

# Regulatory Analysis Form

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EDUCATION  
REVIEW COMMISSION



IRRC Number: 2129

(1) Agency

Education

(2) I.D. Number (Governor's Office Use)

(3) Short Title

Charter School Services and Programs For Children With Disabilities

(4) PA Code Cite

22 Pa. Code, Chapter 703

(5) Agency Contacts & Telephone Numbers

Primary Contact: Dr. Dale Baker  
Office of Educational Initiatives  
(717) 705-2343

Secondary Contact:

(6) Type of Rulemaking (check one)

Proposed Rulemaking   
Final Order Adopting Regulation  
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No   
Yes: By the Attorney General  
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The proposed regulations are promulgated to facilitate compliance with Federal statute, regulation and court decrees that apply in the Commonwealth to children with disabilities. The purposes of proposed Chapter 703 are to develop procedures for special education in charter schools and adopt by reference applicable Federal regulations. The proposed 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).

**Regulatory Analysis Forum**

(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 proposed 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 proposed regulations are mandated by a provision contained in the Charter School Law of 1997, (24 PS 17-1732-A (c)(2)). These proposed 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 proposed 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 proposed 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 proposed 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 proposed 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.

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(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 proposed 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 proposed 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 proposed 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.

Preliminary regional hearings were conducted in Harrisburg, Philadelphia and Pittsburgh. A variety of groups representing parents, local school districts and special educational advocacy groups attended the public hearings.

(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 proposed 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.

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(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 proposed 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 conflicts. And they will have access to training opportunities and program support through the Instructional Support Centers 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 proposed regulations. There are no new legal, accounting or consulting procedures incurred as a result of the proposed 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 proposed 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 required 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.

(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 proposed 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 proposed regulations.

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

No public hearings or informational meetings beyond the public roundtables referenced in response 16 are scheduled. Opportunity for written public comment will be available upon publication in the Pennsylvania Bulletin.

**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.

No. Reporting/record-keeping requirements regarding enrollment, educational records, identification and evaluation of students, IEP and general provisions and supervision of special education students will not change due to the proposed regulations.

(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 proposed regulations specifically meet the needs of special education students enrolled in charter schools. Specific provisions in the proposed 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 proposed regulations will become effective upon final publication in the Pennsylvania Bulletin. They will be applicable to the 2000-2001 school year.

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

The Department of Education will review the effectiveness of Chapter 703 every four years.



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Copy below is hereby approved as to form and legality. Attorney General

*[Signature]*  
BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

JUN 14 2000

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Education

(AGENCY)

006-269

DOCUMENT/FISCAL NOTE NO. \_\_\_\_\_

DATE OF ADOPTION: \_\_\_\_\_

BY: *[Signature]*

Secretary of Education

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

*[Signature]*

4/27/00

DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel, Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

Proposed Rulemaking

Department of Education  
Title 22 - Education  
Chapter 703

Charter School Services and Programs for Children with Disabilities

**Preamble**  
**Department of Education**  
**22 Pa. Code – Education**  
**Chapter 703: Charter School Services and Programs for Children with Disabilities**

The Department of Education proposes to add a new Chapter 703 which relates to charter school services and programs for children with disabilities, as set forth at Annex A, under authority of §1701-A —1732-A of the Public School Code of 1949 (24 P.S. 17-1701-A – 17-1732-A).

**Purpose:**

Under 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. The proposed regulations can reduce the cost by providing children with a more flexible educational environment that can respond to a child's educational needs. These proposed regulations are promulgated to facilitate compliance with Federal statute, regulation, and court decrees that apply in the Commonwealth to children with disabilities. The purposes of proposed Chapter 703 are to develop procedures for special education in charter schools and adopt by reference applicable Federal regulations. The proposed regulations will assist charter schools with compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities.

**Requirements of the Regulations:**

These proposed 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 proposed regulations adopt provisions of specific Federal law (IDEA/504) that apply to special education in charter schools. These proposed regulations also set forth standards applicable to enrollment criteria, timelines for transfer of records between schools, and payments for special education between the school district of residence and the charter schools.

