § 1102 (relating to definitions).

• **This language is unnecessarily duplicative given that Section 1715-A(11) already states that “[t]rustees of a charter school shall be public officials” and therefore subject to the Ethics Act which would include violations of Section 1103.**

(d) A member of a board of trustees of a charter school entity who in the discharge of the member’s official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and follow the procedures required under 65 Pa.C.S. § 1103(j) (relating to restricted activities).

• **This language is unnecessarily duplicative given that Section 1715-A(11) already states that “[t]rustees of a charter school shall be public officials” and therefore subject to the Ethics Act which would include violations of Section 1103.**

(e) A member of a board of trustees of a charter school entity or family member of a member of a board of trustees of a charter school entity shall not, directly or through any other individual, entity, partnership or corporation in which the member holds stock or has a financial interest or other organization, provide a loan, forbearance or forgiveness of a loan or other debt, service or product or lease property to the charter school entity if such action is a conflict of interest as defined in 65 Pa.C.S. § 1102 (relating to definitions).

• **This language is unnecessarily duplicative given that Section 1715-A(11) already states that “[t]rustees of a charter school shall be public officials” and therefore subject to the Ethics Act which would include violations of Section 1103. It is also covered in subsection (c) above.**

(f) A member of a board of trustees of a charter school entity who violates any provision of the Public Official and Employee Ethics Act (65 Pa.C.S. § 1101-1113) shall be subject to the penalties imposed under the jurisdiction of the State Ethics Commission.

• **This language is unnecessarily duplicative given that Section 1715-A(11) already states that “[t]rustees of a charter school shall be public officials” and therefore subject to the Ethics Act which would include those penalties stated in Section 1109 of the Act.**

FISCAL AND AUDITING STANDARDS

§ 713.7. Fiscal Management and Audit Requirements

The following items must be addressed in all audits completed under this section:

(3) A review of whether the charter school entity has the required number of certified staff.

• **An independent financial auditor is not qualified to make this determination.**

(4) A review of the percentage of payroll the charter school entity contributed to employee retirement programs.

• **This is irrelevant and needlessly increases the cost of an audit.**

REDIRECTION PROCESS

§ 713.8. Redirection Process

(a) Pursuant to section 1725-A(a)(5) of the Charter School Law (24 P.S. § 17-1725-A(a)(5)), a charter school entity shall submit its payment request to the school district no later than ten (10) days before the fifth of each month to permit a school district time to make payment.

(b) A school district fails to make a payment under section 1725-A(a)(5) of the Charter School Law (24 P.S. § 17-1725-A(a)(5)) when the school district does not make payment to the charter school entity by the fifth of the month.

(c) If a school district fails to make a payment under subsection (b), a charter school entity may submit a request to the Secretary seeking to have the estimated amount withheld from State payments that will be made to the school district.

(d) A charter school entity that submits a request under subsection (c) must submit the request on a form created by the Department. Such form must include the following information:

(1) For each student for which the charter school entity is seeking payment: (i) PAsecureID. (ii) home address (iii) School district of residence. ...

(viii) Last day educated by the charter school, if applicable.

• **This is not relevant. The district has an obligation to pay until the last day of enrollment and not the last day education is provided.**

(x) Date of current Individualized Education Plan (IEP), if applicable.

• **This is not relevant or required by applicable statute, law or regulation and should not be included. The date of the current IEP does not impact the district's obligation to pay the special education rate for a student identified as a special education student.**

(xi) Date of prior IEP, if applicable.

• This is not relevant or required by applicable statute, law or regulation and should not be included. The date of the current IEP does not impact the district's obligation to pay the special education rate for a student identified as a special education student.

The source of the tuition rate used by the charter school entity in its withholding request to the Department.

(vii) First day educated by the charter school.

This is not relevant. The district has an obligation to pay from the first day of enrollment and not the first day education is provided.

(e) For the months from July through May, requests under this section must be submitted to the Department between the 15th and 25th of each month.

• Imposing limitations as to when a charter school may submit a request to PDE contradicts language in Section 1725(a)(5) of the Charter School Law which includes, among other things, that payments be made to the charter school in twelve (12) equal monthly payments. Reducing the number of monthly payments to less than twelve violates the Charter School Law.

