

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

Department of Education

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

006-308

IRRC Number: 2653

(3) Short Title

Chapter 711 – Charter Schools and Cyber Charter Schools

(4) PA Code Cite

22 PA Code Chapter 711

(5) Agency Contacts & Telephone Numbers

Primary Contact: Linda Rhen, (717) 705-5014
lrhen@state.pa.us

Secondary Contact: Sheri Rowe, (717) 783-5146
srowe@state.pa.us

(6) Type of Rulemaking (check one)

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

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

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

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

Chapter 711 establishes requirements for the education of students with disabilities in charter schools and cyber charter schools. It defines requirements for screening of students who may be eligible for special education, the development of an individualized education program for each identified student, and establishes procedural safeguards for the resolution of complaints.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Public School Code of 1949, 24 P.S. §17-1732-A(c)(2) and §17-1749-A(b)(8).
Individuals with Disabilities Education Act and implementing regulations at 34 CFR 300.1—300.818

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

The regulation is mandated by state law in the Public School Code of 1949, 24 P.S. §17-1732-A(c)(2) and §17-1749-A(b)(8).

Section 608 of the Federal Individuals with Disabilities Education Act (P.L. 108-446) and associated regulations (34 CFR 300.1--300.818) also requires that a state "ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title."

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

Chapter 711 establishes requirements for charter schools and cyber charter schools to provide appropriate educational services to students with disabilities. The policies contained therein are required under the federal Individuals With Disabilities Act which qualifies the Commonwealth to receive more than \$380 million in federal funding. In addition, the chapter maintains reporting requirements and other related requirements consistent with the Charter School Law.

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

Failure to align state policies with the requirements of IDEA will jeopardize this Commonwealth's eligibility for the more than \$380 million it receives each year in federal funding. In addition, approximately 7,500 children with disabilities enrolled in charter schools and cyber charter schools would have limited protections and reduced levels of educational services and programs without state regulation.

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

Approximately 55,000 of Pennsylvania's 1.8 million school-age children attend charter schools or cyber charter schools. Of those, approximately 7,500 (13.7%) are identified as having a disability and receive services and programs (as per the December 1, 2006 child count) as required by IDEA and the Chapter 711 regulations. Charter schools and cyber charter schools are considered public schools, and as such are responsible for providing special education services and programs consistent with the Individuals with Disabilities Education Improvement Act of 2004 and its August 2006 regulations. Following is a break out by disability category of disability in the enrollment in charter schools and cyber charter schools:

Specific Learning Disability - 4,604	Hearing Impairment including Deafness - 39
Speech or Language Impairment - 1,348	Multiple Disabilities - 38
Emotional Disturbance - 566	Orthopedic Impairment - 16
Other Health Impairment - 340	Traumatic Brain Injury - 14
Mental Retardation - 326	Visual Impairment including Blindness - 13
Autism - 206	Preschool - 1

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

School personnel who are not able to meet the new qualifications for educational interpreters may need to be reassigned or could lose their job. Approximately 15-20 educational interpreters may be effected by the regulation, however, data are not available as to the exact number of interpreters who may be working in charter schools or cyber charter schools.

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

There are 109 Charter schools, and 11 cyber charter schools. Enrollments for 2005/06 were approximately 41,200 students attending 109 Charter schools, and 12,600 students attending cyber charter schools; a total of 54,800 total students attending charter and cyber charter schools. In the 2005/06 school year, there were approximately 3,517 professional staff members employed in charter schools and 523 staff members employed by cyber charter schools. There were 1,957 support personnel employed by charter schools and 186 support staff employed by cyber charter schools.

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

Representatives of the Department of Education held five public regional roundtable meetings in December 2006 and January 2007 to seek input on Chapter 711. The sessions were attended by over 50 individuals. Two roundtables were held in Harrisburg. The others were held in King of Prussia, Pittsburgh and the Lehigh Valley. Notice of the roundtable meetings were posted on the Department of Education web site and announced in public meetings, email notices sent to all charter school and cyber charter school chief executive officers, as well as to school administrators and to the Department's stakeholders list.

