

<b>Regulatory Analysis Form</b>		This space for use by IRRC 2001 FEB -6 PM 3:55 REGULATORY REVIEW COMMISSION IRRC Number: <sup>#</sup> 2129	
(1) Agency  Education			
(2) I.D. Number (Governor's Office Use)  006-269			
(3) Short Title  Charter School Services and Programs For Children With Disabilities			
(4) PA Code Cite  22 Pa. Code, Chapter 711		(5) Agency Contacts & Telephone Numbers Primary Contact: Dr. Dale Baker, Director Office of Educational Initiatives (717) 787-9819 Secondary Contact: Gregory Spadafore (717) 705-2881	
(6) Type of Rulemaking (check one)  Proposed Rulemaking Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached?  No <input checked="" type="checkbox"/> Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language.  The regulations are promulgated to facilitate compliance with Federal statute, regulation and court decrees that apply in the Commonwealth to children with disabilities. The purpose of Chapter 711 is to develop procedures for special education in charter schools and adopt by reference applicable Federal regulations. These regulations will assist charter schools with compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  §§1701-A—1732-A of the Public School Code of 1949 (24 P.S. §§17-1701-A17-1732-A).			

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The regulations define terms related to special education for charter schools, outline the Department's authority in its duties to assure charter schools compliance with Federal laws, court decrees, and regulation that govern children with disabilities. The regulations are mandated by a provision contained in the Charter School Law of 1997, (24 PS 17-1732-A (c)(2)). These regulations adopt provisions of specific Federal law (IDEA-20 U.S.C.A. §§1400-1485/Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. §794)), that apply to special education students in charter schools. Charter schools shall reevaluate students identified with mental retardation at least once every 2 years in accordance with the PARC Consent Decree, reported in PARC v. Commonwealth, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations provide a focused summary of federal regulations, which clarify the role of special education in charter schools in Pennsylvania. They address protections for individuals, families and legal guardians of children attending charter schools in the Commonwealth. The regulations clarify the relationship of the local chartering district with the charter school regarding issues related to special education.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

While there are no public health, safety, environmental or general welfare risks associated with nonregulation, the regulations will have an impact on the educational welfare of children and families in the Commonwealth.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Charter school students requiring special education services will be the beneficiaries of the regulations. In school year 1998-1999, of the approximately 6,104 students enrolled in Pennsylvania charter schools, 369 were classified as needing special education services. Another 195 were undergoing evaluation to determine their need for services and 43 were undergoing re-evaluation to determine their need for continuing special education services.

**Regulatory Analysis Form**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The regulations are targeted at a population of students, grades K-12, requiring special education services. There will be no person or class adversely affected by the regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Schools in the Commonwealth chartered by local school districts or by the Charter Appeal Board will be required to comply with the regulations.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

Regional hearings were conducted in Harrisburg, Philadelphia and Pittsburgh during the development of these regulations. Groups representing parents, local school districts and special educational advocacy groups attended the public hearings. The Independent Regulatory Review Commission, and the House and Senate Education Committees provided written comments.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulations can reduce the cost of special education to charter schools because children will have more of their educational needs met in the charter school. Although charter schools are local education agencies that must provide a Free Appropriate Public Education (FAPE) to all who enroll, the missions and programs of charter schools are diverse, often allowing children to make educational progress without special education services. By following federal statutes, regulations and court decrees, charter schools have the opportunity to minimize redundant paperwork and reroute their financial resources toward programs and services for children who need them.

**Regulatory Analysis Form**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Costs and/or savings to local government associated with the regulations will not be significantly impacted. Funding presently allocated to the local chartering district will simply shift to the charter school. Charter schools will have access to the due process and complaint system already developed by the Department to resolve disputes. Charter school personnel and contracted individuals and/or agencies, will have access to training opportunities and program support through the Department's training and technical assistance network and Intermediate Units.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Charter schools are local education agencies (LEAs) monitored by the Department of Education. Systems have been developed and are in place at the Department to offset the costs associated with the implementation of the regulations. There are no new legal, accounting or consulting procedures incurred as a result of the regulations.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

See Response (20a)

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE</b>						
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

Fiscal savings and costs associated with the implementation of the regulations in the above-referenced areas are shifted from the chartering school district to the charter school. For students receiving special education services, the charter public school receives an additional per pupil amount based upon the district's special education expenditure divided by the state-determined percentage of students eligible for special education funding. Intermediate Units also must provide special education services to charter public schools at the same cost as services provided other schools, as requested.

