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**TESTIMONY OF
NANCY A. HUBLEY, ESQ
EDUCATION LAW CENTER-PA
ON THE PROPOSED
REGULATIONS FOR CHARTER SCHOOL SERVICES AND PROGRAMS
FOR CHILDREN WITH DISABILITIES**

Good Afternoon. My name is Nancy Hubley. I am an attorney with the Education Law Center-PA and Director of the Pittsburgh office.

The Education Law Center is a not-for-profit, public interest law firm that represents children and families – including many families of children with disabilities – on issues of public education. We appreciate the opportunity to present oral testimony on the Proposed Regulations for Charter School Services and Programs for Children with Disabilities.

The Education Law Center submits this additional testimony to supplement the extensive written comments we submitted to the Pennsylvania Department of Education on August 28, 2000. We have attached copies here for your reference.

The Education Law Center continues to support PDE's effort to promulgate regulations in this area, but have serious concerns about the Proposed Regulations. They have major flaws - including some significant legal problems. As written, they are confusing and misleading and fail to grapple with some of the most significant issues facing children with disabilities and charter schools in Pennsylvania.

We do not believe tinkering with the words and phrases of these Proposed Regulations can rectify these deficiencies. **We recommend the Department simply start over.** We urge the Department to begin a process that invites critical and creative thinking about how these regulations can ensure that charter schools admit and educate children with disabilities consistent with federal disability laws and how those practices can be monitored and documented by the Department.

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During this past year, I have worked with numerous parents of students with disabilities involved with charter schools in Western Pennsylvania and across the State. I have also provided training seminars to charter school developers, community organizations and parents groups on issues effecting the education of children with disabilities enrolled in charter schools. The Education Law Center has heard from over 300 individuals seeking advice and assistance with problems involving charter schools. We have also provided formal representation to dozens of these families. Some issues are easy to resolve, but many are quite complex, involving difficult interpretations of federal and state law or tough policy decisions. State regulations in this area would provide much needed guidance.

It is essential that Pennsylvania have regulations that provide clear, easy to understand information about the requirements of federal disability laws. The regulations should provide explicit guidance on how charter schools are to meet these obligations consistent with Pennsylvania's Charter School Act – not only to ensure compliance but more importantly, to ensure that children with disabilities are *educated* in charter schools.

Today, I would like to share some of our experiences with charter schools and explain some of our specific concerns about the Proposed Regulations in four major areas: enrollment; accountability; discipline; and personnel.

I. ENROLLMENT

- This is a complex and important issue. We have heard from parents across the state that once a charter school understands their child has a disability and needs special education services, they are discouraged from enrolling their child. Charter schools tell parents, “Your child won’t fit in here.” “We cannot provide those services, you’ll have to go back to your district.” Others simply ask, “Does your child have an IEP?” and try to counsel the parent to make a different choice.
- We recommend that the regulations expressly *prohibit* charter schools from counseling or otherwise discouraging prospective students with disabilities from enrolling in the charter school solely because the student has a disability or requires a particular special education service.
- Even well-meaning charter schools are not clear about what criteria, if any, they can use to determine whom they will admit. The provisions on **enrollment** in Proposed regulation § 711.7 are confusing and inconsistent with Act 22 and federal law. The Proposed regulations give charter schools the impression they can exclude children with disabilities, and perhaps other children as well, if the school determines that the child will be unable to “benefit from the offered program.” The proposed regulations further allow charter schools to establish certain prerequisites to admission that are not mentioned anywhere in Act 22.

- We offer alternative language in our August written comments to help make this area more clear.
- We recommend that these regulations further expressly prohibit charter schools from excluding children with disabilities solely because of their disability or because they need a particular special education service.
- These regulations should encourage charter schools to foster an attitude that all children are welcome at their school regardless of their disability or the types of services they require.
- We also urge the Department to address emerging issues of federal disability law where charter schools are being created and operated exclusively for children with disabilities.

II. ACCOUNTABILITY

- The Department has an obligation under the Individuals with Disabilities Education Act (IDEA) to demonstrate that children with disabilities enrolled in charter schools are being educated consistent with the IDEA. The Department must supervise charter schools and hold them accountable for such compliance.
- We support the Department's efforts to carry out its supervisory responsibilities through monitoring and compliance activities – but this is not enough.
- We are aware of a charter school that has yet to provide any special education services to students with IEPs who attend the school. Two complaints have been filed with the Division of Compliance. The School has been ordered to provide compensatory education services, but the students are still without appropriate services. DOC is investigating a second complaint.
- Another charter school has taken a full school year to “get up to speed” to try to comply with federal disability laws. Students with disabilities in this school have gone more than a year without essential special education services. This resulted in at least one student having to move to a more restrictive setting – at charter school expense. The charter school also faced serious claims for compensatory educational services and attorney's fees.
- Remedying non-compliance is a poor substitute for prior preparation and planning.
- We are aware of many charter schools that have opened their doors without any real understanding of their legal obligations to educate children with disabilities.

Many districts, including Philadelphia, are approving charter schools without any documentation that the school is willing and able to educate children with disabilities consistent with federal disability laws.

- These regulations should require charter schools to submit a Plan as part of their charter application that describes how they will go about educating children with disabilities consistent with federal disability laws.
- If charter schools are required to demonstrate a Plan for meeting the needs of children with disabilities as part of their charter application, they may be in a better position to fulfill their legal obligations once they open.
- Not only will such a plan help a charter school carry out the education of children with disabilities, but it will further help the Department fulfill *its* obligation to demonstrate to the federal Secretary of Education that children with disabilities are being educated consistent with federal disability laws.
- The regulations should expressly require the Plan to include data and other documentation to support the charter school's assurances of non-discrimination and compliance with federal disability law.
- Proposed regulation, §711.4 - Supervision is the only section of the proposed regulations to make reference to the Department's supervision and monitoring of charter schools' compliance with federal disability law. It states that the Commonwealth, through PDE, will provide "general supervision" to ensure compliance.
- As our previous examples demonstrate, general supervision is not enough.
- We further recommend that the regulations include provisions that mandate that the Annual Report required by § 1728-A(B) of Act 22 also include data and other documentation to support the school's assurances that it is in compliance with federal disability laws.
- The regulations should also mandate that the "comprehensive review" conducted by the local school board pursuant to § 1728-A(A) require an opportunity for public comment on whether the charter school is meeting its obligations under federal disability laws.

III. DISCIPLINE

- The provisions on **discipline** at § 711.61 contain serious omissions and errors. These provisions mislead charter schools about the scope of the legal mandates applicable to children with disabilities who are being suspended and expelled.
- This section does not provide any guidance about the obligations of charter schools regarding suspensions of students with disabilities. For example, it makes no mention of the fact that serial suspensions can be considered a change in placement. It also fails to spell out what Chapter 12 of the Pennsylvania Code requires when any student is disciplined.
- This section makes no mention of the need for a manifestation determination prior to removing a child for more than 10 days in a row or prior to administering a suspension that could create a “change in placement” for the child.
- This section completely fails to point out that charter schools must conduct a functional behavioral assessment if it is proposed that a child’s placement be changed for disciplinary reasons.
- This section omits any reference to the legal obligations charter schools have when disciplining a child who is thought-to-be disabled. Such guidance is sorely needed. For example, one parent who was represented by our office had made several oral requests for a special education evaluation to the CAO of a charter school due to her seven-year-old child’s behavior problems in school. Those requests went unanswered, and her child was suspended numerous times. When this parent submitted a written request for a special education evaluation to the school, the parent received a letter the next day from the CAO informing the parent the school wanted to expel her child. It took a complaint filed by our office with the Division of Compliance to compel the school to respond to the parent’s evaluation request.

Another charter school told the parent of a kindergarten student that the student would not be allowed to return to school unless and until the parent located a Therapeutic Staff Support (TSS) worker from the mental health system for her child. Not only did the school fail to evaluate this child, who clearly was having emotional problems in school, when this office contacted the school, the CAO informed us that she would move to have the child expelled if the parent insisted that he return to school without a TSS worker. As a result, the parent chose to keep her child out of school.

- Finally, this section erroneously leads charter schools to believe that their obligation to provide educational services to expelled students with disabilities is

limited to that imposed by Chapter 12. This is not true. The IDEA expressly entitles children with disabilities who are expelled from school to continue to receive a free appropriate public education. *See* 20 U.S.C. § 1412(a)(1)(A).

- This provision needs to be completely rewritten to include a detailed description of how charter schools shall discipline children with disabilities consistent with the mandates of Chapter 12 and the IDEA.
- The regulations should mandate the use of positive rather than negative behavior management techniques, similar to the requirements set forth in 22 Pa. Code §§ 14.36 and 342.36.

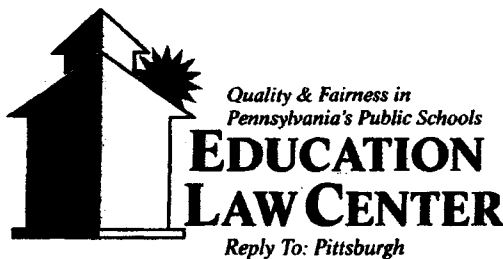
IV. PERSONNEL

- The regulations should make clear that the education of a child with a disability in a charter school is driven by the child's IEP and should be supervised by personnel certified in special education, regardless of who is delivering the educational service.
- We are aware of charter schools where there are no special education supervisors on staff or available by contract - to ensure proper development or implementation of IEPs. As a result, programs are inappropriate and necessary services are being denied.
- Section 711.5 – Personnel. This section of the Proposed Regulations is unclear and misleading. Even if one is familiar with all of the references to the Charter School Act, there is no specific guidance provided about what constitutes "appropriate certification." Some charter schools are misreading this section to mean that only special education teachers can teach children with disabilities, while others are reading it to mean that non-certified teachers can provide special education services.

If we truly expect charter schools to comply with federal disability laws, we should make crystal clear what they mean. We urge you to draft Proposed regulations that provide express guidance and explanations about how these laws should be implemented within charter schools, consistent with Act 22.

We strongly recommend that the Department return to the “drawing board” – and begin again.

Thank you for listening.



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**Comments on Proposed Regulations
For Charter Schools Services and Programs for Children with Disabilities
22 Pa. Code Chapter 711**

The Education Law Center is a not-for-profit, public interest law firm that represents children and families – including many families of children with disabilities – on issues of public education. We appreciate the opportunity to comment on these proposed regulations for charter schools.

Charter school developers and operators in Pennsylvania often have little knowledge about the rights of students with disabilities and the mandates of federal disability laws. They are frequently taken by surprise when they learn of their obligations to children with disabilities. Too often, this awareness comes after the first day of school when children with disabilities have already been excluded or are going without appropriate programs.

We support the Department's effort to promulgate regulations to put charter schools on notice – so that even before they develop a charter, and long before the first day of school, they are aware of their legal obligations to children with disabilities. Regulations that provide information about the requirements of federal disability laws and explicit guidance on how to meet these obligations consistent with Pennsylvania's Charter School Law (Act 22) are essential.

These proposed regulations, however, have major flaws – including some serious legal problems – and require significant reworking. The following are among our major concerns:

- The provisions on **enrollment** are inconsistent with Act 22 and federal law, and will not serve the purpose of assuring non-discrimination in the admissions process. We have proposed a rewrite.
- The provisions on **discipline** also contain serious omissions and errors and should be rewritten.

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- There should be a requirement that charter schools develop and maintain a **special education plan**. This would greatly increase the likelihood that, before even commencing operations, those responsible for the school have thought through and planned for the needs of children with disabilities. Some form of special education plan is also, in our view, required by federal law.
- The federal regulations that are incorporated by reference in these proposals should be **set out in full**.

SPECIFIC COMMENTS

We find the proposed regulations seriously deficient and express the following specific concerns:

1. **The regulations proposed by the Department are misleading, incomprehensible and totally unusable by charter schools**

Federal disability laws, including the Individuals with Disabilities Education Act (IDEA), Section 504 (504) and the Americans with Disabilities Act (ADA) impose extensive legal obligations on charter schools. (See Jay P. Heubert, *Schools Without Rules? Charter Schools, Federal Disability Law, and the Paradoxes of Deregulation*, 32 HARV.C.R.-C.L.L. REV. 301 (1997)). The proposed regulations reduce these significant legal obligations to numerical references to federal laws, without explanation or guidance. When the language of federal disability laws is actually included in the regulations, it is often misstated, presented out of context, or simply unclear.

For example, readers of the proposed regulations are asked to make sense of § 711.3 that states:

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) and (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.

No one could seriously maintain that a provision of this sort gives clear guidance to anyone – especially when the regulations then go on to provide additional bits and pieces that must somehow be integrated with federal law requirements. In these regulations, the main course is elsewhere; the reader gets appetizers and side dishes, and is told to treat it all, somehow, as a full meal.

We think this is a recipe for confusion and non-compliance. If these regulations are adopted in this form, we are confident that, five and ten years from now, compliance officers in the Department of Education will still be pointing charter school personnel to sections of federal law that they have – quite understandably – overlooked. In the meantime, children will have been hurt.

The bottom line is that if we expect people to comply with rules, we should make crystal clear what they are. We strongly recommend that the regulations be re-written to include – whether sequentially, or “side-by-side,” or by some other means – the express language of the federal laws, rather than numerical references. The regulations should further provide guidance and explanations about how these laws should be implemented within charter schools, consistent with Act 22.