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

The Commonwealth's schools already spend more than \$2.3 billion each year on educating students with disabilities. The Commonwealth provides school districts more than \$1.0 billion in state funds. Charter schools and cyber charter schools receive direct funding from resident school districts based on a per pupil cost in that school district.

Charter schools and cyber charter schools receive IDEA funds based on the number of students with disabilities in each school. Charter schools and cyber charter schools receive other federal funding from the Department of Education that is identified in this analysis.

These regulations will have minimal impact on the regulated community as they continue existing requirements or implement existing federal requirements. Educational interpreters need to pass the

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educational interpreter test and also take 20 hours of continuing professional education each year.

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

Costs associated with the recruitment and payment of qualified educational interpreters may be incurred by charter schools and cyber schools who provide an education to students who require these services.

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

The Department, through federal funding provided to the three regional Pennsylvania Training and Technical Assistance Network (PATTAN) centers has and will continue to offer training to educational interpreters that will enable them to meet the new qualifications for these positions established in the regulation. Therefore there will not be additional costs incurred by the Department to implement these requirements.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community						
Local Government	0					
State Government						
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community						
Local Government						

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State Government						
Total Revenue Losses	0	0	0	0	0	0

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

N.A. Implementing current requirements of IDEA.

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

Program	FY -3	FY -2	FY -1	Current FY
State Appropriation for Charter Schools	\$1,000,000 2003-04	\$1,000,000 2004-05	\$0 2005-06	\$0 2006/07

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

The regulation is necessary to align state policies with the requirements of the federal Individuals With Disabilities Education Improvement Act. Without the regulations the Commonwealth would not qualify for substantial federal funding. However, these regulations have minimal impact on the amount of state funds appropriated to provide services and programs to students with disabilities.

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

The Commonwealth is required by the federal Individuals with Disabilities Education Act (IDEA) to align its policies with federal law and regulations. Therefore nonregulation is not an option.

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

N.A.

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

Qualifications for educational interpreters in §711.5 exceed federal law but are required by Act 92 of 2006, the Educational Interpreter's and Transliterator Act.

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

The regulation assures that Pennsylvania's children with disabilities are provided a free appropriate public education that will allow them to reach their maximum potential. The regulation will not put Pennsylvania at a competitive disadvantage.

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

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The regulation revises the Department's existing Chapter 711 regulations to align them with new federal requirements, state statutes, judicial decisions and settlement agreements.

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

The Department's representatives will take public comment through mail and email. In addition, the Department will schedule three public hearings to provide opportunities for individuals to make comment in person. The announcement of the opportunities for public comment will be made in the Pennsylvania Bulletin, and also on the PDE website. Notice will also be provided to stakeholder groups.

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

Yes. Longstanding federal reporting requirements dictated that the Department establish and maintain a system known as Penn Data that has been in operation for decades. These regulations include language that merely recognizes that fact and authorizes, in state regulation, the Department to continue to operate that system and collect information required for federal and state reporting.

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

The entire chapter addresses the needs of students with disabilities. Various provisions address specific types of disabilities such as children who are deaf or hearing impaired, blind, autistic, mentally retarded, brain injured and others.

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

The regulation becomes effective upon publication in the Pennsylvania Bulletin.

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

Department of Education policy is to review its regulations every 5 years.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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

Angela M. Elliott

BY: _____
(DEPUTY ATTORNEY GENERAL)

SEP 19 2007

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

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

DEPARTMENT OF EDUCATION
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 006-308

DATE OF ADOPTION: _____

BY: *Gerald L. Zahorchak*

Gerald L. Zahorchak, D.Ed.
TITLE: Secretary of Education
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

Andrew C. Clark

BY: Andrew C. Clark

AUG 23 2007

DATE OF APPROVAL

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

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

NOTICE OF PROPOSED RULEMAKING

TITLE 22, EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE, CH. 711]

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

Preamble

Department of Education

[22 PA. CODE CH. 711]

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

The Department of Education proposes to amend Chapter 711 (relating to charter schools and cyber charter schools) to read as set forth in Annex A. The Department is acting under the authority of Sections 1732(c)(2) and 1749(b)(8) of the Public School Code of 1949, as amended, 24 P.S. §17-1732-A(c)(2) and §17-1749-A(b)(8).