**Regulatory Analysis Form**

(20b) Provide the past three-year expenditure history for programs affected by the regulation.  
See response (21)

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Because the special education subsidy for charter schools is part of the calculation for the chartering district, and contains many variables, a method of arriving at an exact dollar amount is not currently determinable.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No non-regulatory alternatives were considered because Act 22 requires the promulgation of regulations (see §1732-A (c)(2)).

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory scheme was considered because Act 22 requires regulations (see response 22). However, the Basic Education Circular (BEC) served as an interim document for guidance.

**Regulatory Analysis Form**

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. The provisions of IDEA-20 U.S.C.A. §§1400-1485/Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. §794) supercede all state law, regulation and policy.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Each of the various states has enacted different charter school laws. Due to the requirements of Act 22, comparisons with the laws of other states would not be meaningful.

(26) Will the regulation affect existing or regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

There are no existing regulations. There will be no adverse consequences on the Department of Education or other state agencies as a result of the implementation of the regulations.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Both formal public hearings and informational meetings were conducted. Formal hearings were held on November 12 and 20, 2000, and informational sessions held on three occasions.

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. Reporting/record-keeping requirements regarding enrollment, educational records, identification and evaluation of students, IEP and general provisions and supervision of special education students will change due to the regulations, in order to meet federal and state reporting requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulations specifically meet the needs of special education students enrolled in charter schools. Specific provisions in the regulations are intended for charter schools as unique institutions engaged in the education of special education students.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations will become effective upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Department of Education will review the effectiveness of Chapter 711 every four years.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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2001 FEB -6, PM 3:55  
LEGISLATIVE REFERENCE BUREAU  
REVIEW COMMISSION

# 2129

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p>Department of Education</p> <p>(AGENCY) 006-269</p> <p>DOCUMENT/FISCAL NOTE NO. _____</p> <p>January 31, 2001</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Eugene D. Heckele</u> Secretary of Education</p> <p>TITLE: _____ (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p><u>Meggy E Dunlop</u></p> <p><u>2/6/01</u> DATE OF APPROVAL</p> <p>(Deputy General Counsel) (<del>Chief Counsel, Independent Agency</del>) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 10 days after submission.</p>
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Final-Form

Department of Education  
Title 22 - Education  
Chapter 711

Charter School Services and Programs  
for Children with Disabilities

## PREAMBLE

Department of Education

[22 Pa. Code - CH. 711]

### Charter School Services and Programs for Children with Disabilities

The Department of Education (Department) adds Chapter 711 (relating to charter school services and programs for children with disabilities) to read as set forth at Annex A, under the authority of sections 1701-A--1732-A of the Public School Code of 1949 (24 P. S. §§17-1701-A--17-1732-A) (act).

Notice of proposed rulemaking was published at 30 Pa.B. 3463 (July 8, 2000) with an invitation to submit written comments. In addition, a notice was published at 30 Pa.B. 5290 (October 14, 2000) providing an opportunity for additional public input.

#### *Purpose*

Under section 1732-A(c)(2) of the act (24 P.S. §17-1732-A(c)(2)), the Secretary has the authority and the responsibility to ensure that charter schools comply with Federal laws and regulations governing children with disabilities, and further provides that the Secretary shall promulgate regulations to implement this provision. The missions, programs and curricula of charter schools are to promote the inclusion of all children.

### *Requirements of the Regulations*

These regulations define terms related to special education for charter schools and outline the Department's authority in its duties to assure charter schools' compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities. These regulations adopt provisions of specific Federal law (IDEA/504) that apply to special education in charter schools.

### *Response to Comments*

*Adoption by reference* – Public commentators, House and Senate Education Committees and the Independent Regulatory Review Commission (IRRC) recommended that the appropriate text of the Federal rules from 34 CFR Part 300 be incorporated in the text of these regulations. Early in its work to develop these regulations, the Department determined that doing so would lead to unnecessarily lengthy regulations and lead to possible discrepancies between Federal intent and State intent. As a result, these regulations were drafted to incorporate Federal rules by reference, adding in those areas where the Federal rules require greater detail, where Pennsylvania statute or court decision requires specific language and where Pennsylvania practices are different from those found in other jurisdictions. Federal rules are adopted by reference in many Pennsylvania regulations. The Department of Education has and will continue to develop publications and other media to inform parents, teachers and administrators of their rights and responsibilities under both Federal and State statutes and regulations in regard to children with disabilities.

*Definitions - 711.1* In response to comments from the public, House and Senate Education Committees, and IRRC, several changes were made to the definitions in the final-form. The term “At risk student” was deleted, the statutory definition for “charter school” was included, and the definitions for “Regional charter school and “School entity” were added in this final-form regulation. Clarification was made that charter schools are exempt from the requirements of Chapter 14 relating to special education.