(g) Requests under this section must be signed by the chief executive officer or other authorized individual of the charter school entity certifying that the estimated amounts requested are true and correct, and that a request was first made to the school district of residence, subject to penalties of unsworn falsifications to authorities under 18 Pa.C.S. §4904 (relating to unsworn falsifications to authorities).

• Unless such requirement is made of school district superintendents upon their payment (or nonpayment) of tuition to charter schools, this is wholly inappropriate.

SCHOOL STAFF

§ 713.9. Health Care Benefits

(a) Pursuant to section 1724-A of the Charter School Law (24 P.S. § 17-1724-A), a charter school shall meet the statutory requirement to provide its employees with the same health care benefits as they would be provided if they were an employee of the local school district. To implement this requirement, and demonstrate that health care benefits provided by the charter school are meaningfully similar to those offered by the local school district, the charter school shall do one of the following:

(1) Provide health care coverage that:

(i) Provides benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) with substantially equivalent cost-sharing structure and plan type (such as preferred provider organization, exclusive provider organization, or health maintenance organization) as the most-selected health care plan available to the employees of the charter school's authorizer.

• **As the State Charter School Appeal Board ruled in Gillingham Charter School v. Pottsville Area School District, CAB Dkt. No. 2016-11 (Decided Oct. 25, 2017), "same health care benefits" is solely a reference to provision of benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) and does not relate to equivalent cost-sharing structure and plan type. Any other interpretation is nonsensical as charter schools simply do not have the purchasing power as what is typically a much larger chartering district.**

If a district authorizer were to insist a charter school provide identical terms and conditions as the district offers its own employees, Charter School Law states the district need only require the charter school "include employee contributions to the district's health benefits plan. The charter school shall make any required employer's contribution to the district's health plan to an insurer, a local board of school directors or a contractual representative of school employees, whichever is appropriate to provide the required coverage." 24 § 17-1724- A(d).

Here PDE is proposing a regulation for which compliance is impossible for the overwhelming majority of charter schools.

(ii) Is 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 to the employees of the charter school's authorizer.

• **As the State Charter School Appeal Board ruled in Gillingham Charter School v. Pottsville Area School District, CAB Dkt. No. 2016-11 (Decided Oct. 25, 2017), "same health care benefits" is solely a reference to provision of benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) and does not relate to equivalent cost-sharing structure and plan type. Any other interpretation is nonsensical as charter schools simply do not have the purchasing power as what is typically a much larger chartering district.**

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(2) Contribute to a tax-advantaged account which the employee may use to pay for the purchase of health care coverage, as permitted by Federal law, in an amount not less than the contribution provided by the charter school's authorizer for the (or, if more than one, the most-selected) health care plan available to the employees of the charter school's authorizer.

• As the State Charter School Appeal Board ruled in *Gillingham Charter School v. Pottsville Area School District*, CAB Dkt. No. 2016-11 (Decided Oct. 25, 2017), "same health care benefits" is solely a reference to provision of benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) and does not relate to equivalent cost-sharing structure and plan type. Any other interpretation is nonsensical as charter schools simply do not have the purchasing power as what is typically a much larger chartering district.

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(b) Pursuant to section 1724-A of the Charter School Law (24 P.S. § 17-1724-A), a regional charter school or a cyber charter school shall provide its employees with the same health care benefits as they would be provided if they were employees of the local school district. To implement this requirement, and demonstrate that health care benefits provided by the regional charter school or cyber charter school are meaningfully similar to those offered by the local school district, the regional charter school or cyber charter school shall do one of the following:

(1) Provide health care coverage that: benefits as described in 42 U.S.C. § 18022(b), with substantially equivalent cost-sharing structure and plan type (such as preferred provider organization, exclusive provider organization, or health maintenance organization) as the most-selected health care plan available to employees of the school district within which the regional charter school's or cyber charter school's administrative office is located.

• As the State Charter School Appeal Board ruled in *Gillingham Charter School v. Pottsville Area School District*, CAB Dkt. No. 2016-11 (Decided Oct. 25, 2017), "same health care benefits" is solely a reference to provision of benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) and does not relate to

equivalent cost-sharing structure and plan type. Any other interpretation is nonsensical as charter schools simply do not have the purchasing power as what is typically a much larger chartering district.