It should also be noted that the “incorporation” section quoted above refers only to the IDEA regulations and fails to advise charter schools about significant legal obligations under federal disability laws. For example, in § 711.3 – *Incorporation of Federal Laws*, the regulations fail to make clear that charter schools are obligated to comply with § 504, the ADA, and the IDEA. There is also no mention of the Family Education Rights and Privacy Act (FERPA), which is also applicable to charter schools with implications for children with disabilities

2. Section 711.7 - Enrollment is internally contradictory, overly broad, and inconsistent with the IDEA, the ADA, Section 504 and with Act 22.

Section 711.7, Enrollment, addresses an important and complex issue. We think significant revisions are needed.

In subsection (a), the phrase “on the basis of status as a person with a disability” should be changed to “on the basis of the child’s disability or his or her need for special education or supplementary aids or services.” Charter schools are unlikely to reject children because of their “status,” the far likelier problem is that a child will be rejected because he or she needs a particular service. Also, for clarity, we propose the phrase “deny admission or otherwise discriminate in its admission policies or practices” rather than merely “discriminate.”

Subsection (b), while well-intentioned, is drafted in such a way as to be inconsistent with Act 22. While the Act does allow “reasonable criteria,” it does so only in the context of “limit[ing] admission to a particular grade level or areas of concentration of the school such as mathematics, science or the arts.” Subsection (b), by contrast, appears to create a free-floating option to adopt any “reasonable” criteria at all.¹ Thus, a charter school could (for example) require its applicants to have achieved a certain score

¹While subsection (c) does refer to the issue of “grade level [and] area of concentration,” it is not whether or how that subsection relates to (b).

on standardized tests – a criterion that has nothing to do with grade level or area of concentration, but might well meet a general “reasonableness” standard.² This result would be inconsistent with Act 22. We urge that subsection (b) be revised so as to track the statutory structure more accurately (our proposed language is found at the end of this section).

Subsection (c) also requires revision. In its present form, paragraph (c)(1) can easily be read to allow admission criteria that would require (for example) that the child’s reading scores be at a particular grade level. But while Act 22 permits charters to limit *admission* to a particular grade level (e.g., grades 10-12), we do not interpret this as meaning that schools can exclude children on the ground that they lack the “*intellectual ability*” that the charter considers necessary for achievement at that grade level. Our view, instead, is that if the child has reached 10th grade, she has as much a right as any other 10th-grader to be admitted – even if her intellectual ability or achievement levels are such that she needs a modified or special program. PDE appears to agree with us on this point, since in paragraph (c)(3) it rules out the use of achievement test scores in the admission process.³ Accordingly, paragraph (c)(1) should be eliminated.

Paragraph (c)(2) is also inconsistent with the Act, which simply does not authorize “prerequisites ... that directly relate to the school’s mission,” much less a determination of “whether the child will be able to benefit from the offered program.” Indeed, if the Act *did* authorize such a determination, it would probably conflict with federal law: Section 504 and the ADA require, among other things, an assessment of whether the program can be *modified* to meet the child’s needs – not simply whether the child can benefit from the program as “offered.” Paragraph (c)(2) should be removed.

Finally, in paragraph (c)(3), we urge the addition of the term “grades” after “intelligence tests.”

Our proposal for 711.7 is, then, as follows:

² The provision, in line 2 of subsection (b), that the criteria may not discriminate “against an otherwise qualified handicapped child” does not cure the problem. This language, presumably borrowed from Section 504 and the ADA, offers less protection than does Act 22 itself (unless “otherwise qualified” is read, as it surely will not be, in the sense of 34 CFR 104. – which states that all children of school age are otherwise qualified).

³ We doubt, too, that a contrary interpretation would be consistent with federal law. Under Section 504 and the ADA, a charter school cannot determine the level of “intellectual ability” it considers necessary for its programs and then apply that criterion to all comers. Rather, the school must make accommodations for students with disabilities.

- (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.
 - (b) 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) However, a charter school may not discriminate in its admission policies or practices on the basis of intellectual ability; and admission criteria may not include measures of achievement or aptitude such as intelligence tests, grades, standardized achievement tests and scores resulting from testing associated with reading and math programs.
3. **Section 711.61 - *Suspensions and Expulsions* misleads charter schools about the scope of the legal mandates applicable to children with disabilities who are being suspended or expelled.**

Section 711.61 is inaccurate, misleading and fails to advise charter schools about the full scope of their legal obligations in the area of discipline. This section omits any reference to the legal obligations charter schools have when disciplining a child with a disability or a child who is thought-to-be disabled. In addition, although titled, "suspensions and expulsions," this section does not provide any guidance about the obligations of charter schools regarding suspensions. § 711.61(b) simply states "charter schools must comply with Chapter 12 (relating to students)." Although Chapter 12 is applicable to students with disabilities, the law requires much more when discipline involves a child with a disability. The proposed regulations reduce the IDEA's special disciplinary procedures (set forth in 34 C.F.R. Part 300.519-.529) to a numerical reference in § 711.3 - *Incorporation of Federal laws*, and omit any other reference or explanation alerting charter schools to these significant and complicated legal mandates.

§ 711.61 does not provide any guidance to charter schools about when a disciplinary action constitutes a "change of placement" for a child with a disability or about the concomitant obligations of the charter school, including the provision of procedural safeguards. We recommend this regulations include definitions of a "change of placement," set forth the federal procedural safeguards, and adopt for charter schools the State's standard that defines 15 non-consecutive disciplinary removals from school as a change of placement.

§ 711.61(d) further erroneously leads charter schools to believe that their obligation to provide educational services to expelled students with disabilities is limited to that imposed by Chapter 12. This is not true. The IDEA expressly entitles children with disabilities who are permanently expelled from school to continue to receive a free

appropriate public education. See 20 U.S.C. § 1412(a)(1)(A). The proposed regulation should be clarified with a detailed description of how charter schools shall discipline children with disabilities consistent with the mandates of Chapter 12 and the IDEA.

4. **The regulations fail to establish clear standards for monitoring, supervision and accountability of charter schools.**

A Plan for Special Education

The only section of the regulations to make reference to any supervision, monitoring or accountability for charter schools compliance with federal disability laws is § 711.4 –*Supervision*. Although we support the Department's efforts to "provide general supervision" as required in sub-section (a), we recommend that these regulations further require a charter school to submit, as part of its charter application, a plan for how it will demonstrate compliance with federal disability laws. We would further recommend that these regulations require charter schools to submit (a) as part of their charter application and (b) to the Department a plan for how the school will educate children with disabilities in compliance with federal law.

Such plans would help charter schools prepare for and carry out the education of children with disabilities. It seems clear, therefore, a plan – which need not be burdensome in format – would serve a useful purpose. In our view, moreover, federal regulations effectively mandate that such a plan be required. Without some sort of plan, it is impossible to see how the charter school can meet its obligation to "demonstrate[] to the satisfaction of the SEA that it meets the conditions set forth in [federal special education regulations, including the FAPE requirement]." 34 C.F.R. § 300.180. It is equally impossible to understand how, without receiving such a plan from the charter, the Department of Education can fulfill its obligation to make such a demonstration to the federal Secretary of Education, 34 C.F.R. § 300.110, or carry out effectively its duty of general supervision, 34 C.F.R. § 300.141.

We are aware of the argument, suggested by these proposals, that the Department can carry out its supervisory responsibilities solely through monitoring and compliance activities – rather than by requiring any sort of advance or ongoing planning by the charter. We strongly disagree with this argument. Remedying non-compliance, while important, is a poor substitute for doing the job right in the first place – especially where children's education is concerned. We think that the requirement to plan would help charters do the job right the first time around.

Annual Report

We recommend that the regulations include provisions that require the annual report submitted by charter schools pursuant to § 1728-A (B) of the Act to include data and other documentation to support its assurances of non-discrimination and compliance with federal disability laws.

Public Comment

We also recommend that as part of the "comprehensive review" conducted by the local board of school directors pursuant to § 1728-A (A), the regulations should require an opportunity for public comment on whether the charter school is meeting its obligations under federal disability laws.

5. The regulations fail to inform or advise charter schools of their legal obligations to children with disabilities under all applicable federal laws.

The proposed regulations fail to inform charter schools of all of their obligations under federal disability laws, omitting significant mandates, minimizing others, and seldom offering any guidance or direction about how charter schools should implement federal disability laws within charter schools. To the extent the Department has done this to avoid interpreting the application of complex federal disability laws to the unique circumstances of charter schools in Pennsylvania, it has simply passed this task on to charter school personnel and families. Often without legal counsel and ill-equipped to make these decisions, charter schools and children with disabilities are put at risk as they muddle through this daunting task.

By incorporating and describing only some of the mandates of the federal law, these regulations mislead the reader into believing that some but not all of the federal mandates apply to charter schools. This is not true. Also missing from the regulations is any clear statement that charter schools are exempt from Pennsylvania's own special education regulations. We recommend that the regulations state this explicitly.

Participation in Assessments

Notably missing from the list of virtually incomprehensible references to the IDEA's regulations in § 711.3 is any reference to 34 C.F.R. 300.138 and .139, the federal regulations mandating children with disabilities be included in state-wide and district-wide assessment programs. The Charter School Act itself mandates such participation (*see* § 1715-A (8)), as does Chapter 4 (*see* § 4.51(j)). Yet this important mandate is missing from the proposed regulations.

Procedural Safeguards

The proposed regulations do not adequately inform charter schools about the procedural safeguards they are required to provide to students with disabilities. In § 711.62 - *Procedural safeguards*, the regulations omit any reference to the obligation of charter schools to make mediation and the Special Education Appeals Panels available to parents. This is not, moreover, just a matter of information-sharing: unless the state ensures that mediation services and an appeal route are available, it will not be in compliance with IDEA. (Having chosen a "two-tier" system for its schools generally, Pennsylvania does not have the option to set up a different arrangement for its charters.)

The regulations also fail to provide any guidance about reasonable time lines or procedures to ensure that these due process rights and others are protected.

Records

§ 711.8-Records falls far short of informing charter schools of their legal obligations under the IDEA and FERPA, including the duty to protect the confidentiality of educational records. § 711.8 is unnecessarily confusing and contravenes express provisions of the IDEA and FERPA. Neither a private agency or a private school is under any obligation to transfer student records, nor should records be transferred to these entities without parental consent. We do not disagree that records should be transferred to appropriate public agencies or that a ten-day time period is reasonable. We would recommend the following alternative language for this section:

- (a) When a public agency or approved private school receives written notice from a parent or public agency that a child will be transferring to a charter school, it shall forward all educational records, including the child's most recent evaluations and IEP to the charter school within ten (10) days of the date of receiving the written notice.
- (b) When a charter school receives written notice from a parent that a child will be transferring out of a charter school, the charter school shall forward all educational records, including the child's most recent evaluations and IEP to the parent and the receiving public agency or approved private school within ten (10) days of receiving the written notice.

IEP

The proposed § 711.41-IEP fails to advise charter schools about their legal obligations to develop and implement IEPs. This section further appears to give charter schools the option of implementing an entering child's old IEP or developing a new one. The law does not give charter schools this option. Instead, charter schools, like other local educational agencies in Pennsylvania, are required by federal law to implement the

child's current IEP until the parent agrees to a new IEP or proper due process procedures have been completed. We recommend that these regulations adopt for charter schools a policy similar to that set forth in State's Basic Education Circular (BEC) on inter-district transfers of students in special education programs. (#22PA. Code § 14.31)

Child Find

§ 711.21 *Child Find* should include a requirement that each charter school have a written policy that includes public awareness activities. The regulations should require the activities to be sufficient to inform parents and students that children with disabilities enrolled in charter schools retain their rights under federal disability laws and are not limited to programs or services that are simply "available" within the charter school.

Personnel

In § 711.5 – *Personnel*, the regulations state that "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)." Even if the reader is knowledgeable about the referenced provisions of the Act, there is no guidance provided about what constitutes "appropriate certification." Act 22 permits both certified and non-certified teachers to teach within charter schools. We recommend that the regulations make this clear. We are also concerned that, as written, this section will be interpreted to mean that children with disabilities must receive *all* of their special education services from a certified special education teacher, frustrating efforts to include these children in regular education charter schools classrooms with both certified and non-certified teachers.

We also recommend that the regulations include language that makes it clear that the education of a child with a disability in a charter school must be driven by the child's IEP and supervised by personnel certified in special education, regardless of who is delivering the service.

Evaluation and Reevaluation

In § 711.22- *Evaluation and Reevaluation*, the regulations simply state that a charter school "shall reevaluate students with disabilities every three years, unless a shorter period is required by existing law." This section is titled "evaluation and reevaluation," but refers only to reevaluations. This section misleads charter schools by failing to inform them of the equally important federal mandates for evaluations under the both the IDEA and § 504. It is further unclear to what "existing law" the regulations refer. Charter schools should be advised that parents and school personnel can request an evaluation at *any time* and that an evaluation is required whenever a change of placement is proposed. We would recommend that the regulations provide guidance about when an

ELC Comments
Proposed Charter School Regulations
August 28, 2000

evaluation and re-evaluation must be completed, similar to the forty-five-school-day time period applicable to other public schools.