This proposed rulemaking establishes procedures for the education of students with disabilities who attend public charter schools or cyber charter schools, and sets forth requirements and procedures for the delivery of services and programs for such students. These proposed regulations are promulgated to facilitate compliance with federal statute, regulations and court decrees that apply to students with disabilities. Chapter 14 (22 PA Code Chapter 14), which governs programs for students with disabilities who are served by school districts, does not apply to students with disabilities who attend charter schools and cyber charter schools. Instead, these schools must follow the regulations of the Department of Education contained in 22 PA Code Chapter 711, as required by 24 P.S. §17-1732-A(b).

Representatives of the Department held five regional public roundtable meetings during December 2006 and January 2007 where stakeholders were provided an opportunity to discuss the issues and share their concerns about charter schools and cyber charter schools. These roundtable meetings were conducted immediately following roundtable meetings for other regulations, Chapters 14 and 16, thereby, expanding the awareness of stakeholders regarding the roundtable discussions.

Notices of the meetings were distributed to individuals and organizations who asked to be included on the Department's stakeholder list. Notice was sent to charter school and cyber charter school chief executive officers, superintendents, intermediate unit executive directors, area vocational school directors and others via the Department's PennLINK email system. Public notice was posted on the Department's web site. A number of large statewide education associations alerted their members and others about the meetings through their email distribution lists, web sites and publications.

The Department heard from over 50 individuals and organizations throughout this process.

Purpose

The proposed revisions to Chapter 711 are designed to align the chapter with the Federal Individuals with Disabilities Education Improvement Act (IDEA) (20 U.S.C.A. §§ 1400—1419), as amended December 3, 2004, and related Federal regulations, and applicable provisions of Pennsylvania statute.

The revised federal regulations are adopted by reference in this Chapter. The Department determined that many areas in the Federal rules are sufficiently detailed to provide for effective implementation and, therefore, are proposed to be incorporated by reference.

Additional language is proposed in this chapter where Federal rules require greater detail for implementation or State statute requires regulation.

This rulemaking will become part of the eligibility grant application to the United States Department of Education under IDEA . The Commonwealth must demonstrate a good faith effort to align its policies with IDEA and its implementing regulations in order to be eligible to receive federal funds. Copies of the eligibility grant application will be made available to the public through the Department of Education.

Requirements of the Proposed Rulemaking

The proposed rulemaking defines terms related to special education for charter schools and cyber charter schools and outlines the Department's authority to assure charter schools' compliance with the Federal laws, regulations and court decrees as they apply to children with disabilities. These proposed regulations adopt specific terminology; specify timelines for development and implementation of Individualized Education Program (IEP) plans; require timely access to instructional materials for students who are blind or visually impaired; and, specify criteria for the determination of students with specific learning disabilities. In addition, the proposed rulemaking incorporates requirements for the transportation of students to charter schools and cyber charter schools, as specified by state law. Major elements of the proposed rules include:

§ 711.1. Definitions. – Defines cyber charter school, which is used throughout the Chapter where the term charter school appears. This change reflects the amendment of the Charter School Law by Act 14 of 2002 adding provisions regarding cyber charter schools and making cyber charter schools subject to this Chapter. 24 P.S. §17-1749-A(b)(8).

§ 711.2. Purposes. - Specifies the intent to comply with the Individuals with Disabilities Education Improvement Act, IDEA 2004 and its August 2006 implementing regulations. Indicates intent for students to have access to the general curriculum and assessments and

support for charter schools and cyber schools providing early intervening (pre-referral intervention).

§ 711.3 References to federal regulations are updated.

§ 711.5. Personnel.- Adds language regarding the qualifications of Educational Interpreters in conformity with the criteria adopted by the State Board of Education under the Sign Language Interpreter/Transliterator State Registration Act.