*Clarifying applicability of Federal regulations - 711.3* Public commentators, House and Senate Education Committees and IRRC recommended changes to clarify that charter schools have duties under both 34 CFR Part 300 and Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 CFR Part 104. The final-form regulations were changed to clarify the provisions under both Part 104 and Part 300 as described in sections 711.2 and 711.3. It was also suggested that the section be expanded to include additional applicable provisions of federal regulations. This section was amended to include sections 300.3, 300.121-125, 300.138-139, 300.401, 300.574(a)(b).

*Department supervision. - 711.4* Public commentators and IRRC recommended this section be expanded to clarify how the Department will meet its obligation of monitoring activities. This section was revised accordingly.

*Annual report. - 711.6* Public commentators and IRRC suggested the annual report include additional information similar to that provided by school districts. Changes to the

final-form rulemaking were made to clarify the specific information that charter schools will be required to include in their annual report.

*Enrollment.* - 711.7 Public commentators and IRRC recommended clarification of the phrase "reasonable criteria". This subsection was revised to remove the language that was vague and redundant. Specifying the criteria or categories of criteria would be difficult because each charter school establishes a unique educational program.

*Educational records.* - 711.8 Public commentators and IRRC suggested a change to ensure that (a) all records are transferred and (b) confidentiality is maintained. The final-form regulations were amended accordingly.

*Child find.* - 711.21 Public commentators and IRRC recommended this section be modified to be consistent with Federal regulations specifically 34 CFR Part 300.125(a)(i). The final-form regulations were changed to add the word "located" to be consistent with Federal regulations.

*Evaluation and Reevaluation.* - 711.22 Because provisions on evaluation have been adopted by reference, evaluation was removed from the title of this section. Public commentators and IRRC suggested that this section didn't include the requirements of the PARC consent decree for students with mental retardation to be reevaluated every two years. Language was added on the final-form regulations regarding the right of parents and teachers to request reevaluation of a student with a disability at any time.

*Suspensions and expulsions.* - 711.61 Public commentators, House and Senate Education Committees and IRRC suggested that this section was incomplete in identifying the requirements under 34 CFR (sections 300.520—300.529). As a result this section was modified accordingly and the citations to the Federal regulations added to section 711.3.

*Procedural safeguards.* - 711.62 Public commentators and IRRC recommended that mediation be included as an option for dispute resolution. Although provisions for mediation are adopted by reference, language was added to the final-form to highlight its availability. IRRC requested that the term “without delay” be replaced by a specific timeframe. The final-form regulation was amended accordingly.

#### *Cost and Paperwork Estimates*

These regulations will ensure compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities while not adding to the cost of providing special education services in charter schools. Charter schools are local education agencies that must provide a Free Appropriate Public Education (FAPE) to all who enroll. The missions and programs of charter schools are diverse, often allowing children to make educational progress without special education services. By following Federal statutes, regulations and court decrees, charter schools have the opportunity to minimize redundant paperwork and reroute their financial resources toward programs and services for children who need them. Because charter schools are local education agencies that are supervised by the Department, they will have access to systems already

created and developed by the Department and therefore will not need to create and develop their own. Charter schools will be able to access staff training through the Department's training and technical assistance network and Intermediate Units. Charter schools and parents will have access to the due process and complaint system that has already been developed by the Department to resolve conflicts. Reliance upon proven systems already in place will reduce the cost and paperwork associated with the staff development and complaint management systems that are required for compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities.

*Effective Date*

These regulations will become effective upon final publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The Department will review the effectiveness of Chapter 711 every 4 years; therefore, no Sunset date is necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. §745.5(a)), on June 27, 2000, the Department submitted a copy of the regulations published at 30 Pa.B. 3463, to the Independent Regulatory Review Commission (IRRC) and to the Chairmen of the House and Senate Committees on Education.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.5a(d)), the final-form regulations were (deemed) approved by the Senate Education Committee on \_\_\_\_\_ and (deemed) approved by the House Education Committee on \_\_\_\_\_. IRRC met on \_\_\_\_\_ and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

*Contact Person*

The official responsible for information on these final-form regulations is Dr. Dale Baker, Department of Education, Office of Educational Initiatives, 333 Market Street, Harrisburg, Pa. 17126-0333, at (717)-705-0930 or TDD at (717)-783-8445.

*Findings*

The Department finds that:

- (1) Public notice of the intention to adopt these regulations was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.

(3) The regulations are necessary and appropriate for the administration of the school code.