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(ii) Is funded by the regional charter school or cyber charter school in an amount not less than the contribution provided by the school district within which the regional charter school’s or cyber charter school’s administrative office is located for the most-selected health care plan available to that school district’s employees.

• As the State Charter School Appeal Board ruled in Gillingham Charter School v. Pottsville Area School District, CAB Dkt. No. 2016-11 (Decided Oct. 25, 2017), “same health care benefits” is solely a reference to provision of benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) and does not relate to equivalent cost-sharing structure and plan type. Any other interpretation is nonsensical as charter schools simply do not have the purchasing power as what is typically a much larger chartering district.

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Here PDE is proposing a regulation for which compliance is impossible for the overwhelming majority of charter schools.

(2) Contribute to a tax-advantaged account which the employee may use to pay for the purchase of health care coverage, as permitted by Federal law, in an amount not less than the contribution provided by the school district in which the regional charter school’s or cyber charter school’s administrative office is located for the most-selected health care plan available to that school district’s employees.

• **As the State Charter School Appeal Board ruled in *Gillingham Charter School v. Pottsville Area School District*, CAB Dkt. No. 2016-11 (Decided Oct. 25, 2017), “same health care benefits” is solely a reference to provision of benefits in each of the categories of benefits as described in 42 U.S.C. § 18022(b) and does not relate to equivalent cost-sharing structure and plan type. Any other interpretation is nonsensical as charter schools simply do not have the purchasing power as what is typically a much larger chartering district.**

If a district authorizer were to insist a charter school provide identical terms and conditions as the district offers its own employees, Charter School Law states the district need only require the charter school “include employee contributions to the district’s health benefits plan. The charter school shall make any required employer’s contribution to the district’s health plan to an insurer, a local board of school directors or a contractual representative of school employees, whichever is appropriate to provide the required coverage.” 24 § 17-1724-A(d).

Here PDE is proposing a regulation for which compliance is impossible for the overwhelming majority of charter schools.

(c) Charter schools, regional charter schools, or cyber charter schools shall present health care benefit plan enrollment options to employees, including a comparison of what they would have been offered if they were employees of the local school district, at each enrollment period.

• **This proposed requirement serves no purpose other than to confuse and/or anger charter school employees. A more effective requirement would be to require the local school district to allow charter schools, regional charter schools and cyber charter schools to enroll their employees in the district’s health care plan under the same terms and conditions that are afforded district employees and at the same cost to the charter schools, regional charter schools and cyber charter schools as to the district.**

(d) The comparison required by subsection (c) shall include the following statement:

“UNDER PENNSYLVANIA LAW, CHARTER SCHOOLS, REGIONAL CHARTER SCHOOLS, AND CYBER CHARTER SCHOOLS ARE REQUIRED TO PROVIDE THE SAME HEALTH CARE BENEFITS TO THEIR EMPLOYEES AS THEY WOULD BE PROVIDED IF THEY WERE EMPLOYEES OF THE LOCAL DISTRICT. IF YOU BELIEVE THE PLAN OPTIONS MADE AVAILABLE TO YOU ARE NOT COMPARABLE TO THOSE OFFERED BY YOUR LOCAL DISTRICT, YOU MAY FILE A COMPLAINT WITH THE AUTHORIZER OR AUTHORIZERS OF THE CHARTER SCHOOL, REGIONAL CHARTER SCHOOL, OR CYBER CHARTER SCHOOL.”

• **This proposed requirement serves no purpose other than to confuse and/or anger charter school employees potentially resulting in ill-informed complaints to authorizers based on a misunderstanding of legal requirements. Requiring that the**

charter school provide a copy of its policy to the district (and vice versa) whenever it changes would better address the same alleged concern. However, the ideal solution would simply be to require the local school district to offer charter schools, regional charter schools and cyber charter schools an opportunity to participate in the district's health care plan under the same terms and conditions that are afforded district employees and at the same cost to the charter schools, regional charter schools and cyber charter schools as to the district.

(e) The authorizer of the charter school, regional charter school, or cyber charter school may review the health care benefits policies of the charter school, regional charter school, or cyber charter school.

• If this is done there is no need for the charter school to provide a comparison of the district's benefits and the charter school's benefits to its employees each year.

Respectfully submitted,

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