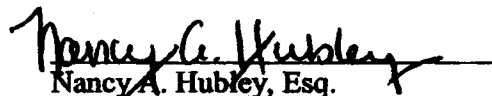
6. There have not been adequate opportunities for public comment on proposed regulations

We would like to note that the proposed regulations were made public on July 8, 2000 in the midst of summer vacation schedules when families, educational professionals, particularly charter school operators, and other stakeholders are away from their work. There has not been adequate time to disseminate these significant regulations to all of the folks who care about charter schools and children with disabilities, nor has there been time to insure meaningful public comment.

We recommend that the proposed regulations be revised and re-published after the summer months so that they can be widely disseminated. We further recommend that the Department schedule public hearings across the State and to extend the comment period to encourage and facilitate meaningful public comment.

Thank you for the opportunity to comment.

Date: 8-28-00


Nancy A. Hubley, Esq.
On behalf of the
Education Law Center-PA

Original: 2129

RECEIVED

JUL 17 2000

OFFICE OF EDUCATIONAL
INITIATIVES

291 RIVERVIEW RD.
KING OF PRUSSIA, PA. 19406
JULY 13, 2000

RECEIVED
2000 AUG-7 AM 9:41
REVIEW COMMISSION

Dr. Dale Baker
Office of Educational Initiatives
333 Market Street
Harrisburg, Pa. 17126-0333

Re: Chapter 711

Dear Dr. Baker:

In response to your proposed rulemaking to add Chapter 711 to the Public School Code of 1949, please consider this recommendation regarding section 711.62. Procedural Safeguards:

Mediation should be another option in addition to a due process hearing. Mediation is also mandated by the latest amendment to IDEA. Leaving this option out of the menu of procedural safeguards is a glaring omission.

Moreover, I understand that the Pennsylvania Department of Education is in the process of changing the name of special education mediation services (SEMS) to the Office of Dispute Resolution.

Thank you for considering this recommendation.
Sincerely,

Original: 2129

Baker, Dale**To:** grignano@duq.edu**Subject:** RE: Proposed Rulemaking/charter school services for children with disabilities

Chenzie- thanks for your input- deadline for comments has been extended until August 28. Dale

-----Original Message-----

From: Chenzie Grignano [mailto:grignano@duq.edu]**Sent:** Friday, August 04, 2000 9:24 AM**To:** dbaker@state.pa.us**Cc:** ebecker@state.pa.us**Subject:** Proposed Rulemaking/charter school services for children with disabilities

Hi Dale,

I am writing regarding Chapter 711., and hoping that my brief comments reach you in time so that you and others can do whatever is necessary to respond to them. Because I just learned of the general provisions of 711., my remarks are limited. I would hope that the state would provide public hearings on them, so that I and others could give public testimony and provide greater detail.

For your information, yesterday, CSP held a meeting of charters in Allegheny County (business managers and CAOs) and only one person in the group said that they had known of, or looked at the proposed regulations. Further, I don't remember seeing any mention of them in PDE's latest Charter Update #7, dated July 20, 2000. Considering the time of year, 30 days is just too short for careful and thought feedback.

Now to the sections in the proposed regulations that I believe deserve more attention, discussion and rewrite:

1. 711.4 Supervision. This section does not note how the SEA will do its job. While it notes what it expects from charter schools, it does not list what the SEA will do to provide general supervision and to ensure compliance. The section is too vague, it needs action steps.
2. 711.5 Personnel. Needs clarification. In some manner, it should say that special education certification is only needed when it is required by a student's IEP.
3. 711.7 Enrollment. This section needs the most work. I find it confusing. One sentence contradicts the next. It would be a disservice to the charter movement to let this section stand as written.
4. 711.43 Transportation. This could be said in a clearer manner.
5. 711.44 ESY. This section is over done.
6. 711.61 Suspension and expulsion. This section is missing a major reference to IDEA's Discipline section as it relates to FAPE.

Please call should you have any questions. Thanks, Chenzie

8/4/00

RECEIVED
2000 AUG -7 AM 9:41
REVIEW COMMISSION

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2000 SEP -5 AM 8: 34

INDEPENDENT REGULATORY
REVIEW COMMISSION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
Office of Chief Counsel
September 1, 2000

① **SUBJECT: Inquiry Regarding Proposed Regulations**
Charter School Services and Programs for Children with Disabilities

TO: Kimberly Debien
Regulatory Analyst
Independent Regulatory Review Commission

FROM: Daniel J. Myers
Assistant Counsel

This responds to your request for the legal authority supporting proposed regulation Section 711.43(a). That provision states,

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.

Because charter schools are independent public schools (24 P.S. §17-1703-A), they qualify as "Local Education Agencies" as well as "Public Agencies" under the federal regulations implementing the federal Individuals with Disabilities Education Act (IDEA). 34 CFR §§300.18(b)(2), 300.22.

As public agencies, charter schools must provide special education and related services to a child with a disability in accordance with the child's Individualized Education Program (IEP). 34 CFR §300.350(a)(1). IEPs sometimes require private school placement by public agencies. 34 CFR §300.349. When they do, that placement must be provided at no cost to the parents. 34 CFR §300.401(a)(2). IDEA and its implementing regulations do not prescribe how the Commonwealth of Pennsylvania will ensure that private school placements by LEAs will be provided at no cost to the parents.

To ensure that such placements are provided at no cost to parents, the Commonwealth has established a reimbursement mechanism by which LEAs pay 100% of the placement costs up front, and apply to the Pennsylvania Department of Education's Bureau of Special Education for reimbursement of 60% of those costs. 24 P.S. §13-1376. Proposed Sections 711.43(a) and (b) are intended to extend that same reimbursement mechanism to charter schools. Thus, charter schools will pay 100% of the placement costs up front and apply to the Bureau for 60% reimbursement.

Cc: Fran Warkomski, Greg Spadafore, Nanette Kimmel

Original: 2129

RR 1 Box 68
Port Royal, PA 17082
August 27, 2000

Dr. Dale Baker
Office of Educational Initiative
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

RE: Proposed Regulations for the implementation of Chapter 324

Dear Dr. Baker:

I am troubled that this State would take any steps that would reduce a school district's responsibility for providing an appropriate education for any child with special needs.

I wonder if those who are proposing these lower standards, purportedly in keeping with the Federal Regulations, have sought or received any information from the Right to Education Office or the SEMS (Special Education Mediation Service) or even the bureau's own Division of Compliance. If they had, they must have observed the pitiful efforts of many school districts to comply with the current regulations and standards.

As I understand the funding for Charter Schools, the Charter school receives funds from the school district in which it is located equal to the dollar amount that district expends per pupil multiplied by the number of children attending the Charter school. That would be acceptable, if the Charter Schools had the same obligations to all children as the public schools do. But, apparently they do not.

Just last Friday I talked to a mother who had withdrawn her special needs child from our district, applied to the new Charter school but her application was denied. She told me that the people at the Charter school told her that they "did not have staff with the appropriate certification" to teach her child so she was reenrolling in our District. This child has an average IQ but a learning disability in reading. This is not even a "low incidence" disability but this Charter school was able to deny this child services based on "lack of a certified teacher."

I submit that Charter Schools will be able to act similarly for almost any disability thereby discriminating against any student with special needs.

Another piece of this picture is the increased expense to school districts when their funding sources are drawn down by the Charter Schools, who will share in the special education allocation (as part of the per pupil expenditure) but will not be providing special education services, at least not on the scale that falls to public schools.

I work in the Harrisburg School District as a Special Education Facilitator and I know personally of the wide variety of children for whom we must provide an appropriate education. These are often very expensive services, some of which cannot be provided within the school district's current facilities and therefore must be contracted for. As more and more children without disabilities are drawn out of our system, we are left with a much higher percentage of special needs children. As the non-handicapped children leave the public schools, and take their "per pupil" allocation with them, the handicapped children left behind, who are indisputably more expensive to educate, have even fewer resources available to them.

I can also foresee some young children with disabilities, perhaps not yet apparent, attending Charter schools but not being successful. The next scenario will be the Charter school telling the parents that they do not have the "certified" staff to educate their child and that child returning to the public school system thereby further taxing an already overtaxed system.

I would like to challenge PDE to visit some currently chartered "Charter" schools and count the number of children with IEP's for any disability other than "speech and language?" How many children do they have with a diagnosis of depression, conduct disorder, oppositional defiant, mental retardation, autism, developmental delay, cerebral palsy or even specific learning disability? How many teachers do they have on their staff with certification in special education? I do not know the answer, but I would like to.

Please consider all the ramifications to the public schools when enacting regulations that allow Charter schools to exclude special needs students from their roles.

Sincerely,

A handwritten signature in black ink, reading "Patricia A. Hertzler". The signature is written in a cursive, flowing style.

Patricia A. Hertzler

Original: 2129

Baker, Dale

From: Hubley, Nancy [NHubley@elc-pa.org]
Sent: Monday, August 28, 2000 1:48 PM
To: Dale Baker (E-mail)
Subject: Comments on Proposed Charter School regulations

RECEIVED

2000 SEP -5 AM 10: 07

LEGISLATIVE
REVIEW COMMISSION

Dear Dale:

Attached, at last, are my comments on the proposed Charter School regulations. I am also having them hand delivered to you today.

Thank you for your consideration. I look forward to the Department's response.

Sincerely,

Nancy

Comments on Proposed Regulations

For Charter Schools Services and Programs for Children with Disabilities

22 Pa. Code Chapter 711

The Education Law Center is a not-for-profit, public interest law firm that represents children and families – including many families of children with disabilities – on issues of public education. We appreciate the opportunity to comment on these proposed regulations for charter schools.

Charter school developers and operators in Pennsylvania often have little knowledge about the rights of students with disabilities and the mandates of federal disability laws. They are frequently taken by surprise when they learn of their obligations to children with disabilities. Too often, this awareness comes after the first day of school when children with disabilities have already been excluded or are going without appropriate programs.

We support the Department's effort to promulgate regulations to put charter schools on notice – so that even before they develop a charter, and long before the first day of school, they are aware of their legal obligations to children with disabilities. Regulations that provide information about the requirements of federal disability laws and explicit guidance on how to meet these obligations consistent with Pennsylvania's Charter School Law (Act 22) are essential.

These proposed regulations, however, have major flaws – including some serious legal problems – and require significant reworking. The following are among our major concerns:

- The provisions on **enrollment** are inconsistent with Act 22 and federal law, and will not serve the purpose of assuring non-discrimination in the admissions process. We have proposed a rewrite.
- The provisions on **discipline** also contain serious omissions and errors and should be rewritten.
- There should be a requirement that charter schools develop and maintain a **special education**

8/28/00

plan. This would greatly increase the likelihood that, before even commencing operations, those responsible for the school have thought through and planned for the needs of children with disabilities. Some form of special education plan is also, in our view, required by federal law.

- o The federal regulations that are incorporated by reference in these proposals should be **set out in full**.

SPECIFIC COMMENTS

We find the proposed regulations seriously deficient and express the following specific concerns:

1. The regulations proposed by the Department are misleading, incomprehensible and totally unusable by charter schools

Federal disability laws, including the Individuals with Disabilities Education Act (IDEA), Section 504 (504) and the Americans with Disabilities Act (ADA) impose extensive legal obligations on charter schools. (See Jay P. Heubert, *Schools Without Rules? Charter Schools, Federal Disability Law, and the Paradoxes of Deregulation*, 32 HARV.C.R.-C.L.L. REV. 301 (1997). The proposed regulations reduce these significant legal obligations to numerical references to federal laws, without explanation or guidance. When the language of federal disability laws is actually included in the regulations, it is often misstated, presented out of context, or simply unclear.

For example, readers of the proposed regulations are asked to make sense of

§ 711.3 that states:

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) and (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.

No one could seriously maintain that a provision of this sort gives clear guidance to anyone – especially when the regulations then go on to provide additional bits and pieces that must somehow be integrated with federal law requirements. In these regulations, the main course is elsewhere; the reader gets appetizers and side dishes, and is told to treat it all, somehow, as a full meal.

We think this is a recipe for confusion and non-compliance. If these regulations are adopted in this form, we are confident that, five and ten years from now, compliance officers in the Department of Education will still be pointing charter school personnel to sections of federal law that they have – quite understandably – overlooked. In the meantime, children will have been hurt.

The bottom line is that if we expect people to comply with rules, we should make crystal clear what they are. We strongly recommend that the regulations be re-written to include – whether sequentially, or "side-by-side," or by some other means – the express language of the federal laws, rather than numerical references. The regulations should further provide guidance and explanations about how these laws should be implemented within charter schools, consistent with Act 22.

It should also be noted that the "incorporation" section quoted above refers only to the IDEA regulations and fails to advise charter schools about significant legal obligations under federal disability laws. For example, in § 711.3 – **Incorporation of Federal Laws**, the regulations fail to make clear that charter schools are obligated to comply with § 504, the ADA, and the IDEA. There is also no mention of the Family Education Rights and Privacy Act (FERPA), which is also applicable to charter schools with implications for children with disabilities

2. Section 711.7 - Enrollment is internally contradictory, overly broad, and inconsistent with the IDEA, the ADA, Section 504 and with Act 22.