*Order*

The Department, acting under the authorizing statute, orders that:

- (a) The regulations of the Department at 22 Pa. Code are amended by adding a new Chapter 711, sections 711.1-711.9, 711.21- 711.22, 711.41-711.44, and 711.61-711.62 to read as set forth at Annex A.
- (b) The Secretary will submit this Order and Annex A to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form as required by law.
- (c) The Secretary of the Department shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This Order is effective upon final publication in the *Pennsylvania Bulletin*.

  
EUGENE W. HICKOK,

Secretary

ANNEX A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

CHAPTER 711. CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN

WITH DISABILITIES

GENERAL PROVISION AND SUPERVISION

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711.2. PurposeS and intent.

711.3. Incorporation of Federal laws REGULATIONS.

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711.7. Enrollment.

711.8. Education records.

711.9. Payments.

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711.21. Child find.

711.22. ~~Evaluation and~~ Reevaluation.

IEP

711.41. IEP.

711.42. Transportation.

711.43. Educational placement.

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### **PROCEDURAL SAFEGUARDS**

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### **GENERAL PROVISION AND SUPERVISION**

§711.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Act--The Charter School Law (24 P. S. §§ 17-1701-A--17-1732-A).

~~At risk student--A student at risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage.~~

~~Charter school--An independent public school established and operated under a charter granted under the act~~ **FROM THE LOCAL BOARD OF SCHOOL DIRECTORS AND IN WHICH STUDENTS ARE ENROLLED OR ATTEND. A CHARTER SCHOOL MUST BE ORGANIZED AS A PUBLIC, NONPROFIT CORPORATION. CHARTERS MAY NOT BE GRANTED TO ANY FOR-PROFIT ENTITY.**

REGIONAL CHARTER SCHOOL--SHALL MEAN AN INDEPENDENT PUBLIC SCHOOL ESTABLISHED AND OPERATED UNDER A CHARTER FROM MORE THAN ONE LOCAL BOARD OF SCHOOL DIRECTORS AND IN WHICH STUDENTS ARE ENROLLED OR ATTEND.

Child with a disability--As defined in 34 CFR 300.7 (relating to child with a disability).

Department--The Department of Education of the Commonwealth.

ESY--Extended school year.

FAPE--Free appropriate public education.

IDEA--Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400--1485).

IEP--Individualized education program.

SCHOOL ENTITY--A SCHOOL DISTRICT, INTERMEDIATE UNIT, JOINT SCHOOL OR AREA VOCATIONAL TECHNICAL SCHOOL.

SEA--State education agency--The Department of Education of the Commonwealth.

Secretary--The Secretary of the Department of Education.

Section 504--Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794).

§711.2. Purpose and Intent.

(a) This chapter specifies how the Commonwealth, through the Department, will meet its obligation to ensure that charter schools comply with the IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children), ~~or~~ AND Section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) This chapter does not prevent a charter school and a school district from entering into agreements regarding the provision of services and programs to comply with this chapter, whether or not the agreements involve payment for the services and programs by the charter school.

(c) CHARTER SCHOOLS ARE EXEMPT FROM THE REQUIREMENTS OF CHAPTER 14 (RELATING TO SPECIAL EDUCATION (24 P. S. §§ 17-1732-A)).

§711.3. Incorporation of Federal laws REGULATIONS.

(a) Charter schools assume the duty to ensure that a FAPE is available to a child with a disability in compliance with the IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children) ~~or~~ AND Section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) ~~Except as expressly provided in this chapter,~~ THE REQUIREMENTS OF 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) ~~is~~ ARE incorporated by reference as follows:

(I) 300.3

(II) 300.4--300.26

(III) 300.28--300.29

(IV) 300.121--300.125

(V) 300.138

(VI) 300.139

(VII) 300.300

(VIII) 300.302--300.309

(IX) 300.312--300.313

(X) 300.320--300.321

(XI) 300.340

(XII) 300.342--300.346

(XIII) 300.347(a) and (b)

(XIV) 300.348--300.350

(XV) 300.401

(XVI) 300.403

(XVII) 300.500--300.515

(XVIII) 300.519--300.529

(XIX) 300.531--300.536

(XX) 300.540--300.543

(XXI) 300.550--300.553

(XXII) 300.560--300.573

(XXIII) 300.574 (A)(B)

(XXIV) 300.576

(c) ~~Except as expressly provided in this chapter,~~ THE REQUIREMENTS OF 34 CFR Part 104

is ARE incorporated by reference as follows:

(I) 104.3(f), (h)—(j), (k)(2), (l)

(II) 104.4--104.8

(III) 104.11--104.12

(IV) 104.21--104.37.

§711.4. Supervision.