§ 711.10. Complaint procedure. – Adds language that directs the Department to establish a complaint procedure consistent with Federal regulations and to disseminate notice of the procedure.

§ 711.22. Reevaluation. – Revised to clarify that students have the right to be reevaluated annually, upon request of a parent or teacher but that more frequent reevaluation may occur only if the parents and school agree.

§ 711.23. Screening. – Clarifies requirements for charter schools and cyber charter schools to establish systems for the initial screening of students before making referrals for special education evaluation. Also clarifies the procedures charter schools and cyber charter schools must follow if they provide early intervening services (pre-referral intervention) to struggling students. Such early intervening services are not required, but, if the charter school or cyber charter school provides such services, the school must conduct the services in accord with these requirements.

§ 711.24. Evaluation. – Requires copies of the evaluation report to be disseminated to parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

§ 711.25. -- Criteria for the determination of Specific Learning Disabilities. – As required by IDEA 2004, the proposed regulations establish criteria that charter schools and cyber charter schools must follow when establishing procedures for determining whether students have specific learning disabilities.

§ 711.41. IEP. – Requires transition planning to occur when the student reaches age 14. And, requires IEP implementation within 10 days of completion of the IEP.

§711.42 Transportation – The proposed rulemaking clarifies transportation requirements based on amendments to the Charter School Law since the initial promulgation of this Chapter. The proposed rulemaking indicates school districts must provide transportation to students with disabilities and to protected handicapped students under Section 504 who are enrolled in a charter school. This includes transportation to an extended school year program, if that program is held at the charter school. If modifications or accommodations, to the transportation are required, including bus aides, the provisions of such modifications or accommodations are the responsibility of the charter school. The proposed rulemaking also clarifies that cyber charter school students are not required to

attend a specific facility to receive their educational services and, therefore, the district of residence is not required to provide transportation for cyber charter school students.

§ 711.45. Access to Instructional Materials. – As required by Federal regulations the Department has established standards for instructional materials in alternative formats by adopting the National Instructional Materials Accessibility Standard as defined in 20 U.S.C. §1474(e)(3)(B). The federal regulations require the state's adoption of this requirement.

§ 711.46. Behavior Support. – Establishes positive rather than negative measures will be required; prohibits certain aversive techniques and inappropriate use of restraints; and, establishes notification requirements when a student has been injured.

§ 711.62. Procedural safeguards – Adds language to clarify that due process hearings, appeal panel proceedings and hearing officers are subject to Title I Pa. Code Part II relating to General Rules of Administrative Practice and Procedure. Also incorporates IDEA requirements for resolution sessions for parents of children with disabilities and permits parent advocates to attend resolution sessions. Provides for new timelines for due process hearings, consistent with federal law. Provides for student remaining in current educational program (pendency) during mediation and allows parent advocates to attend resolution sessions.

Affected Parties

Students who need or may need special education services and programs who are enrolled in charter schools and cyber schools will be affected by this proposal. The proposal also will affect parents and guardians of those students by guaranteeing their participation in the process of determining services and programs that best meet the needs of their child. The Department, charter schools and cyber charter schools will be affected through compliance with the regulations.

Cost and Paperwork Estimates

The proposed rulemaking will not result in significant added costs or savings to either the Department or charter schools and cyber charter schools since they reflect existing federal or state requirements.

Specific criteria for the identification of students with learning disabilities and specific attributes of early intervening services are added, consistent with IDEA. The regulations emphasize the use of scientifically based instruction prior to identifying a student as having a learning disability. In addition, the regulations also permit the use of pre-referral intervention (early intervening services) to help struggling students. The procedures for identifying students with learning disabilities will require schools to document the instruction provided to students prior to referral.

Requirements for the access to instructional materials as required by IDEA are added. The resource center is funded by the federal government. This requirement is not anticipated to add costs to charter schools or cyber charter schools.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

This Chapter will be subject to sunset review by the Department on December 31, 2012 in order to determine its effectiveness in implementing the underlying state and federal statutes and regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 28, 2007, the Department submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

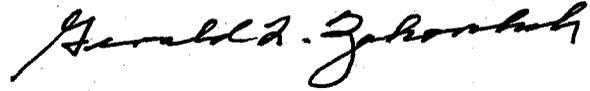
Public Comments and Contact Person

Interested individuals and organizations may access the proposed regulations at www.pabulletin.com. The current Chapter 711 regulations may be accessed at: www.pacode.com. The Federal regulations adopted by reference may be found at: <http://idea.ed.gov/explore/home>.