Proposed Chapter 703 contains requirements for child find duties in charter schools as well as evaluation and reevaluation of students, Individualized Education Programs (IEP), transportation, educational placement, and extended school year. The procedural safeguards section outlines requirements for suspension and expulsion and the charter school's access to the due process system.

**Cost and Paperwork Estimates:**

The proposed 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 of Education, 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 Intermediate Units and the Instructional Support Centers. 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 proposed regulations will become effective upon final publication in the Pennsylvania Bulletin.

**Sunset Date:**

Because the Department will review the effectiveness of Chapter 703 every four years, no sunset date is necessary.

**Regulatory Review:**

Under Section 5(a) of the Regulatory Review Act, (71 P.S. §745.5(a)), the Department submitted a copy of the proposed regulations on June 26, 2000 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the regulations, the Department has provided the Commission and Committees with a copy of a detailed Regulatory Analysis Form in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If the Committees have any objections to any portion of the proposed regulations, they will notify the Department within 20 days from the close of the public comment period. If the Commission has any objections to any portion of the proposed regulations, it will notify the Department within 10 days of the close of the Committees' review period. Such notification shall specify the regulatory review criteria which have not been met by that portion. The act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

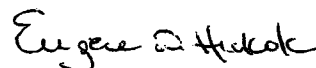
**Public Comments and Contact Person:**

Interested persons are invited to submit written comments, suggestions, or objections regarding proposed Chapter 703 to Dr. Dale Baker, Office of Educational Initiatives, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the Pennsylvania Bulletin. Persons needing additional information regarding this proposal may contact Dr. Baker.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Dr. Baker at 717-705-0930 or TDD at 717-783-8445.

Alternative formats of these proposed regulations (e.g. Braille, large print, or cassette tape) can be made available to members of the public upon request to Dr. Baker

By the Department of Education:



Eugene W. Hickok  
Secretary of Education

ANNEX A

22 Pa. Code, Chapter 703

PROPOSED REGULATIONS

CHAPTER 703: CHARTER SCHOOL SERVICES AND PROGRAMS FOR

CHILDREN WITH DISABILITIES

GENERAL PROVISION AND SUPERVISION

- §703.1. Definitions.
- §703.2. Purpose and intent.
- §703.3. Incorporation of Federal laws.
- §703.4. Supervision.
- §703.5. Personnel.
- §703.6. Annual report.
- §703.7. Enrollment.
- §703.8. Education records.
- §703.9. Payments.

IDENTIFICATION AND EVALUATION

- §703.21. Child find.
- §703.22. Evaluation and reevaluation.

IEP

§703.41. IEP.

§703.42. Transportation.

§703.43. Educational placement.

§703.44. ESY.

PROCEDURAL SAFEGUARDS

§703.61. Suspension and expulsion.

§703.62. Procedural safeguards.



## GENERAL PROVISION AND SUPERVISION

### §703.1. 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 Charter School Law (24 P.S. §§17-1701-A to 17-1732-A). The term also includes regional charter schools as defined by the Charter School Law.

Child with a disability - As defined at 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.

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).

**§703.2. 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 at 34 CFR Part 300 (relating to assistance to states for the education of children), or Section 504 and its implementing

regulations at 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.

**§703.3. Incorporation of Federal laws.**

- (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 at 34 CFR Part 300 (relating to assistance to states for the education of children) or Section 504 and its implementing regulations at 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, 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) is incorporated by reference as follows: §§300.4-300.26, §300.28-300.29, §300.300, §§300.302-300.309, §§300.312-300.313, §§300.320-300.321, §300.340, §§300.342-300.346, §300.347(a)-(b), §§300.348-300.350.

§300.403, §§300.500-300.515, §§300.519-300.529, §§300.531-300.536,  
§§300.540-300.543, §§300.550-300.553, §§300.560-300.573, and  
§300.576.