Section 711.7, Enrollment, addresses an important and complex issue. We think significant revisions are needed.

In subsection (a), the phrase "on the basis of status as a person with a disability" should be changed to "on the basis of the child's disability or his or her need for special education or supplementary aids or services." Charter schools are unlikely to reject children because of their "status;" the far likelier problem is that a child will be rejected because he or she needs a particular service. Also, for clarity, we propose the phrase "deny admission or otherwise discriminate in its admission policies or practices" rather than merely "discriminate."

Subsection (b), while well-intentioned, is drafted in such a way as to be inconsistent with Act 22. While the Act does allow "reasonable criteria," it does so only in the context of "limit[ing] admission to a particular grade level or areas of concentration of the school such as mathematics, science or the arts." Subsection (b), by contrast, appears to create a free-floating option to adopt any "reasonable" criteria at all. Thus, a charter school could (for example) require its applicants to have achieved a certain score on standardized tests – a criterion that has nothing to do with grade level or area of concentration, but might well meet a general "reasonableness" standard. This result would be inconsistent with Act 22. We urge that subsection (b) be revised so as to track the statutory structure more accurately (our proposed language is found at the end of this section).

Subsection (c) also requires revision. In its present form, paragraph (c)(1) can easily be read to allow admission criteria that would require (for example) that the child's reading scores be at a particular grade level. But while Act 22 permits charters to limit *admission* to a particular grade level (e.g., grades 10-12), we do not interpret this as meaning that schools can exclude children on the ground that they lack the "intellectual ability" that the charter considers necessary for achievement at that grade level. Our view, instead, is that if the child has reached 10th grade, she has as much a right as any other 10th-grader to be admitted – even if her intellectual ability or achievement levels are such that she needs a modified or special program. PDE appears to agree with us on this point, since in paragraph (c)(3) it rules out the use of achievement test scores in the admission process. Accordingly, paragraph (c)(1) should be eliminated.

Paragraph (c)(2) is also inconsistent with the Act, which simply does not authorize "prerequisites ... that directly relate to the school's mission," much less a determination of "whether the child will be able to benefit from the offered program." Indeed, if the Act *did* authorize such a determination, it would probably conflict with federal law: Section 504 and the ADA require, among other things, an assessment of whether the program can be *modified* to meet the child's needs – not simply whether the child can benefit from the program as "offered." Paragraph (c)(2) should be removed.

Finally, in paragraph (c)(3), we urge the addition of the term "grades" after "intelligence tests."

Our proposal for 711.7 is, then, as follows:

- 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.
- b. 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. However, a charter school may not discriminate in its admission policies or practices on the basis of intellectual ability; and admission criteria may not include measures of achievement or aptitude such as intelligence tests, grades, standardized achievement tests and scores resulting from testing associated with reading and math programs.

3. Section 711.61 - Suspensions and Expulsions misleads charter schools about the scope of the legal mandates applicable to children with disabilities who are being suspended or expelled.

Section 711.61 is inaccurate, misleading and fails to advise charter schools about the full scope of their legal obligations in the area of discipline. This section omits any reference to the legal obligations charter schools have when disciplining a child with a disability or a child who is thought-to-be disabled. In addition, although titled, "suspensions and expulsions," this section does not provide any guidance about the obligations of charter schools regarding suspensions. **§ 711.61(b)** simply states "charter schools must comply with Chapter 12 (relating to students)." Although Chapter 12 is applicable to students with disabilities, the law requires much more when discipline involves a child with a disability. The proposed regulations reduce the IDEA's special disciplinary procedures (set forth in 34 C.F.R. Part 300.519-.529) to a numerical reference in **§ 711.3 – Incorporation of Federal laws**, and omit any other reference or explanation alerting charter schools to these significant and complicated legal mandates.

§ 711.61 does not provide any guidance to charter schools about when a disciplinary action constitutes a "change of placement" for a child with a disability or about the concomitant obligations of the charter school, including the provision of procedural safeguards. We recommend this regulations include definitions of a "change of placement," set forth the federal procedural safeguards, and adopt for charter schools the State's standard that defines 15 non-consecutive disciplinary removals from school as a change of placement.

§ 711.61(d) further erroneously leads charter schools to believe that their obligation to provide educational services to expelled students with disabilities is limited to that imposed by Chapter 12. This is not true. The IDEA expressly entitles children with disabilities who are permanently expelled from school to continue to receive a free appropriate public education. See 20 U.S.C. § 1412(a)(1)(A). The proposed regulation should be clarified with a detailed description of how charter schools shall discipline children with disabilities consistent with the mandates of Chapter 12 and the IDEA.

4. The regulations fail to establish clear standards for monitoring, supervision and accountability of charter schools.

A Plan for Special Education

The only section of the regulations to make reference to any supervision, monitoring or accountability for charter schools compliance with federal disability laws is **§ 711.4 –Supervision**. Although we support the Department's efforts to "provide general supervision" as required in sub-section (a), we recommend that these regulations further require a charter school to submit, as part of its charter application, a plan for how it will demonstrate compliance with federal disability laws. We would further recommend that these regulations require charter schools to submit (a) as part of their charter application and (b) to the Department a plan for how the school will educate children with disabilities in compliance with federal law.

Such plans would help charter schools prepare for and carry out the education of children with disabilities. It seems clear, therefore, a plan – which need not be burdensome in format – would serve a useful purpose. In our view, moreover, federal regulations effectively mandate that such a plan be required. Without some sort of plan, it is impossible to see how the charter school can meet its obligation to "demonstrate[] to the satisfaction of the SEA that it meets the conditions set forth in [federal special education regulations, including the FAPE requirement]." 34 C.F.R. § 300.180. It is equally impossible to understand how, without receiving such a plan from the charter, the Department of Education can fulfill its obligation to make such a demonstration to the federal Secretary of Education, 34 C.F.R. § 300.110, or carry out effectively its duty of general supervision, 34 C.F.R. § 300.141.

We are aware of the argument, suggested by these proposals, that the Department can carry out its supervisory responsibilities solely through monitoring and compliance activities – rather than by requiring any sort of advance or ongoing planning by the charter. We strongly disagree with this argument. Remedying non-

compliance, while important, is a poor substitute for doing the job right in the first place – especially where children's education is concerned. We think that the requirement to plan would help charters do the job right the first time around.

Annual Report

We recommend that the regulations include provisions that require the annual report submitted by charter schools pursuant to § 1728-A (B) of the Act to include data and other documentation to support its assurances of non-discrimination and compliance with federal disability laws.

Public Comment

We also recommend that as part of the "comprehensive review" conducted by the local board of school directors pursuant to § 1728-A (A), the regulations should require an opportunity for public comment on whether the charter school is meeting its obligations under federal disability laws.

5. The regulations fail to inform or advise charter schools of their legal obligations to children with disabilities under all applicable federal laws.

The proposed regulations fail to inform charter schools of all of their obligations under federal disability laws, omitting significant mandates, minimizing others, and seldom offering any guidance or direction about how charter schools should implement federal disability laws within charter schools. To the extent the Department has done this to avoid interpreting the application of complex federal disability laws to the unique circumstances of charter schools in Pennsylvania, it has simply passed this task on to charter school personnel and families. Often without legal counsel and ill-equipped to make these decisions, charter schools and children with disabilities are put at risk as they muddle through this daunting task.

By incorporating and describing only some of the mandates of the federal law, these regulations mislead the reader into believing that some but not all of the federal mandates apply to charter schools. This is not true. Also missing from the regulations is any clear statement that charter schools are exempt from Pennsylvania's own special education regulations. We recommend that the regulations state this explicitly.

Participation in Assessments

Notably missing from the list of virtually incomprehensible references to the IDEA's regulations in § 711.3 is any reference to 34 C.F.R. 300.138 and .139, the federal regulations mandating children with disabilities be included in state-wide and district-wide assessment programs. The Charter School Act itself mandates such participation (see § 1715-A (8)), as does Chapter 4 (see § 4.51(j)). Yet this important mandate is missing from the proposed regulations.

Procedural Safeguards

The proposed regulations do not adequately inform charter schools about the procedural safeguards they are required to provide to students with disabilities. In § 711.62

- **Procedural safeguards**, the regulations omit any reference to the obligation of charter schools to make mediation and the Special Education Appeals Panels available to parents. This is not, moreover, just a matter of information-sharing: unless the state ensures that mediation services and an appeal route are available, it will not be in compliance with IDEA. (Having chosen a "two-tier" system for its schools generally, Pennsylvania does not have the option to set up a different arrangement for its charters.)

The regulations also fail to provide any guidance about reasonable time lines or procedures to ensure that these due process rights and others are protected.

Records

§ 711.8-Records falls far short of informing charter schools of their legal obligations under the IDEA and FERPA, including the duty to protect the confidentiality of educational records. § 711.8 is unnecessarily confusing and contravenes express provisions of the IDEA and FERPA. Neither a private agency or a private school is under any obligation to transfer student records, nor should records be transferred to these entities without parental consent. We do not disagree that records should be transferred to appropriate public agencies or that a ten-day time period is reasonable. We would recommend the following alternative language for this section:

- a. When a public agency or approved private school receives written notice from a parent or public agency that a child will be transferring to a charter school, it shall forward all educational records, including the child's most recent evaluations and IEP to the charter school within ten (10) days of the date of receiving the written notice.
- b. When a charter school receives written notice from a parent that a child will be transferring out of a charter school, the charter school shall forward all educational records, including the child's most recent evaluations and IEP to the parent and the receiving public agency or approved private school within ten (10) days of receiving the written notice.

IEP

The proposed **§ 711.41-IEP** fails to advise charter schools about their legal obligations to develop and implement IEPs. This section further appears to give charter schools the option of implementing an entering child's old IEP or developing a new one. The law does not give charter schools this option. Instead, charter schools, like other local educational agencies in Pennsylvania, are required by federal law to implement the child's current IEP until the parent agrees to a new IEP or proper due process procedures have been completed. We recommend that these regulations adopt for charter schools a policy similar to that set forth in State's Basic Education Circular (BEC) on inter-district transfers of students in special education programs. (#22PA. Code § 14.31)

Child Find

§ 711.21 Child Find should include a requirement that each charter school have a written policy that includes public awareness activities. The regulations should require the activities to be sufficient to inform parents and students that children with disabilities enrolled in charter schools retain their rights under federal disability laws and are not limited to programs or services that are simply "available" within the charter school.

Personnel

In § 711.5 – *Personnel*, the regulations state that "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)." Even if the reader is knowledgeable about the referenced provisions of the Act, there is no guidance provided about what constitutes "appropriate certification." Act 22 permits both certified and non-certified teachers to teach within charter schools. We recommend that the regulations make this clear. We are also concerned that, as written, this section will be interpreted to mean that children with disabilities must receive *all* of their special education services from a certified special education teacher, frustrating efforts to include these children in regular education charter schools classrooms with both certified and non-certified teachers.

We also recommend that the regulations include language that makes it clear that the education of a child with a disability in a charter school must be driven by the child's IEP and supervised by personnel certified in special education, regardless of who is delivering the service.

Evaluation and Reevaluation

In § 711.22- *Evaluation and Reevaluation*, the regulations simply state that a charter school "shall reevaluate students with disabilities every three years, unless a shorter period is required by existing law." This section is titled "evaluation and re-evaluation," but refers only to reevaluations. This section misleads charter schools by failing to inform them of the equally important federal mandates for evaluations under the both the IDEA and § 504. It is further unclear to what "existing law" the regulations refer. Charter schools should be advised that parents and school personnel can request an evaluation at *any time* and that an evaluation is required whenever a change of placement is proposed. We would recommend that the regulations provide guidance about when an

evaluation and re-evaluation must be completed, similar to the forty-five-school-day time period applicable to other public schools.

6. There have not been adequate opportunities for public comment on proposed regulations

We would like to note that the proposed regulations were made public on July 8, 2000 in the midst of summer vacation schedules when families, educational professionals, particularly charter school operators, and other stakeholders are away from their work. There has not been adequate time to disseminate these significant regulations to all of the folks who care about charter schools and children with disabilities, nor has there been time to insure meaningful public comment.

We recommend that the proposed regulations be revised and re-published after the summer months so that they can be widely disseminated. We further recommend that the Department schedule public hearings across the State and to extend the comment period to encourage and facilitate meaningful public comment.

Thank you for the opportunity to comment.

Date: _____

Nancy A. Hubley, Esq.

On behalf of the

Education Law Center-PA

8/28/00

Original: 2129

August 22, 2000

RECEIVED

AUG 29 2000

OFFICE OF EDUCATIONAL
INITIATIVES

Dr. Dale Baker
Office of Educational Initiatives
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker,

I am writing to you in regard to the proposed regulations on the rights of children with disabilities. I am a mother of a seven-year-old boy with severe disabilities. Even though my son has only been in the school system for a short period of time, (two years), it has been the most frustrating two years of our lives. And now you are trying to make it even more difficult.

Not only have parents and advocates been given a short time to respond to the new proposals, but also they are extremely deceptive. Giving only reference numbers is hardly a way to help to clarify what federal regulations are being quoted. This makes it extremely difficult for the readers. What parents DO NOT need is more difficulty when it comes to dealing with issues surrounding a child with disabilities. The regulations make it harder for us to try defend the rights of our children. If the state want to "incorporate" federal regulations, it should be written out in black and white what each regulation is.