(a) The Commonwealth, through the Department as the SEA, will provide general supervision of special education services and programs provided under this chapter to ensure that charter schools comply with Federal laws and regulations governing children with disabilities SECTION 711.3 (RELATING TO INCORPORATION OF FEDERAL REGULATIONS).

(b) The Department will ~~establish and implement methods of administration, including effective and proper methods of monitoring, directing corrective action, and ensuring compliance, to ensure that charter schools comply with Federal laws and regulations governing children with disabilities~~ SUPERVISE CHARTER SCHOOLS' COMPLIANCE WITH IDEA IN ACCORDANCE WITH THE POLICIES AND PROCEDURES SET OUT IN THE DEPARTMENT'S IDEA GRANT APPLICATION UNDER THE PROVISIONS OF 34 CFR §300.110 AND AS APPROVED BY THE U.S. DEPARTMENT OF EDUCATION.

(c) Charter schools shall:

- (1) Comply with the Department's compliance monitoring requirements.
- (2) Provide all information requested by the Department.
- (3) Complete all corrective action required by the Department.

§711.5. Personnel.

Persons who provide special education or related services to children with disabilities in charter schools must have appropriate certification, notwithstanding section 1724-A of the act (24 P. S. §17-1724-A).

§711.6. Annual report.

(a) The annual report required under section 1728-A(b) of the act (24 P. S. §17-1728-A(b)) shall include:

(1) The number of CHILDREN WITH DISABILITIES students in special education.

(2) The services, programs and resources being implemented by the charter school staff.

(3) The services and programs utilized by the charter school through contracting with another public agency, other organizations or individuals.

(4) The services and programs utilized by the charter school through the assistance of the intermediate unit in which the charter school is located under section 1725-A(a)(4) of the act (24 P. S. §17-1725-A(a)(4)).

(5) Staff training in special education utilized by the charter school through the DEPARTMENT'S TRAINING AND TECHNICAL ASSISTANCE NETWORK AND intermediate unit and instructional support centers.

(b) The annual report shall include an assurance that the charter school is in compliance with Federal laws and regulations governing children with disabilities and the requirements of this chapter.

(C) THE ANNUAL REPORT SHALL INCLUDE THE AGE AND TYPE OF EXCEPTIONALITY FOR EACH ENROLLED CHILD WITH A DISABILITY; THE LEVEL OF INTERVENTION

PROVIDED TO EACH CHILD WITH A DISABILITY; CERTIFICATION OF STAFF  
PROVIDING SERVICES TO EACH CHILD WITH A DISABILITY; AND PROGRAMS  
AND SERVICES AVAILABLE TO CHILDREN WITH A DISABILITY.

§711.7. Enrollment.

- (a) A charter school may not DENY ENROLLMENT OR OTHERWISE discriminate in its admission policies or practices on the basis of A CHILD'S DISABILITY OR HIS OR HER NEED FOR SPECIAL EDUCATION OR SUPPLEMENTARY AIDS OR SERVICES status as a person with a disability.
- (b) ~~Charter schools may establish reasonable criteria, which shall be listed in their charters, to be used in evaluating prospective students. These criteria may not discriminate against an otherwise qualified handicapped child because of the child's handicap.~~ SUBJECT TO THE REQUIREMENT OF PARAGRAPH (A), A CHARTER SCHOOL MAY LIMIT ADMISSION TO A PARTICULAR GRADE LEVEL OR AREAS OF CONCENTRATION OF THE SCHOOL SUCH AS MATHEMATICS, SCIENCE OR THE ARTS. A CHARTER SCHOOL MAY ESTABLISH REASONABLE CRITERIA TO EVALUATE PROSPECTIVE STUDENTS WHICH SHALL BE OUTLINED IN THE SCHOOL CHARTER.
- (c) A charter school may not discriminate in its admission policies or practices on the basis of intellectual ability, except as follows: ADMISSION CRITERIA MAY NOT INCLUDE MEASURES OF ACHIEVEMENT OR APTITUDE.
- ~~(1) The criteria may be used to assess intellectual ability relating solely to the charter school's particular grade level or area of concentration or targeted population group composed of at risk students.~~

~~(2) The criteria may include prerequisites specified in the school's charter that directly relate to the school's mission and assess whether the child will be able to benefit from the offered program.~~

~~(3) The criteria may not include measures of achievement or aptitude such as intelligence tests, standardized achievement tests and scores resulting from testing associated with reading and math programs.~~

§711.8. Education records.

(a) When the educational records for a child with a disability are transferred from a public agency, private school, approved private school or private agency, to a charter school, the public agency, private school, approved private school or private agency from which the child transferred shall forward ALL OF the child's educational records, including the most recent IEP, within 10 days after the public agency, private school, approved private school or private agency is notified in writing that the child is enrolled in a charter school.