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Dr. Linda O. Rhen, Pennsylvania Department of Education. Comments may be sent via mail or email. Comments sent via mail should be sent to: 333 Market Street, Harrisburg, PA 17126-0333. Comments sent

via email should be sent to: RA-Chapter711@state.pa.us. Public comments must be received within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Dr. Linda O. Rhen at 717-783-5786-or TTY (717) 783-8445.



Gerald L. Zahorchak,
Secretary of Education

Annex A

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

GENERAL PROVISION AND SUPERVISION

Sec.

- 711.1. Definitions.
- 711.2. Purposes and intent.
- 711.3. Incorporation of Federal regulations.
- 711.4. Supervision.
- 711.5. Personnel.
- 711.6. Annual report.
- 711.7. Enrollment.
- 711.8. Education records.
- 711.9. Payments.
- 711.10. Complaint Procedure.**

IDENTIFICATION AND EVALUATION

- 711.21. Child find.
- 711.22. Reevaluation.
- 711.23. Screening.
- 711.24. Evaluation.
- 711.25. Criteria for the Determination of Specific Learning Disabilities.

IEP

- 711.41. Individualized Education Program (IEP).
- 711.42. Transportation.
- 711.43. Educational placement.
- 711.44. Extended School Year (ESY).
- 711.45. Access to Instructional Materials.
- 711.46. Behavior support.

PROCEDURAL SAFEGUARDS

711.61. Suspension and expulsion.

711.62. Procedural safeguards.

GENERAL PROVISION AND SUPERVISION

§ 711.1. Definitions.

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

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

Charter school—An independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend. A charter school shall be organized as a public, nonprofit corporation. Charters may not be granted to any for-profit entity.

Child with a disability—As defined in [34 CFR 300.7] 34 CFR 300.8 (relating to child with a disability).

Cyber Charter school – An independent public school established and operated under a charter from the Department of Education and which uses technology in order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through the Internet or other electronic means. A cyber charter school shall be organized as a public, nonprofit corporation. Cyber charters may not be granted to any for-profit entity.

Department—The Department of Education of the Commonwealth.

ESY—Extended school year.

FAPE—Free appropriate public education.

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

IEP—Individualized education program.

Regional charter school—An independent public school established and operated under a charter from more than one local board of school directors and in which students are enrolled or attend. **A regional charter school must be organized as a public, nonprofit**

corporation. Charters may not be granted to any for-profit entity.

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

School entity—A school district, intermediate unit, joint school or area vocational technical school.

Secretary—The Secretary of the Department **of Education**.

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

§ 711.2. Purposes and intent.

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

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

(c) Charter schools **and cyber charter schools** are exempt from Chapter 14 (relating to special education services and programs). See 24 P. S. § 17-1732-A

(d) Children with disabilities shall have access to the general curriculum, and participate in state and local assessments as established and described in 22 PA Code, Chapter 4.

(e) The Department supports the use of pre-referral intervention strategies, in accord with 34 CFR §300.226 and as outlined in §711.23 (c) to promote students' success in the general education environment.

§ 711.3. Incorporation of Federal regulations.