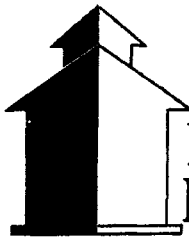
It has taken me almost two years just to start to get an appropriate educational environment for my son. It has been quite a struggle every step of the way and these proposed regulations will support the charter schools more than ever, taking away supportive actions for the students' rights.

I extremely urge that the deadline for comment period is extended and public hearings are held. It will be realized only then that these proposed regulations be turned down or changed for the good of the students. And isn't that what school is really all about?

Sincerely,



Yvonne R. Ninnemann
847 Penn Estates
East Stroudsburg, PA 18301
(570) 420-9122



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Quality & Fairness in
Pennsylvania's Public Schools

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August 28, 2000

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Deborah Wei

CO-DIRECTORS
Janet F. Stotland
Len Rieser

Dale Baker
Pennsylvania Department of Education
Office of Education Initiatives
333 Market Street
Harrisburg, PA 17126

Dear Mr. Baker:

Enclosed are the comments from the Education Law Center-PA on the proposed Charter School regulations.

Thank you for your consideration.

Very Truly Yours,

Nancy A. Hubley
Attorney-at-Law

Enclosure

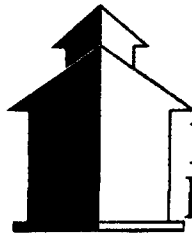
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*Steve -
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The Philadelphia Building
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*Quality & Fairness in
Pennsylvania's Public Schools*

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**Comments on Proposed Regulations
For Charter Schools Services and Programs for Children with Disabilities
22 Pa. Code Chapter 711**

The Education Law Center is a not-for-profit, public interest law firm that represents children and families – including many families of children with disabilities – on issues of public education. We appreciate the opportunity to comment on these proposed regulations for charter schools.

Charter school developers and operators in Pennsylvania often have little knowledge about the rights of students with disabilities and the mandates of federal disability laws. They are frequently taken by surprise when they learn of their obligations to children with disabilities. Too often, this awareness comes after the first day of school when children with disabilities have already been excluded or are going without appropriate programs.

We support the Department's effort to promulgate regulations to put charter schools on notice – so that even before they develop a charter, and long before the first day of school, they are aware of their legal obligations to children with disabilities. Regulations that provide information about the requirements of federal disability laws and explicit guidance on how to meet these obligations consistent with Pennsylvania's Charter School Law (Act 22) are essential.

These proposed regulations, however, have major flaws – including some serious legal problems – and require significant reworking. The following are among our major concerns:

- The provisions on **enrollment** are inconsistent with Act 22 and federal law, and will not serve the purpose of assuring non-discrimination in the admissions process. We have proposed a rewrite.
- The provisions on **discipline** also contain serious omissions and errors and should be rewritten.

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- There should be a requirement that charter schools develop and maintain a **special education plan**. This would greatly increase the likelihood that, before even commencing operations, those responsible for the school have thought through and planned for the needs of children with disabilities. Some form of special education plan is also, in our view, required by federal law.
- The federal regulations that are incorporated by reference in these proposals should be **set out in full**.

SPECIFIC COMMENTS

We find the proposed regulations seriously deficient and express the following specific concerns:

1. **The regulations proposed by the Department are misleading, incomprehensible and totally unusable by charter schools**

Federal disability laws, including the Individuals with Disabilities Education Act (IDEA), Section 504 (504) and the Americans with Disabilities Act (ADA) impose extensive legal obligations on charter schools. (See Jay P. Heubert, *Schools Without Rules? Charter Schools, Federal Disability Law, and the Paradoxes of Deregulation*, 32 HARV.C.R.-C.L.L. REV. 301 (1997)). The proposed regulations reduce these significant legal obligations to numerical references to federal laws, without explanation or guidance. When the language of federal disability laws is actually included in the regulations, it is often misstated, presented out of context, or simply unclear.

For example, readers of the proposed regulations are asked to make sense of § 711.3 that states:

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) and (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.

No one could seriously maintain that a provision of this sort gives clear guidance to anyone – especially when the regulations then go on to provide additional bits and pieces that must somehow be integrated with federal law requirements. In these regulations, the main course is elsewhere; the reader gets appetizers and side dishes, and is told to treat it all, somehow, as a full meal.

We think this is a recipe for confusion and non-compliance. If these regulations are adopted in this form, we are confident that, five and ten years from now, compliance officers in the Department of Education will still be pointing charter school personnel to sections of federal law that they have – quite understandably – overlooked. In the meantime, children will have been hurt.

The bottom line is that if we expect people to comply with rules, we should make crystal clear what they are. We strongly recommend that the regulations be re-written to include – whether sequentially, or “side-by-side,” or by some other means – the express language of the federal laws, rather than numerical references. The regulations should further provide guidance and explanations about how these laws should be implemented within charter schools, consistent with Act 22.

It should also be noted that the “incorporation” section quoted above refers only to the IDEA regulations and fails to advise charter schools about significant legal obligations under federal disability laws. For example, in § 711.3 – *Incorporation of Federal Laws*, the regulations fail to make clear that charter schools are obligated to comply with § 504, the ADA, *and* the IDEA. There is also no mention of the Family Education Rights and Privacy Act (FERPA), which is also applicable to charter schools with implications for children with disabilities

2. **Section 711.7 - Enrollment is internally contradictory, overly broad, and inconsistent with the IDEA, the ADA, Section 504 and with Act 22.**

Section 711.7, Enrollment, addresses an important and complex issue. We think significant revisions are needed.

In subsection (a), the phrase “on the basis of status as a person with a disability” should be changed to “on the basis of the child’s disability or his or her need for special education or supplementary aids or services.” Charter schools are unlikely to reject children because of their “status;” the far likelier problem is that a child will be rejected because he or she needs a particular service. Also, for clarity, we propose the phrase “deny admission or otherwise discriminate in its admission policies or practices” rather than merely “discriminate.”

Subsection (b), while well-intentioned, is drafted in such a way as to be inconsistent with Act 22. While the Act does allow “reasonable criteria,” it does so only in the context of “limit[ing] admission to a particular grade level or areas of concentration of the school such as mathematics, science or the arts.” Subsection (b), by contrast, appears to create a free-floating option to adopt any “reasonable” criteria at all.¹ Thus, a charter school could (for example) require its applicants to have achieved a certain score on standardized tests – a criterion that has nothing to do with grade level or area of

¹While subsection (c) does refer to the issue of “grade level [and] area of concentration,” it is not whether or how that subsection relates to (b).

concentration, but might well meet a general “reasonableness” standard.² This result would be inconsistent with Act 22. We urge that subsection (b) be revised so as to track the statutory structure more accurately (our proposed language is found at the end of this section).

Subsection (c) also requires revision. In its present form, paragraph (c)(1) can easily be read to allow admission criteria that would require (for example) that the child’s reading scores be at a particular grade level. But while Act 22 permits charters to limit *admission* to a particular grade level (*e.g.*, grades 10-12), we do not interpret this as meaning that schools can exclude children on the ground that they lack the “*intellectual ability*” that the charter considers necessary for achievement at that grade level. Our view, instead, is that if the child has reached 10th grade, she has as much a right as any other 10th-grader to be admitted – even if her intellectual ability or achievement levels are such that she needs a modified or special program. PDE appears to agree with us on this point, since in paragraph (c)(3) it rules out the use of achievement test scores in the admission process.³ Accordingly, paragraph (c)(1) should be eliminated.

Paragraph (c)(2) is also inconsistent with the Act, which simply does not authorize “prerequisites ... that directly relate to the school’s mission,” much less a determination of “whether the child will be able to benefit from the offered program.” Indeed, if the Act *did* authorize such a determination, it would probably conflict with federal law: Section 504 and the ADA require, among other things, an assessment of whether the program can be *modified* to meet the child’s needs – not simply whether the child can benefit from the program as “offered.” Paragraph (c)(2) should be removed.

Finally, in paragraph (c)(3), we urge the addition of the term “grades” after “intelligence tests.”

Our proposal for 711.7 is, then, as follows:

- (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.

² The provision, in line 2 of subsection (b), that the criteria may not discriminate “against an otherwise qualified handicapped child” does not cure the problem. This language, presumably borrowed from Section 504 and the ADA, offers less protection than does Act 22 itself (unless “otherwise qualified” is read, as it surely will not be, in the sense of 34 CFR 104.3(k)(2) – which states that all children of school age are otherwise qualified).

³ We doubt, too, that a contrary interpretation would be consistent with federal law. Under Section 504 and the ADA, a charter school cannot determine the level of “intellectual ability” it considers necessary for its programs and then apply that criterion to all comers. Rather, the school must make accommodations for students with disabilities.

- (b) 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) However, a charter school may not discriminate in its admission policies or practices on the basis of intellectual ability; and admission criteria may not include measures of achievement or aptitude such as intelligence tests, grades, standardized achievement tests and scores resulting from testing associated with reading and math programs.
3. **Section 711.61 - *Suspensions and Expulsions* misleads charter schools about the scope of the legal mandates applicable to children with disabilities who are being suspended or expelled.**

Section 711.61 is inaccurate, misleading and fails to advise charter schools about the full scope of their legal obligations in the area of discipline. This section omits any reference to the legal obligations charter schools have when disciplining a child with a disability or a child who is thought-to-be disabled. In addition, although titled, "suspensions and expulsions," this section does not provide any guidance about the obligations of charter schools regarding suspensions. **§ 711.61(b)** simply states "charter schools must comply with Chapter 12 (relating to students)." Although Chapter 12 is applicable to students with disabilities, the law requires much more when discipline involves a child with a disability. The proposed regulations reduce the IDEA's special disciplinary procedures (set forth in 34 C.F.R. Part 300.519-.529) to a numerical reference in **§ 711.3 - *Incorporation of Federal laws***, and omit any other reference or explanation alerting charter schools to these significant and complicated legal mandates.

§ 711.61 does not provide any guidance to charter schools about when a disciplinary action constitutes a "change of placement" for a child with a disability or about the concomitant obligations of the charter school, including the provision of procedural safeguards. We recommend this regulations include definitions of a "change of placement," set forth the federal procedural safeguards, and adopt for charter schools the State's standard that defines 15 non-consecutive disciplinary removals from school as a change of placement.

§ 711.61(d) further erroneously leads charter schools to believe that their obligation to provide educational services to expelled students with disabilities is limited to that imposed by Chapter 12. This is not true. The IDEA expressly entitles children with disabilities who are permanently expelled from school to continue to receive a free appropriate public education. See 20 U.S.C. § 1412(a)(1)(A). The proposed regulation should be clarified with a detailed description of how charter schools shall discipline children with disabilities consistent with the mandates of Chapter 12 and the IDEA.

4. The regulations fail to establish clear standards for monitoring, supervision and accountability of charter schools.

A Plan for Special Education

The only section of the regulations to make reference to any supervision, monitoring or accountability for charter schools compliance with federal disability laws is § 711.4 –**Supervision**. Although we support the Department's efforts to "provide general supervision" as required in sub-section (a), we recommend that these regulations further require a charter school to submit, as part of its charter application, a plan for how it will demonstrate compliance with federal disability laws. We would further recommend that these regulations require charter schools to submit (a) as part of their charter application and (b) to the Department a plan for how the school will educate children with disabilities in compliance with federal law.

Such plans would help charter schools prepare for and carry out the education of children with disabilities. It seems clear, therefore, a plan – which need not be burdensome in format – would serve a useful purpose. In our view, moreover, federal regulations effectively mandate that such a plan be required. Without some sort of plan, it is impossible to see how the charter school can meet its obligation to "demonstrate[] to the satisfaction of the SEA that it meets the conditions set forth in [federal special education regulations, including the FAPE requirement]." 34 C.F.R. § 300.180. It is equally impossible to understand how, without receiving such a plan from the charter, the Department of Education can fulfill *its* obligation to make such a demonstration to the federal Secretary of Education, 34 C.F.R. § 300.110, or carry out effectively its duty of general supervision, 34 C.F.R. § 300.141.

We are aware of the argument, suggested by these proposals, that the Department can carry out its supervisory responsibilities solely through monitoring and compliance activities – rather than by requiring any sort of advance or ongoing planning by the charter. We strongly disagree with this argument. Remedying non-compliance, while important, is a poor substitute for doing the job right in the first place – especially where children's education is concerned. We think that the requirement to plan would help charters do the job right the first time around.

Annual Report

We recommend that the regulations include provisions that require the annual report submitted by charter schools pursuant to § 1728-A (B) of the Act to include data and other documentation to support its assurances of non-discrimination and compliance with federal disability laws.

Public Comment

We also recommend that as part of the “comprehensive review” conducted by the local board of school directors pursuant to § 1728-A (A), the regulations should require an opportunity for public comment on whether the charter school is meeting its obligations under federal disability laws.

5. The regulations fail to inform or advise charter schools of their legal obligations to children with disabilities under all applicable federal laws.

The proposed regulations fail to inform charter schools of all of their obligations under federal disability laws, omitting significant mandates, minimizing others, and seldom offering any guidance or direction about how charter schools should implement federal disability laws within charter schools. To the extent the Department has done this to avoid interpreting the application of complex federal disability laws to the unique circumstances of charter schools in Pennsylvania, it has simply passed this task on to charter school personnel and families. Often without legal counsel and ill-equipped to make these decisions, charter schools and children with disabilities are put at risk as they muddle through this daunting task.