- (c) Except as expressly provided in this chapter, 34 CFR Part 104 is  
incorporated by reference as follows: §104.3(f), §104.3(h)-104.3(j),  
§104.3(k)(2), §104.3(l), §104.4-104.8, §§104.11-104.12, §§104.21-104.37.

**§703.4. 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.
- (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.
- (c) Charter schools shall comply with the Department's compliance monitoring  
requirements, shall provide all information requested by the Department, and  
shall complete all corrective action required by the Department.

**§703.5. 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).

**§703.6. 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 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 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.

**§703.7. Enrollment.**

(a) A charter school shall not discriminate in its admission policies or practices on the basis of 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 shall not discriminate against an otherwise qualified handicapped child because of his/her handicap.

(c) A charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, except as provided below.

- (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.

**§703.8. 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 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.

**§703.9. 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

#### §703.21. 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 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 and evaluation of children with disabilities enrolled in the charter school.

**§703.22. Evaluation and reevaluation.**

(a) Charter schools shall reevaluate students with disabilities every 3 years, unless a shorter period is required by existing law.

IEP

**§703.41. IEP.**

When a child with a 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 IEP, either by adopting the existing IEP or by developing a new IEP for the child.

**§703.42. 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.
  
- (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.

**§703.43. 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)).

**§703.44. ESY**

In order to implement 34 CFR §300.309, the State ESY Standards are as follows:

- (a) 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.

(b) An eligible student 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.

(c) 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.

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

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

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

(3) 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.

- (e) 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.
- (f) 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 at 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.
- (g) When considering the need for ESY services, 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.

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

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

(1) Progress on goals in consecutive IEPs.

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

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

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

- (5) Observations and opinions by educators, parents and others.
- (6) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.
- (j) 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.
- (k) The need for ESY services will not be based on any of the following:
- (1) The desire or need for day care or respite care services.
  - (2) The desire or need for a summer recreation program.
  - (3) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.



PROCEDURAL SAFEGUARDS

**§703.61. Suspension and expulsion.**

- (a) For purposes of this chapter, the terms “suspension” and “expulsion” have the meanings as set forth in 22 Pa. Code §12.6 (relating to exclusions from school).
  
- (b) Charter schools shall comply with Chapter 12 (relating to students).
  
- (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 22 Pa. Code §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.

**§703.62. Procedural safeguards.**

(a) 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 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 employes of the Department.

- (4) Neither a hearing officer nor an appellate hearing officer may be an employe 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, PENNSYLVANIA 17126-0333

SECRETARY OF EDUCATION

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

June 27, 2000

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

Dear Mr. Nyce:

Enclosed are copies of proposed regulations for review by your Commission pursuant to the Regulatory Review Act. The proposed regulations, Chapter 703, relate to Charter School Services and Programs for Children with Disabilities.

The Regulatory Review Act provides that the Commission must, within 10 days from the closing date of the Committees' review period, submit comments to the Department regarding the regulations. We anticipate that the regulations will be published in the Pennsylvania Bulletin on July 8, 2000.

The Department of Education will provide your Commission with any assistance you may require to facilitate a thorough review of these proposed regulations.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in cursive script that reads "Eugene W. Hickok".

Eugene W. Hickok

cc: Linda Barrett, Esq.

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

I.D. NUMBER: 6-269

SUBJECT: Charter School Services & Programs for Children with Disabilities

AGENCY: DEPARTMENT OF EDUCATION

**TYPE OF REGULATION**

- X Proposed Regulation
- 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

RECEIVED  
 2000 JUN 27 PM 3:50  
 INDEPENDENT REGULATORY REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
6/27		HOUSE COMMITTEE ON EDUCATION
6/27		HOUSE COMMITTEE ON EDUCATION
6/27		SENATE COMMITTEE ON EDUCATION
6/27		SENATE COMMITTEE ON EDUCATION
6/27		INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
6/27/00		LEGISLATIVE REFERENCE BUREAU

June 16, 2000