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

[(b) The requirements of 34 CFR Part 300 are incorporated by reference as follows:

- (1) 300.3 (relating to regulations that apply).
- (2) 300.4—300.26.
- (3) 300.28 and 300.29 (relating to supplementary aids; and transition services).
- (4) 300.121—300.125.
- (5) 300.138 (relating to participation in assessments).
- (6) 300.139 (relating to reports relating to assessments).
- (7) 300.300 (relating to provision of FAPE).
- (8) 300.302—300.309.
- (9) 300.312 and 300.313 (relating to children with disabilities in public charter schools; and children experiencing developmental delays).
- (10) 300.320 and 300.321 (relating to initial evaluations; and reevaluations).
- (11) 300.340 (relating to definitions related to IEPs).
- (12) 300.342—300.346.
- (13) 300.347(a) and (b) (relating to content of IEP).
- (14) 300.348—300.350 (relating to agency responsibilities for transition services; private school placements by public agencies; and IEP accountability).
- (15) 300.401 (relating to responsibility of State educational agency).
- (16) 300.403 (relating to placement of children by parents if FAPE is at issue).
- (17) 300.500—300.515.
- (18) 300.519—300.529.
- (19) 300.531—300.536.
- (20) 300.540—300.543.
- (21) 300.550—300.553.
- (22) 300.560—300.573.
- (23) 300.574 (a) and (b) (relating to children's rights).

(24) 300.576 (relating to disciplinary information)]

(b) The requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 64 FR 46450 - 46845 (August 14, 2006) are incorporated by reference, as follows:

- (i) 34 CFR 300.4—300.8 (a) and (c) (defining the terms “act”;
“assistive technology device”; and “assistive technology service”;
“charter school;” “child with a disability)
- (ii) 34 CFR 300. 9 – 300.15 (defining the terms “consent”; “core
academic subjects” ;“day”; “business day”; “school day”;
“educational service agency”; “elementary school”;
“equipment”; and “evaluation”)
- (iii) 34 CFR 300.17 – 300.19(“free appropriate public education”;
“highly qualified special education teachers” and homeless
children”)
- (iv) 34 CFR 300.22-300.23 (defining “individualized education
program”; and “individualized education program team”)
- (v) 34 CFR 300.27 – 300.30 (defining “limited English proficient”;
“local educational agency”; “native language”; and “parent”)
- (vi) 34 CFR 300.32 – 300.37 (defining “personally identifiable”;
“public agency”; “related services”; “scientifically based
research”; and “secondary school”)
- (vii) 34 CFR 300.39 (defining the term “special education”)
- (viii) 34 CFR 300.41- 300.45 (defining State educational agency;
“supplementary aids and services”; “transition services”;
“universal design” and “ward of the state”)
- (ix) 34 CFR 300.101- 34 CFR 300.102 (relating to free appropriate
public education (FAPE) and exception to FAPE for certain ages)
- (x) 34 CFR 300.104 - 300.108 (relating to residential placement;
assistive technology; extended school year services; nonacademic
services; and physical education)
- (xi) 34 CFR 300.113 – 300.114 (a)(2) (relating to routine checking of
hearing aids and external components of surgically implanted
medical devices and general LRE requirements)
- (xii) 34 CFR 300.115 - 300.117 (relating to continuum of alternative
placements; placements; and nonacademic settings)
- (xiii) 34 CFR 300.122 (relating to evaluation)

- (xiv) 34 CFR 300.148 (relating to children with disabilities enrolled by their parents in private schools when FAPE is at issue)
- (xv) 34 CFR 300.160 (relating to participation in assessments)
- (xvi) 34 CFR 300.172 (relating to access to instructional materials)
- (xvii) 34 CFR 300.174 (relating to prohibition on mandatory medication)
- (xviii) 34 CFR 300.207 (relating to personnel development)
- (xix) 34 CFR 300.210 - 300.213 (relating to purchase of instructional materials; information for SEA; public information; and records regarding migratory children)
- (xx) 34 CFR 300.226 (relating to early intervening services)
- (xxi) 34 CFR 300.300-300.301 (relating to parental consent and initial evaluations)
- (xxii) 300.302- 300.307 (a) (1) (2) and (b) (relating to screening, reevaluations, additional requirements; determination of eligibility; Specific Learning Disabilities);
- (xxiii) 34 CFR 300.308 - 300.311 (relating to additional group members; determining the existence of a specific learning disability; observation; specific documentation for the eligibility determination)
- (xxiv) 34 CFR 300.320 – 300.325 (relating to definition of individualized education program; IEP team; parent participation; when IEPs must be in effect; development, review and revision of IEP; private school placement by public agencies)
- (xxv) 34 CFR 300.327 – 300.328 (relating to educational placements; and alternative means of meeting participation)
- (xxvi) 34 CFR 300.501 – 300.508 (relating to opportunity to examine records; parent participation in meetings; independent education evaluation; prior notice by the public agency; content of notice; procedural safeguards notice; electronic mail; mediation; filing a due process complaint; and due process complaint)
- (xxvii) 34 CFR 300.510- 300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions, appeal and partial review; timelines and convenience of hearings and reviews; and civil action)
- (xxviii) 34 CFR 300.518 (a) (b) and (d) - 300.519 (relating to child's status