By incorporating and describing only some of the mandates of the federal law, these regulations mislead the reader into believing that some but not all of the federal mandates apply to charter schools. This is not true. Also missing from the regulations is any clear statement that charter schools are exempt from Pennsylvania’s own special education regulations. We recommend that the regulations state this explicitly.

Participation in Assessments

Notably missing from the list of virtually incomprehensible references to the IDEA’s regulations in § 711.3 is any reference to 34 C.F.R. 300.138 and .139, the federal regulations mandating children with disabilities be included in state-wide and district-wide assessment programs. The Charter School Act itself mandates such participation (*see* § 1715-A (8)), as does Chapter 4 (*see* § 4.51(j)). Yet this important mandate is missing from the proposed regulations.

Procedural Safeguards

The proposed regulations do not adequately inform charter schools about the procedural safeguards they are required to provide to students with disabilities. In § 711.62 - ***Procedural safeguards***, the regulations omit any reference to the obligation of charter schools to make mediation and the Special Education Appeals Panels available to parents. This is not, moreover, just a matter of information-sharing: unless the state ensures that mediation services and an appeal route are available, it will not be in compliance with IDEA. (Having chosen a "two-tier" system for its schools generally, Pennsylvania does not have the option to set up a different arrangement for its charters.)

The regulations also fail to provide any guidance about reasonable time lines or procedures to ensure that these due process rights and others are protected.

Records

§ 711.8-**Records** falls far short of informing charter schools of their legal obligations under the IDEA and FERPA, including the duty to protect the confidentiality of educational records. § 711.8 is unnecessarily confusing and contravenes express provisions of the IDEA and FERPA. Neither a private agency or a private school is under any obligation to transfer student records, nor should records be transferred to these entities without parental consent. We do not disagree that records should be transferred to appropriate public agencies or that a ten-day time period is reasonable. We would recommend the following alternative language for this section:

- (a) When a public agency or approved private school receives written notice from a parent or public agency that a child will be transferring to a charter school, it shall forward all educational records, including the child's most recent evaluations and IEP to the charter school within ten (10) days of the date of receiving the written notice.
- (b) When a charter school receives written notice from a parent that a child will be transferring out of a charter school, the charter school shall forward all educational records, including the child's most recent evaluations and IEP to the parent and the receiving public agency or approved private school within ten (10) days of receiving the written notice.

IEP

The proposed § 711.41-**IEP** fails to advise charter schools about their legal obligations to develop and implement IEPs. This section further appears to give charter schools the option of implementing an entering child's old IEP or developing a new one. The law does not give charter schools this option. Instead, charter schools, like other local educational agencies in Pennsylvania, are required by federal law to implement the

child's current IEP until the parent agrees to a new IEP or proper due process procedures have been completed. We recommend that these regulations adopt for charter schools a policy similar to that set forth in State's Basic Education Circular (BEC) on inter-district transfers of students in special education programs. (#22PA. Code § 14.31)

Child Find

§ 711.21 *Child Find* should include a requirement that each charter school have a written policy that includes public awareness activities. The regulations should require the activities to be sufficient to inform parents and students that children with disabilities enrolled in charter schools retain their rights under federal disability laws and are not limited to programs or services that are simply "available" within the charter school.

Personnel

In § 711.5 – *Personnel*, the regulations state that "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)." Even if the reader is knowledgeable about the referenced provisions of the Act, there is no guidance provided about what constitutes "appropriate certification." Act 22 permits both certified and non-certified teachers to teach within charter schools. We recommend that the regulations make this clear. We are also concerned that, as written, this section will be interpreted to mean that children with disabilities must receive *all* of their special education services from a certified special education teacher, frustrating efforts to include these children in regular education charter schools classrooms with both certified and non-certified teachers.

We also recommend that the regulations include language that makes it clear that the education of a child with a disability in a charter school must be driven by the child's IEP and supervised by personnel certified in special education, regardless of who is delivering the service.

Evaluation and Reevaluation

In § 711.22- *Evaluation and Reevaluation*, the regulations simply state that a charter school "shall reevaluate students with disabilities every three years, unless a shorter period is required by existing law." This section is titled "evaluation and reevaluation," but refers only to reevaluations. This section misleads charter schools by failing to inform them of the equally important federal mandates for evaluations under the both the IDEA and § 504. It is further unclear to what "existing law" the regulations refer. Charter schools should be advised that parents and school personnel can request an evaluation at *any time* and that an evaluation is required whenever a change of placement is proposed. We would recommend that the regulations provide guidance about when an

evaluation and re-evaluation must be completed, similar to the forty-five-school-day time period applicable to other public schools.

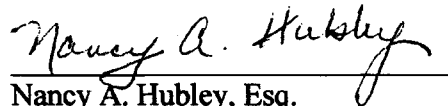
6. There have not been adequate opportunities for public comment on proposed regulations

We would like to note that the proposed regulations were made public on July 8, 2000 in the midst of summer vacation schedules when families, educational professionals, particularly charter school operators, and other stakeholders are away from their work. There has not been adequate time to disseminate these significant regulations to all of the folks who care about charter schools and children with disabilities, nor has there been time to insure meaningful public comment.

We recommend that the proposed regulations be revised and re-published after the summer months so that they can be widely disseminated. We further recommend that the Department schedule public hearings across the State and to extend the comment period to encourage and facilitate meaningful public comment.

Thank you for the opportunity to comment.

Date:


Nancy A. Hubley, Esq.
On behalf of the
Education Law Center-PA

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Original: 2129

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AUG 28 2000

**OFFICE OF EDUCATIONAL
INITIATIVES**

August 23, 2000

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker:

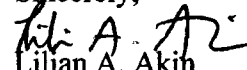
I am writing you regarding the proposed charter school regulations. I am an attorney who represents parents and students in the public school system and also consult with the Duquesne University Charter School Project.

I am opposed to the regulations for the following reasons:

- (1) There was not enough public comment period. The deadline to respond to the proposed regulations is August 28, 2000 and does not take into consideration the fact that summertime is typically a very busy time and is the time when a lot of families take vacations. The proposed comment period should be increased to give more people the opportunity to comment.
- (2) There should be more publicity surrounding the proposed regulations. There was in fact very little publicity about these proposed regulations. I am sure that there are people who would be willing to provide input if they were aware of these proposed regulations.
- (3) There should be an opportunity for a public hearing.
- (4) It is very confusing and lazy for the regulations to incorporate other federal regulations by simply listing the citation. If there is a federal law that is important enough for a charter school to follow, then its provisions should be spelled out in the charter school regulations.
- (5) The fact that prerequisites are permitted could have the effect of preventing children from disabilities from being considered for admission.
- (6) The regulations appear to prevent children with disabilities from accessing mediation or the Appeals Panel.

Thank you very much. I am available at your convenience to further explore these proposed regulations.

Sincerely,


Lilian A. Akin
Attorney at Law

Original: 2129



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

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INDEPENDENT REGULATORY REVIEW COMMISSION

10

August 21, 2000

Krista Zanella, Administrative Assistant
The ARC of Blair County
Becky Sheetz Recreation Bldg.
P.O. Box 927
431 Jackson Ave.
Altoona, PA 16603

Dear Ms. Zanella:

Thank you for your letter of August 17, 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, 10th Floor
Harrisburg, PA 17126-0333
Phone: (717) 705-2343
Fax: (717) 705-0708
TTY: (717) 783-8445

Sincerely Yours,

A handwritten signature in cursive script that reads "Dale Baker".

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

**The
Arc**

of

Blair County

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AUG 17 2000

**OFFICE OF EDUCATIONAL
INITIATIVES**

**Becky Sheetz Recreation Bldg.
P.O. Box 927
431 Jackson Ave.
Altoona, PA 16603
Telephone (814) 946-1011**

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker:

This letter is written to express comments on the proposed regulations for children with disabilities in charter schools. There are four main points that are to be made:

1. The comment period should be extended. It is summer time and many people are on vacation. Given the complexity of these issues, and lack of publicity about these regulations, the deadline should be extended well beyond August 28th. Also, public hearings should be held.
2. The regulations are, at worst, deceptive, or at best, unclear. This is because they "incorporate" many pages of federal regulations-without really quoting them. Instead there are simply a long list of numbers referring to federal regulations which most readers will not have at their disposal. If the state wants to "incorporate" federal regulations, it should set out in black and white what those regulations are.
3. The regulations suggest that charter schools can discriminate against children with disabilities. While the proposed regulations (like the Charter School Law itself) say that a charter school may not discriminate, they also state that the school may adopt "prerequisites that directly relate to the school's mission." This creates the danger that "prerequisites" could be used to keep students with disabilities out of charters. The proposal is, at best contradictory, and at worst discriminatory.
4. The regulations are incomplete, and/or erroneous in other ways. For example, the regulations (correctly) allow parents of children in charter schools to have due process hearings, but (incorrectly) don't provide for mediation, or for appeals of due process hearing decisions.

Please help us to see that these proposed regulations will not discriminate against children with disabilities. Thank you for your time and consideration.

Sincerely,



Krista Zanella, Administrative Assistant
on behalf of the President
and Board of Directors
of the Arc of Blair County

formerly Association for Retarded Citizens

Original: 2129



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

RECEIVED

2000 AUG 22 AM 8:38

August 21, 2000

REGULATORY
REVIEW COMMISSION

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

Dear Ms. Ratajczak

Thank you for your letter of August 8, 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, 10th Floor
Harrisburg, PA 17126-0333
Phone: (717) 705-2343
Fax: (717) 705-0708
TTY: (717) 783-8445

Sincerely Yours,

A handwritten signature in cursive script that reads "Dale Baker".

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

1429 Center Street
West Chester, PA 19382-6528
August 18, 2000

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker:

I am concerned about the proposed regulations on the rights of children with disabilities in charter schools. As they stand, they are basically incomprehensible to the lay reader (such as a parent like me), because they "incorporate" federal regulations by citing their regulation numbers. I, for one, do not have ready access to 34 CFR Part 300, and, even if I did, it would be extremely cumbersome to have to look up each of the referenced regulations individually. If the Pennsylvania regulations are to incorporate the federal regulations, those regulations should be quoted in full.

Another issue is that the regulations are confusing on the issue of whether charter schools may discriminate against students with disabilities. The Charter School Law states that charter schools may not discriminate against students with disabilities, but the proposed regulations state that charter schools may enforce "prerequisites...that directly relate to the school's mission." What is to prevent charter schools from adopting prerequisites that will effectively bar children with disabilities from attending those schools? The regulations need to be revised to ensure that charter schools may not discriminate against children with disabilities.

There are other problems with the regulations, as well. For example, while they allow parents of children of students in charter schools to have due process hearings, the regulations do not provide for mediation or for appeals of due process hearing decisions.

Despite these problems, the comment period is slated to end on August, 28, 2000, which implies (falsely, I hope) that the state is trying to slip these regulations in while stakeholders are away on their summer vacations. Given the complexity of the issues, I strongly recommend that the deadline for comment be extended well beyond the end of this month, and that public hearings be held.

Like their age-mates, children with disabilities can be eager to pursue specific fields, such as science and technology, or foreign languages. Charter schools can be the door to an excellent opportunity for students with disabilities to learn successfully alongside like-minded regular students in an environment optimized to support their pursuit of their mission. Please do not allow vague, confusing regulations to slam this door in our kids' faces. I urge you to reach out to all the stakeholders in this issue, and craft regulations that ensure that young Pennsylvanians with disabilities will indeed receive a free, appropriate public education in the least restrictive environment.

Very truly yours,



Lorraine A. Ratajczak

cc: Nancy A. Hubley, Education Law Center



every child inc.
Bringing children and families together

Original: 2129

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2000 AUG 29 AM 8:20

INDEPENDENT REGULATORY
REVIEW COMMISSION

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AUG 25 2000

OFFICE OF EDUCATIONAL
INITIATIVES

August 22, 2000

Dr. Dale Baker
Office of Educational Initiatives
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker;

On behalf of Every Child, Inc., a private non-profit agency that serves children with special needs and their families, I am writing to express our deep concern regarding the proposed regulations on the rights of children with disabilities in charter schools.

It appears that the regulations are not only inconsistent in message, and difficult to decipher, coded by number — they have been disseminated during a time when many families are on planned vacations, and have inadequate time to respond to and advocate for the best educational program for their children in the charter school system. I am quite certain that the majority of our families are unaware of this crucial opportunity to ensure that charter schools, funded by taxpayers, are as inclusive as our public schools. (Our newsletter could be an effective communication tool to spread the message.)

As a key person in this process, we appeal to you to appropriately extend the timeframe by which families can respond to the proposed regulations affecting their children with special needs. Their vital stake deserves ample voice.

Thank you.