(b) When the educational records for a child with a disability are transferred to a public agency, private school, approved private school or private agency from a charter school, the charter school shall forward the child's educational records, including the most recent IEP, within 10 school days after the charter school is notified in writing that the child is enrolled at another public agency, private school, approved private school or private agency.

(C) CHARTER SCHOOLS SHALL MAINTAIN EDUCATIONAL RECORDS FOR CHILDREN WITH DISABILITIES CONSISTENT WITH THE REGULATIONS FOR THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974 AT 34 CFR PART 99.

§711.9. Payments.

(a) The child's school district of residence shall provide the special education payment required by section 1725-A(a)(3) of the act (24 P.S. §17-1725-A(a)(3)) to the charter school either when:

(1) A child with an IEP from a Pennsylvania school entity begins attending the charter school.

(2) The charter school has identified an enrolled child as a child with a disability under the IDEA, has developed an IEP for the child, and notifies the district of residence of the identification.

(b) When a child for whom a charter school received the special education payment required under section 1725-A(a)(3) of the act enrolls in another public agency, private school, approved private school or private agency in this Commonwealth, the charter school shall immediately inform the child's school district of residence that its payment responsibilities under section 1725-A(a)(3) of the act have ceased.

**IDENTIFICATION AND EVALUATION**

§711.21. Child find.

(a) To enable the Commonwealth to meet its obligations under 34 CFR 300.125 (relating to child find), each charter school shall establish written policies and procedures to ensure that all children with disabilities that are enrolled in the charter school, and who are in need of special education and related services, are identified, LOCATED and evaluated.

(b) Each charter school's written policy shall include:

(1) Public awareness activities sufficient to inform parents of children applying to or enrolled in

the charter school of available special education services and programs and how to request those services and programs.

(2) Systematic screening activities that lead to the identification, LOCATION and evaluation of children with disabilities enrolled in the charter school.

§711.22. Evaluation and ~~r~~Reevaluation.

(A) THE PARENT OR TEACHER OF A CHILD WITH A DISABILITY HAVE THE RIGHT UNDER 34 CFR PART 300 TO REQUEST A REEVALUATION AT ANY TIME.

(B) Charter schools shall reevaluate students with disabilities AT LEAST ONCE every 3 years; unless a shorter period is required by existing law.

(C) CHILDREN WITH DISABILITIES WHO ARE IDENTIFIED AS MENTALLY RETARDED SHALL BE REEVALUATED AT LEAST ONCE EVERY 2 YEARS.

### IEP

§711.41. IEP.

When a child with aN IEP disability transfers to a charter school from another public agency, private school, approved private school or private agency in this Commonwealth, the charter school is responsible upon enrollment for ensuring that the child receives special education and related services in conformity with an THE IEP, either by adopting the existing IEP or by developing a new IEP for the child IN ACCORDANCE WITH THE REQUIREMENTS OF IDEA.

§711.42. Transportation.

(A) The child's school district of residence is responsible for ensuring that transportation to and from the charter school, when recommended as a related service in an IEP or as an accommodation under Section 504, is provided at no cost to the parent or charter school. A CHILD WITH A DISABILITY WHO RESIDES IN THE SCHOOL DISTRICT IN WHICH THE CHARTER SCHOOL IS LOCATED, OR WHO IS A RESIDENT OF A SCHOOL DISTRICT WHICH IS PART OF A REGIONAL CHARTER SCHOOL, SHALL BE PROVIDED TRANSPORTATION TO THE CHARTER SCHOOL ON THE SAME TERMS AND CONDITIONS AS TRANSPORTATION IS PROVIDED TO STUDENTS ATTENDING THE SCHOOLS OF THE DISTRICT. NONRESIDENT STUDENTS SHALL BE PROVIDED TRANSPORTATION UNDER §1361 OF THE PUBLIC SCHOOL CODE OF 1949 (24 P.S. §13-1361).

(b) This chapter does not prohibit a charter school and a school district from entering into agreements regarding the provision of transportation as a related service or accommodation to children with disabilities.

§711.43. Educational placement.

(a) When the IEP team at a charter school places a child in another public agency, private school, approved private school or private agency, and the parents choose to keep their child enrolled in the charter school, the charter school is obligated to pay for that placement.

(b) When a charter school places a child in an approved private school, the charter school shall be treated as the child's school district of residence for purposes of calculating cost of tuition and maintenance at the approved private school under section 1376(a) of the Public School Code of

1949 (24 P. S. § 13-1376(a)).

§711.44. ESY.