during proceedings; and surrogate parents)

(xxix) 34 CFR 300.530- 300.537 (relating to discipline; authority of school personnel; determination of setting; appeal; placement during appeals; protections for children not determined eligible for special education and related services; referral to and action by law enforcement and judicial authorities; change of placement because of disciplinary removals; and state enforcement mechanisms)

(xxx) 34 CFR 300.610 – 300.625 (confidentiality of information; definitions; notice to parents; access rights; record of access; records on more than one child; list of types and locations of information; fees; amendment of records at parent request; opportunity for hearing; result of hearing; hearing procedures; consent; safeguards; destruction of information; and children's rights)

(c) The requirements of 34 CFR Part 104 are incorporated by reference as follows:

(1) 104.3(f), (h)—(j), (k)(2) and (l) (relating to definitions).

(2) 104.4—104.8. (relating to discrimination prohibited; assurances required; remedial action; designation of responsible employee; and notice)

(3) 104.10 (relating to effect of state or local law or other requirements and effect of employment opportunities).

(4) 104.11 and 104.12 (relating to discrimination prohibited; and reasonable accommodation).

(5) 104.21—104.37 (relating to accessibility)

Cross References

This section cited in 22 Pa. Code § 711.4 (relating to supervision).

§ 711.4. Supervision.

(a) The Commonwealth, through the Department will provide general supervision of special education services and programs provided under this chapter to ensure that charter

schools **and cyber charter schools** comply with § 711.3 (relating to incorporation of Federal regulations).

(b) The Department will supervise charter schools' **and cyber charter schools'** compliance with the IDEA in accordance with the policies and procedures in the Department's IDEA grant application under **34 CFR 300.100 (relating to eligibility for assistance)** and as approved by the United States Department of Education.

(c) Charter schools **and cyber charter schools** shall:

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

§ 711.5. Personnel.

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

(b) **Educational Interpreters – In order to serve as an educational interpreter at a charter school or cyber charter school, consistent with the Sign Language Interpreter/Transliterators State Registration Act, an individual must meet the following qualifications:**

- (1) **Achieve and provide evidence of a score of 3.5 on the Educational Interpreter Performance Assessment (EIPA) for the appropriate grade level to which the person has been assigned; or**
- (2) **Be a qualified educational interpreter or qualified transliterator pursuant to the Sign Language Interpreter or Transliterator State Registration Act and its implementing regulations; and**
- (3) **Provide evidence of a minimum of twenty hours of staff development activities relating to interpreting or transliterating services annually.**

(c) **The Department, in consultation with the State Board of Education will review the EIPA score requirement every two years.**

§ 711.6. Annual report.

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

- (1) The number of children with disabilities in special education.

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

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

(4) The services and programs utilized by the charter school or the cyber charter school through the assistance of **[the] an** intermediate unit **[in which the charter school is located] as prescribed** under sections 1725-A(a)(4) and 1744-A(3) of the act (24 P. S. §§ 17-1725-A(a)(4), 1744-A(3)).

(5) Staff training in special education utilized by the charter school or the cyber charter school through the Department's training and technical assistance network and intermediate unit.

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

(c) The annual report shall include the age and type of exceptionality for each enrolled child with a disability; the level of intervention provided to each child with a disability; certification of staff providing services to each child with a disability; and programs and services available to children with a disability.

§ 711.7. Enrollment.