Sincerely,

Susan I. Davis
Executive Director



DEPARTMENT OF
LABOR & INDUSTRY
COMMONWEALTH OF PENNSYLVANIA

Original: 2129

OFFICE OF VOCATIONAL REHABILITATION
909 GREEN STREET
HARRISBURG, PA 17102

www.dli.state.pa.us

RECEIVED

August 15, 2000

AUG 28 2000

**OFFICE OF EDUCATIONAL
INITIATIVES**

Dr. Dale Baker
Office of Educational Initiatives
333 Market Street
Harrisburg, PA 17126-0333

RE: Proposed Chapter 711 Regulations

Dear Doctor Baker:

The mission of the Office of Vocational Rehabilitation (OVR) is to expand and strengthen employment outcomes, independence and specialized services for Pennsylvanians with disabilities. One of our primary objectives is to assist students with disabilities transition from school to work. Therefore, we have great interest in providing feedback to you on the proposed rulemaking for charter schools.

711.7 Enrollment (b)

Strengthen the language so that "reasonable criteria" for evaluating perspective students can in no way create barriers for students with disabilities to have equal opportunity to admission to the charter school.

711.21 Child find (a)

As is most likely reflected in your compliance review requirements for the school's written child find policy, the addition of a timeframe for the completion of an evaluation of students' special educational needs would facilitate the IEP process.

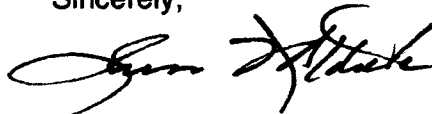
Dr. Dale Baker
Proposed Chapter 711 Regulations
August 15, 2000
Page 2

Additional Comments

As you are aware, the Departments of Education, Welfare, Health and Labor & Industry entered into an IDEA-Memorandum of Understanding (IDEA-MOU) in January of 2000. The Dept. of Labor & Industry has an excellent working relationship with the Dept. of Education through the interagency IDEA - MOU efforts. Will charter schools be identified as partners in these collaborative efforts? If so, additional language reflecting this requirement under IDEA would be beneficial.

Thank you for the opportunity to provide comment and OVR would appreciate being kept abreast of the progress of these regulations. If you have any questions or would like to discuss these comments, please feel free to contact the OVR Statewide Transition from School to Work Specialist Joan E. Kester, CRC, PA Office of Vocational Rehabilitation, 909 Green Street, Harrisburg, PA 17102, 717-787-6695, e-mail jkester@dlr.state.pa.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan L. Aldrete", written in a cursive style.

Susan L. Aldrete
Executive Director

cc: Joan Kester, CRC, Rehabilitation Specialist, OVR
Nesta Livingston, Project Director, PA Rehabilitation Council



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

333 MARKET STREET
HARRISBURG, PA 17126-0333

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2000 AUG 22 AM 8:37
INDEPENDENT REGULATORY REVIEW COMMISSION

August 21, 2000

Ilene Solomon Greenstone
6327 Phillips Avenue
Pittsburgh, PA 15217

Dear Ms. Greenstone:

Thank you for your letter of August 17, 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, 10th Floor
Harrisburg, PA 17126-0333
Phone: (717) 705-2343
Fax: (717) 705-0708
TTY: (717) 783-8445

Sincerely Yours,

A handwritten signature in cursive script that reads "Dale Baker".

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

Ilene Solomon Greenstone
6327 Phillips Avenue
Pittsburgh, PA 15217

RECEIVED

AUG 17 2000

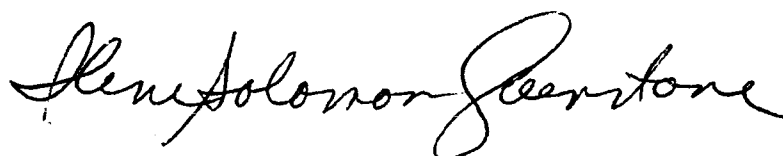
**OFFICE OF EDUCATIONAL
INITIATIVES**

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

Dear Dr. Baker:

I recently received information about the proposed regulations on the rights of children with disabilities in charter schools. I am concerned about how they are being addressed. I found them to be very difficult to understand – particularly the list of numbers referring to federal regulations. I am not an expert in this field. Therefore I need to have clearly articulated statements, not a list of numbers. Additionally, there seems to be a lack of clarity about the prerequisites that relate to a school mission. Although the laws say that charter schools can't discriminate against children with disabilities the prerequisites statement could keep certain students from being accepted. Finally, the comment period needs to be extended. Many people who I know are more than interested in these issues and are away for the summer. If this comment period ends on August 28th and there is no opportunity for public hearings, very few families or professionals will have the chance to comment.

I am asking for your support in having all families and professionals working together to ensure quality education for ALL children. Thank you



Ilene Solomon Greenstone



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

333 MARKET STREET
HARRISBURG, PA 17126-0333

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2000 AUG 22 AM 8:39

August 18, 2000

INDEPENDENT REGULATORY
REVIEW COMMISSION

Northeast Pennsylvania Center for Independent Living
Lower Level – IBEW Building
431 Wyoming Avenue
Scranton, PA 18503-1228

Dear Mr. Williams:

Thank you for your letter of August 14, 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, 10th Floor
Harrisburg, PA 17126-0333
Phone: (717) 705-2343
Fax: (717) 705-0708
TTY: (717) 783-8445

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Dale Baker".

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

Northeast Pennsylvania Center for Independent Living
Lower Level - IBEW Building
431 Wyoming Avenue • Scranton, PA 18503-1228

Executive Director
John F. Boland

Deputy Director
Jerome A. Pollard

August 14, 2000

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker:

As a former special education student who is now an advocate, I am taking this opportunity to comment on the proposed charter school regulations.

First, the August 28 deadline needs to be extended. Public hearings should be conducted. The regulations attempt to "incorporate" federal regulations. As a result, they are ambiguous. The proposals should be clearly written.

The regulations also allow a school to adopt "prerequisites...that directly relate to the school's mission. This could potentially exclude students with disabilities from charters.

Finally, the proposals do not provide for mediation, or for appeals of due process hearing decisions.

Thank you for your consideration.

Sincerely,



Keith Williams
Associate Director

Original: 2129



PENNSYLVANIA
SCHOOL BOARDS
ASSOCIATION, INC.

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2000 AUG 2 4 10:09
774 LIMEKILN ROAD, NEW CUMBERLAND, PA 17070-2398 / (717) 774-2331 / FAX (717) 774-0718

REVIEW COMMISSION

July 31, 2000

Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Nyce,

Enclosed are the comments of the Pennsylvania School Boards Association to the Department of Education concerning proposed new regulations to 22 Pa. Code, Chapter 711, regarding charter school services and programs for children with disabilities, that was published in the July 8, 2000 issue of the *Pennsylvania Bulletin*.

Generally, we are supportive of the proposal that has been developed pursuant to the requirements of Act 22 of 1997, the Charter School Law. PSBA believes that the proposed Chapter 711 establishes guidance for charter schools to provide special education services as required by federal law under the supervision of the department.

However, the association does have concerns with various specific areas of the proposal that are addressed by section number and topic. In most of these instances, we are suggesting various modifications to the language in order to clarify or strengthen certain provisions, or to maintain consistency with federal requirements.

We offer these comments to you as the proposal moves through the regulatory review process. Please contact me if you have any questions regarding the issues addressed in this letter.

Sincerely,

Thomas J. Gentzel
Assistant Executive Director
Governmental and Member Relations



Original: 2129

PENNSYLVANIA
SCHOOL BOARDS
ASSOCIATION, INC.

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2000 AUG -2 AM 10:09

774 LIMEKILN ROAD, NEW CUMBERLAND, PA 17070-2398 / (717) 774-2331 / FAX (717) 774-0718

REVIEW COMMISSION

July 31, 2000

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker:

The Pennsylvania School Boards Association would like to take this opportunity to provide comments concerning the department's proposed new regulations to 22 Pa. Code, Chapter 711, regarding charter school services and programs for children with disabilities, that was published in the July 8, 2000 issue of the *Pennsylvania Bulletin*.

Generally, we are supportive of the proposal that has been developed pursuant to requirements of Act 22 of 1997, the Charter School Law. Act 22 authorizes charter schools to be exempt from complying with state special education regulations and standards under 22 Pa. Code, Chapters 14 and 342, but requires those schools to comply with federal laws and regulations governing children with disabilities. PSBA believes that the proposed Chapter 711 does establish guidance for charter schools to provide special education services as required by federal law under the supervision of the department. Our comments that follow raise questions or call for clarification in certain specific sections of the proposal.

Section 711.1 (Definitions) – PSBA suggests that the definition of “at-risk student” be deleted. Although the term is used in Section 711.7 (1), we believe it is not necessary to define the term in this chapter of regulations since it is used only once and is not part of special education services. Further, we believe that the definition, as drafted, is too broad and in itself leads to questions (e.g., what is meant by “poverty,” “community factors,” “academic difficulties” or “economic disadvantage”).

Section 711.2 (Purpose and intent) – This section could be strengthened, we suggest, by including a statement that clarifies that charter schools are exempt from the requirements of state special regulations. In addition, language should be added similar to that in the preamble that states that this new chapter of regulations is promulgated “to facilitate compliance with federal statute, regulation and court decrees that apply in this commonwealth to children with disabilities.”

Section 711.3 (Incorporation of federal laws) – This section includes a list of those sections of federal regulation under 34 CFR Part 300 to be adopted by reference. While the inclusion of the list is beneficial insofar that the language under those provisions does not have to be restated under the proposal, we are concerned that it implies that all other federal requirements do not apply. Further, we have noted that the list of sections of federal regulations to be incorporated by reference is slightly different than the list under the proposed revisions to the state regulations under Chapter 14. Upon comparison, it is clearly understandable why certain sections, such as those concerning state agency responsibilities and provisions for FAPE requirements for students with disabilities in adult prisons, are not included under Chapter 711. PSBA suggests that language be added to 711.3(a) to clarify that charter schools must comply with *all applicable* provisions of federal laws. In addition, we suggest 711.3(b) be amended to state that the list of sections to be incorporated by reference “includes but is not limited to” those provisions.

The association does raise concerns regarding two sections of federal regulation that are not proposed to be incorporated into Chapter 711, as follows:

Participation in state assessments – Two sections of federal law that are included under Chapter 14 but omitted under Chapter 711 are 300.138 and 300.139, which require special education students to be included in state and district-wide assessment programs, and call for the state agency to compile and report to the public the assessment results. Section 1715-A (8) of Act 22 of 1997 requires charter schools to participate in the Pennsylvania State Assessment System as provided for in the Chapter 4 regulations on academic standards and assessment. Section 4.51(j) of Chapter 4 regarding the state assessment system requires children with disabilities to be included in the testing program, with appropriate accommodations where necessary; alternate assessments must be developed for those students who cannot participate in the program as determined by the child’s IEP team. Section 4.51(a)(6) requires the state to “provide results to school districts (including charter schools) and AVTs based upon the aggregate performance of all students, for students with an Individualized Education Program (IEP) and for those without an IEP.”

Since both federal and state law requires charter school students to participate in the assessment system, PSBA recommends that Chapter 711 be amended to include sections 300.138 and 300.139 under the list of provisions to be adopted by reference in order to abate any confusion or misinterpretation of these regulations.

Children’s rights – Also present under proposed Chapter 14 but absent under Chapter 711 is Section 300.574 (a) and (b). This section requires the state agency to provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded parents, taking into consideration the age of the child and type or severity of disability. It also states that, pursuant to regulations for the Family Educational Rights and Privacy Act, the rights of parents regarding education records are transferred to the student at age 18.

We question what the department's rationale is for omitting the reference to Section 300.574(a) and (b) in Chapter 711, and what implications the omission would have on the affected students and parents. PSBA believes that the proposal should ensure the rights and privacy of special education students and their parents and should not imply any diminution of such rights.

Section 711.7 (Enrollment) - Through discussions with various school districts that have charter schools operating in their area, PSBA has heard concerns related to efforts by some charter schools to dissuade parents of students with disabilities from enrolling in their schools. The association supports the language under Section 711.7 and further recommends that the provisions under 711.7(a) be strengthened by adding language that would prohibit charter schools from counseling or otherwise discouraging prospective students with disabilities from applying for admission.

PSBA also has two comments regarding Section 711.7(b). First, we believe that the term "handicapped child" should be changed to "child with a disability" in order to be consistent with federal law. Second, we recommend that the proposal include an explanation or examples of what is considered to be "reasonable criteria" to be used in evaluating prospective students.

Section 711.8 (Educational records) - The issue of student records and confidentiality raises concerns among school officials that want to ensure that they are in compliance with federal and state requirements. It is important to emphasize the need to ensure that any provisions under Chapter 711 concerning student records have been compared with the requirements under the Family Educational Rights and Privacy Act (FERPA) in order to minimize the liability of school entities and charter school operators.

Section 711.21 (Child find) - In order to clarify the active role that charter schools must take regarding child find duties beyond developing a policy, we suggest the language be amended in Section 711.21(a) to replace the word "establish" with the words "adopt and use." In addition, Section 711.21(b) should be revised to state that "Each charter school shall conduct." These suggested changes are consistent with similar language under the proposed Chapter 14.

Section 711.22 (Evaluation and reevaluation) - The section calls for charter schools to reevaluate their special education students every three years, "unless a shorter period is required by existing law." However, it is unclear whether that refers to only federal law, or if state rules would apply to this section.