To implement 34 CFR 300.309, the State ESY Standards are as follows:

(1) The following words and terms, when used in this section, have the following meanings.

unless the context clearly indicates otherwise:

Recoupment--Recovery of skills or behavioral patterns, or both, specified on the IEP to a level demonstrated prior to the interruption of educational programming.

Regression--Reversion to a lower level of functioning evidenced by a measurable decrease in the level of skills or behaviors which occur as the result of an interruption in educational programming.

(2) ~~An eligible student~~ A CHILD with disabilities is entitled to ESY services if regression caused by interruption in educational programming and limited recoupment capacity, or other factors, makes it unlikely that the student will ~~attain or~~ maintain skills and behavior relevant to established IEP goals and objectives.

(3) Factors such as those listed in this section shall be considered by the IEP teams whenever relevant, but no single factor is determinative of need for ESY services.

(4) Factors in addition to recoupment and regression include:

(i) The extent to which the student has mastered and consolidated an important skill or behavior at the point when educational programming would be interrupted.

(ii) The extent to which a skill or behavior is particularly crucial to reaching the goals of self-sufficiency and independence from caretakers.

(iii) The extent to which successive interruptions in educational programming reduce a student's motivation and trust and may lead to an irreversible withdrawal from the learning process.

(5) Charter schools are responsible for considering the need for ESY services for each eligible student, including each student placed by the charter school in an approved private school or other placement site not operated by the charter school.

(6) Consideration of the need for ESY services shall occur at the IEP team meeting to be convened at least annually, or more frequently if conditions warrant consistent with Federal requirements in 34 CFR 300.343(c) (relating to IEP meetings). Consideration means that ESY services are raised and discussed at the IEP team meeting. In making a determination that a student is eligible for ESY services, the IEP team shall rely on criteria in this section and applicable judicial decisions.

(7) ~~When considering the~~ THE need for ESY services, IS MOST APPLICABLE ~~the IEP team shall pay particular attention to~~ students with disabilities that are thought of as severe (that is, students with autism/pervasive developmental disorder, serious emotional disturbance, severe levels of mental retardation, degenerative impairments with mental involvement and severe multiple disabilities) and to IEP goals that are associated with self-sufficiency and independence from caretakers. IEP teams may not limit their consideration of need for ESY services to students with particular types or degrees of disability, particular student goals, particular methods of programming provided during the regular school term, or the

availability of retrospective data on regression and recoupment.

(8) ESY services shall be designed to attain or maintain skills and behaviors relevant to established IN IEP goals and objectives.

(9) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential, and year-to-year progress may include the following:

(i) Progress on goals in consecutive IEPs.

(ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

(v) Observations and opinions by educators, parents and others.

(vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.

(10) Documentation that ESY services have been considered shall be made on each eligible student's IEP. When determined to be necessary by the IEP team, ESY services shall be reflected on a student's IEP.

(11) The need for ESY services will not be based on any of the following:

(i) The desire or need for day care or respite care services.

(ii) The desire or need for a summer recreation program.

(iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of FAPE (a Free Appropriate Public Education.)

### PROCEDURAL SAFEGUARDS

#### §711.61. Suspension and expulsion.

- (a) For purposes of this chapter, the terms "suspension" and "expulsion" have the meanings as set forth in § 12.6 (relating to exclusions from school).
- (b) Charter schools shall comply with Chapter 12 (relating to students) AND 34 CFR §§300.519-529.
- (c) Any removal from the current educational placement is a change of placement for a student who is identified with mental retardation.
- (d) When a child with a disability has been expelled from a charter school, the charter school shall provide the child with a disability with the education required under §12.6(e) until the charter school is notified in writing that the child is enrolled in another public agency, private school, approved private school or private agency.

#### §711.62. Procedural safeguards.

(A) THE CHARTER SCHOOL SHALL ENSURE THAT PROCEDURES ARE ESTABLISHED AND IMPLEMENTED TO ALLOW PARTIES TO DISPUTES REGARDING ANY MATTER DESCRIBED IN 34 CFR §300.503(A)(1), TO RESOLVE THE DISPUTE THROUGH A MEDIATION PROCESS THAT, AT A MINIMUM, MUST BE AVAILABLE

WHENEVER A HEARING IS REQUESTED UNDER 34 CFR §§300.507 OR 300.520-300.528.