Section 711.44 (ESY) - PSBA has provided comment to the department regarding provisions for extended school year services in past years as various revisions were made to state special education regulations and standards. The association has questioned the need to include specific provisions in those rules since Section 300.309 of the federal regulation establish the need for schools to make ESY services available in certain instances. However, it has been the department's position that federal rules require state regulation to have specific provisions for the implementation of ESY.

Dr. Dale Baker Letter
July 31, 2000
Page 4

With this in mind, PSBA recommends that the language under Chapter 711 be identical to that under the proposed Chapter 14 revisions so that these requirements are addressed consistently by traditional public schools and charter schools. In addition, we suggest that language under 711.44(4)(ii) be amended to clarify that the goals to be reached are those under the student's IEP. Also, under the following section 711.44(4)(iii), we question the need for the words "...motivation and trust and may lead to an irreversible..." in that sentence. That language does not appear in Chapter 14, and we believe that the inclusion of such broad, undefined terminology may lead to confusion and leave charter schools open to liability in certain cases.

Section 711.61 (Suspension and expulsion) – This section properly establishes provisions concerning suspension and expulsion, but it does not address and makes no reference to discipline procedures under federal special education law. PSBA suggests that Section 711.61(b) be revised to state that charter schools shall comply with Chapter 12 (relating to students) and the requirements of 34 CFR 300.520-300.529. Although these sections are adopted by reference under Section 711.3(b), we believe they should be restated here for added clarity and emphasis.

We appreciate the opportunity to review and comment on the proposed new chapter of regulations. Please contact me if you wish to discuss the issues addressed in this letter.

Sincerely,



Thomas J. Gentzel
Assistant Executive Director
Governmental and Member Relations

c: Sen. James Rhoades
 Sen. Allyson Schwartz
 Rep. Jess Stairs
 Rep. Nicholas Colafella
 Mr. Robert Nyce

Original: 2129



RECEIVED

2000 AUG -4 AM 8:24

PENNSYLVANIA
SCHOOL BOARDS
ASSOCIATION, INC.

774 LIMEKILN ROAD, NEW CUMBERLAND, PA 17070-2398 / (717) 774-2331 / FAX (717) 774-0718
REVIEW COMMISSION

July 31, 2000

RECEIVED

AUG 01 2000

OFFICE OF EDUCATIONAL
INITIATIVES

Dr. Dale Baker
Office of Educational Initiatives
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333

Dear Dr. Baker:

The Pennsylvania School Boards Association would like to take this opportunity to provide comments concerning the department's proposed new regulations to 22 Pa. Code, Chapter 711, regarding charter school services and programs for children with disabilities, that was published in the July 8, 2000 issue of the *Pennsylvania Bulletin*.

Generally, we are supportive of the proposal that has been developed pursuant to requirements of Act 22 of 1997, the Charter School Law. Act 22 authorizes charter schools to be exempt from complying with state special education regulations and standards under 22 Pa. Code, Chapters 14 and 342, but requires those schools to comply with federal laws and regulations governing children with disabilities. PSBA believes that the proposed Chapter 711 does establish guidance for charter schools to provide special education services as required by federal law under the supervision of the department. Our comments that follow raise questions or call for clarification in certain specific sections of the proposal.

Section 711.1 (Definitions) – PSBA suggests that the definition of “at-risk student” be deleted. Although the term is used in Section 711.7 (1), we believe it is not necessary to define the term in this chapter of regulations since it is used only once and is not part of special education services. Further, we believe that the definition, as drafted, is too broad and in itself leads to questions (e.g., what is meant by “poverty,” “community factors,” “academic difficulties” or “economic disadvantage”).

Section 711.2 (Purpose and intent) – This section could be strengthened, we suggest, by including a statement that clarifies that charter schools are exempt from the requirements of state special regulations. In addition, language should be added similar to that in the preamble that states that this new chapter of regulations is promulgated “to facilitate compliance with federal statute, regulation and court decrees that apply in this commonwealth to children with disabilities.”

Section 711.3 (Incorporation of federal laws) – This section includes a list of those sections of federal regulation under 34 CFR Part 300 to be adopted by reference. While the inclusion of the list is beneficial insofar that the language under those provisions does not have to be restated under the proposal, we are concerned that it implies that all other federal requirements do not apply. Further, we have noted that the list of sections of federal regulations to be incorporated by reference is slightly different than the list under the proposed revisions to the state regulations under Chapter 14. Upon comparison, it is clearly understandable why certain sections, such as those concerning state agency responsibilities and provisions for FAPE requirements for students with disabilities in adult prisons, are not included under Chapter 711. PSBA suggests that language be added to 711.3(a) to clarify that charter schools must comply with *all applicable* provisions of federal laws. In addition, we suggest 711.3(b) be amended to state that the list of sections to be incorporated by reference “includes but is not limited to” those provisions.

The association does raise concerns regarding two sections of federal regulation that are not proposed to be incorporated into Chapter 711, as follows:

Participation in state assessments – Two sections of federal law that are included under Chapter 14 but omitted under Chapter 711 are 300.138 and 300.139, which require special education students to be included in state and district-wide assessment programs, and call for the state agency to compile and report to the public the assessment results. Section 1715-A (8) of Act 22 of 1997 requires charter schools to participate in the Pennsylvania State Assessment System as provided for in the Chapter 4 regulations on academic standards and assessment. Section 4.51(j) of Chapter 4 regarding the state assessment system requires children with disabilities to be included in the testing program, with appropriate accommodations where necessary; alternate assessments must be developed for those students who cannot participate in the program as determined by the child’s IEP team. Section 4.51(a)(6) requires the state to “provide results to school districts (including charter schools) and AVTs based upon the aggregate performance of all students, for students with an Individualized Education Program (IEP) and for those without an IEP.”

Since both federal and state law requires charter school students to participate in the assessment system, PSBA recommends that Chapter 711 be amended to include sections 300.138 and 300.139 under the list of provisions to be adopted by reference in order to abate any confusion or misinterpretation of these regulations.

Children’s rights – Also present under proposed Chapter 14 but absent under Chapter 711 is Section 300.574 (a) and (b). This section requires the state agency to provide policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded parents, taking into consideration the age of the child and type or severity of disability. It also states that, pursuant to regulations for the Family Educational Rights and Privacy Act, the rights of parents regarding education records are transferred to the student at age 18.

We question what the department's rationale is for omitting the reference to Section 300.574(a) and (b) in Chapter 711, and what implications the omission would have on the affected students and parents. PSBA believes that the proposal should ensure the rights and privacy of special education students and their parents and should not imply any diminution of such rights.

Section 711.7 (Enrollment) - Through discussions with various school districts that have charter schools operating in their area, PSBA has heard concerns related to efforts by some charter schools to dissuade parents of students with disabilities from enrolling in their schools. The association supports the language under Section 711.7 and further recommends that the provisions under 711.7(a) be strengthened by adding language that would prohibit charter schools from counseling or otherwise discouraging prospective students with disabilities from applying for admission.

PSBA also has two comments regarding Section 711.7(b). First, we believe that the term "handicapped child" should be changed to "child with a disability" in order to be consistent with federal law. Second, we recommend that the proposal include an explanation or examples of what is considered to be "reasonable criteria" to be used in evaluating prospective students.

Section 711.8 (Educational records) - The issue of student records and confidentiality raises concerns among school officials that want to ensure that they are in compliance with federal and state requirements. It is important to emphasize the need to ensure that any provisions under Chapter 711 concerning student records have been compared with the requirements under the Family Educational Rights and Privacy Act (FERPA) in order to minimize the liability of school entities and charter school operators.

Section 711.21 (Child find) - In order to clarify the active role that charter schools must take regarding child find duties beyond developing a policy, we suggest the language be amended in Section 711.21(a) to replace the word "establish" with the words "adopt and use." In addition, Section 711.21(b) should be revised to state that "Each charter school shall conduct:" These suggested changes are consistent with similar language under the proposed Chapter 14.

Section 711.22 (Evaluation and reevaluation) - The section calls for charter schools to reevaluate their special education students every three years, "unless a shorter period is required by existing law." However, it is unclear whether that refers to only federal law, or if state rules would apply to this section.

Section 711.44 (ESY) - PSBA has provided comment to the department regarding provisions for extended school year services in past years as various revisions were made to state special education regulations and standards. The association has questioned the need to include specific provisions in those rules since Section 300.309 of the federal regulation establish the need for schools to make ESY services available in certain instances. However, it has been the department's position that federal rules require state regulation to have specific provisions for the implementation of ESY.

Dr. Dale Baker Letter
July 31, 2000
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With this in mind, PSBA recommends that the language under Chapter 711 be identical to that under the proposed Chapter 14 revisions so that these requirements are addressed consistently by traditional public schools and charter schools. In addition, we suggest that language under 711.44(4)(ii) be amended to clarify that the goals to be reached are those under the student's IEP. Also, under the following section 711.44(4)(iii), we question the need for the words "...motivation and trust and may lead to an irreversible..." in that sentence. That language does not appear in Chapter 14, and we believe that the inclusion of such broad, undefined terminology may lead to confusion and leave charter schools open to liability in certain cases.

Section 711.61 (Suspension and expulsion) – This section properly establishes provisions concerning suspension and expulsion, but it does not address and makes no reference to discipline procedures under federal special education law. PSBA suggests that Section 711.61(b) be revised to state that charter schools shall comply with Chapter 12 (relating to students) and the requirements of 34 CFR 300.520-300.529. Although these sections are adopted by reference under Section 711.3(b), we believe they should be restated here for added clarity and emphasis.

We appreciate the opportunity to review and comment on the proposed new chapter of regulations. Please contact me if you wish to discuss the issues addressed in this letter.

Sincerely,



Thomas J. Gentzel
Assistant Executive Director
Governmental and Member Relations

c: Sen. James Rhoades
Sen. Allyson Schwartz
Rep. Jess Stairs
Rep. Nicholas Colafella
Mr. Robert Nyce

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REVIEW COMMISSION

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Affiliated with the National Education Association

Dear Dr. Baker:

The following are a list of PSEA's comments, suggestions and objections regarding the proposed regulations entitled "Charter School Services and Programs for Children with Disabilities" published in the Pennsylvania Bulletin, Volume 30, Number 28 dated July 8, 2000.

- Definitions should be cross referenced to definitions in federal laws and regulations.
- Section 711.3(a) -- Should be amended to provide that charter schools assume the duty to ensure FAPE under the IDEA and under Section 504. As written, it appears that compliance is required under the IDEA or Section 504.
- Section 713.3(b) -- Should be amended to incorporate by reference the following regulations in addition to those already provided. These regulations apply to charter schools assuming the role of the LEA under Pennsylvania's statute: 300.180-192; 300.197-240; 300.242-250; 300.311; 300.347(d); 300.400. In addition, the following Section 504 regulations should be added: 104.53 - 104.61. Charter schools are treated like any other recipient under these regulations.
- Section 713.6 -- Should be amended to require that charter schools file special education plans which at a minimum report upon (1) the age and type of exceptionality for each enrolled student, (2) the level of intervention provided to each student, (3) certification of staff providing services to each student, and (4) programs and services available to students with disabilities. Without this information, it will be impossible for the Department to determine whether the charter school is complying with federal law.
- Section 713.7 -- Should be amended to clarify that charter schools may not have admissions criteria which tend to exclude students with disabilities or certain categories of students with disabilities. The section as written is extremely confusing.
- Section 713.8 -- Should be amended to provide that the sending school must transfer all of the student's educational records. As written, the section appears to require that the sending entity transfer only the student's current IEP. The section should also be amended to require that charter schools request that the student's prior school forward the student's records within 10 days of admission. If charter schools are not required to take action to obtain the records, it is likely that such schools may not be on notice of and may not have time to develop the programs and services which they must provide to their special education students.



- Section 713.21 -- Should be amended to require that the policy of each charter school include public awareness activities sufficient to inform parents that students attending charter schools retain their rights under federal special education laws. As written, this section suggests that charter schools need only inform parents about the programs which are available. Federal law requires charter schools to make available all programs and services which are appropriate to the needs of special education students. This section should also be amended to require that sending districts provide this notice to parents as part of their child find responsibilities.
- Section 713.22 -- Should be amended to clarify that charter schools must reevaluate students more frequently than every three years upon the request of the parent, the student's teacher, whenever a change in placement is considered or whenever the situation warrants. The regulation as written fails to put charter schools on notice of this federal requirement.
- Section 713.41 -- Should be amended to clarify that the charter school's IEP team determines whether to implement the current IEP and that if the team decides that it is appropriate to develop a new IEP, IDEA procedures must be followed. As written, the regulation suggests that the charter school may unilaterally decide to develop a new IEP.
- Section 713.43 -- Should be amended to clarify that the charter school is responsible for monitoring the educational program, convening annual IEP meetings, revising the IEP, and assuring procedural compliance whenever the charter school's IEP team places the student in an APS or other private setting.
- Section 713.61 -- Should be amended to clarify that charter schools may not apply normal discipline procedures to special education students unless procedural requirements mandated under federal law have been met. The regulation should specify these requirements. As written, the section indicates that charter schools may suspend special education students for any period of time without conducting a manifestation determination or functional behavioral assessment and without affording parents due process rights. This is a clear violation of federal law.

Sincerely,

Leslie A. Collins

Leslie A. Collins, Staff Attorney

LAC/sb

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