(B) The following apply to coordination services for special education and Section 504 hearings and to hearing officers and appellate hearing officers:

- (1) The Secretary may contract for coordination services in support of hearings conducted by local charter schools. The coordination services shall be provided on behalf of charter schools and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.
- (2) If a charter school chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a charter school which receives a request for an impartial due process hearing shall forward the request WITHIN 5 DAYS OF ITS RECEIPT to the entity providing coordination services under paragraph (1) without delay.
- (3) The Secretary will contract for the services of panels of appellate hearing officers and may compensate appellate hearing officers for their services. The compensation does not cause the appellate hearing officers to become employees of the Department.
- (4) Neither a hearing officer nor an appellate hearing officer may be an employee or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PA 17126-0333

*SAMPLE OF Response  
to public commentators*

August 4, 2000

~~Joseph McMahon  
291 Riverlew Road  
King of Prussia, PA 19406~~

~~Dear Mr. McMahon:~~

Thank you for your letter of July 13, 2000 on proposed regulations chapter 711.

Pursuant to the provisions of the Regulatory Review Act, copies of your comments are being provided to the Independent Regulatory Review Commission (IRRC) and the chairmen of the House and Senate Education Committees.

Your comments will be considered carefully as the Department develops the final-form of these regulations.

If you would like to receive information on the final-form of these regulations when it becomes available, please contact me at:

Office of Educational Initiatives  
333 Market Street, 10<sup>th</sup> Floor  
Harrisburg, PA 17126-0333  
Phone: (717) 705-2343  
Fax: (717) 705-0708  
TTY: (717) 783-8445

Sincerely Yours,

Dr. Dale Baker  
Acting Director  
Office of Educational Initiatives

Cc: Honorable James J. Rhoades, Senate Chairman  
Honorable Allyson Y. Schwartz, Senate Minority Chairperson  
Honorable Jess M. Stairs, House Majority Chairman  
Honorable Nicholas Colafella, House Democratic Chairman  
Robert Nyce, IRRC  
Daniel Myers, Assistant Counsel, PDE  
Frances Warkomski, Director Bureau of Special Education, PDE  
Dale Baker Acting Director PDE

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

CHAPTER 711. CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN WITH  
DISABILITIES

LIST OF PUBLIC COMMENTATORS

July 8, 2000-August 8, 2000

Pennsylvania State Education Association  
Legal Division  
400 North Third Street  
Harrisburg, PA 17105

Pennsylvania School Boards Associations, Inc.  
774 Limeclin Road  
New Cumberland, Pennsylvania 17070-2398

Education Law Center  
The Philadelphia Building  
1315 Walnut Street 4<sup>th</sup> floor  
Philadelphia, PA 19107-4717

Chenzie Grignano  
[grignano@duq.edu](mailto:grignano@duq.edu)

Joseph McMahon  
291 River Rd  
King of Prussia, PA 19406

Irene Solomon Greenstone  
6327 Phillips Avenue  
Pittsburgh, PA 15217

Northeast Pennsylvania Center for Independent Living  
Lower Level – IBEW Building  
431 Wyoming Ave  
Scranton, PA 18503-122B

Lorraine A Ratajczak  
1429 Center Street  
West Chester, PA 19382-6528

The ARC of Blair County  
Becky Schtz Recreation Bldg.  
P.O. Box 927  
Altoona, Pennsylvania 16603

NOTE: ALL OF THESE  
people were mailed  
A copy of the final-form  
of Ch. 711 on 2/6/01



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION  
333 MARKET STREET  
HARRISBURG, PENNSYLVANIA 17126-0333

SECRETARY OF EDUCATION

717 787-5820 (TEL)  
717 787-7222 (FAX)  
717-783-8445 (TTY)

Mr. Robert E. Nyce  
Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of the final-form of Department of Education regulations 22 Pa. Code, Chapter 711 (charter school services and programs for children with disabilities) (regulatory package #6-269) for review by the Commission pursuant to the provisions of section 5(c) of the Regulatory Review Act.

The Regulatory Review Act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The Department of Education will provide the Commission with any assistance it requires to facilitate a thorough review of these regulations.

Please let me know if there is anything that you need.

Sincerely,

A handwritten signature in black ink that reads "R. J. Tomalis".

Ronald J. Tomalis  
Executive Deputy Secretary

Enclosure

cc: Gregory E. Dunlap, Esquire  
Linda C. Barrett, Esquire

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 6-269  
 SUBJECT: Charter School Services & Programs for Childrens with Disabilities  
 AGENCY: DEPARTMENT OF EDUCATION

RECEIVED  
 2001 FEB -6 PM 3:55  
 REGULATORY  
 REVIEW COMMISSION

**TYPE OF REGULATION**

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
2-6-01	<i>Bob Stuck</i>	HOUSE COMMITTEE ON EDUCATION
2-6-01	<i>Paikki O'Leary</i>	
	<i>J. Guiney 2/6</i>	SENATE COMMITTEE ON EDUCATION
	<i>Synda Richardson 2/6</i>	
	<i>Alisa E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

February 6, 2001