(a) A charter school or cyber charter school may not deny enrollment or otherwise discriminate in its admission policies or practices on the basis of a child's disability or the child's need for special education or supplementary aids or services.

(b) Subject to subsection (a), a charter school or cyber 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 or cyber charter school may establish reasonable criteria to evaluate prospective students which shall be outlined in the school charter.

(c) A charter school or cyber charter school may not discriminate in its admission policies or practices on the basis of intellectual ability. Admission criteria may not include measures of achievement or aptitude.

§ 711.8. Education records.

(a) When the educational records for a child with a disability are transferred from a public agency, private school, approved private school or private agency, to a charter school or cyber charter school, the public agency, private school, approved private

school or private agency from which the child transferred shall forward all of the child's educational records, including the most recent IEP, within 10 days after the public agency, private school, approved private school or private agency is notified in writing that the child is enrolled in a charter school or cyber charter school.

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

(c) Charter schools and cyber charter schools shall maintain educational records for children with disabilities consistent with the regulations for the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § § 1221 note and 1232g) in 34 CFR Part 99 (relating to family educational rights and privacy).

§ 711.9. Payments.

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

(1) A child with an IEP [**from a school entity in this Commonwealth**] begins attending the charter school or cyber charter school.

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

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

§ 711.10 Complaint Procedure – The Department shall establish a complaint procedure consistent with 34 CFR 300.151 – 300.153 and disseminate notice of that procedure.

IDENTIFICATION AND EVALUATION

§ 711.21. Child find.

(a) To enable the Commonwealth to meet its obligations under [34 CFR 300.125] **34 CFR 300.111** (relating to child find), each charter school **and cyber charter school** shall establish written policies and procedures to ensure that all children with disabilities **[that] who** are enrolled in the charter school **and cyber charter school**, and who are in need of special education and related services, are identified, located and evaluated.

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

(1) Public awareness activities sufficient to inform parents of children applying to or enrolled in the charter school **or cyber charter school** of available special education services and programs and how to request those services and programs.

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

§ 711.22. Reevaluation.

(a) The parent or teacher of a child with a disability has the right under 34 CFR Part 300.303 **(b) [(relating to assistance to states for the education of children with disabilities) to request a reevaluation at any time.] (relating to reevaluations) to request a reevaluation annually and more frequent reevaluations may only occur if the parent and charter school or cyber charter school agree.**

(b) Charter schools **and cyber charter schools** shall reevaluate students with disabilities at least once every 3 years.

(c) Children with disabilities who are identified as mentally retarded shall be reevaluated at least once every 2 years.

711.23 Screening

(a) Each charter school and cyber charter school shall establish a system of screening which may include pre-referral intervention services to accomplish the following:

(1) Identify and provide initial screening for students prior to referral for a special education evaluation, including those services outlined in §711.23 (c).

(2) Provide peer support for teachers and other staff members to assist them in working effectively with students in the general education curriculum.

(3) Identify students who may need special education services and programs.

(b) The screening process shall include:

(1) Hearing and vision screening in accordance with § 1402 of the Public School Code of 1949 (24 P. S. § 14-1402) for the purpose of identifying students with hearing or vision difficulty so that they can be referred for assistance or recommended for evaluation for special education.

(2) Screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects;

(c) Each charter school and cyber charter school may develop a program of pre-referral intervention services. In the case of charter schools and cyber charter schools meeting the criteria set forth in 34 CFR 300.646(b)(2), relating to disproportionality, as established by the state agency, such services are required and shall include:

(1) A verification that the student was provided with appropriate instruction in reading, including the essential components of reading instruction (as defined in § 1208(3) of the Elementary and Secondary Education Act (ESEA)), and appropriate instruction in math.

(2) For students with academic concerns, an assessment of the student's performance in relation to State-approved grade level standards.

(3) For students with behavioral concerns, a systematic observation of the student's behavior in the school environment where the student is displaying difficulty.

(4) A research-based intervention to increase the student's rate of learning or behavior change based on the results of the assessments under paragraph (2) and/or (3).

(5) Repeated assessments of achievement and/or behavior conducted at reasonable intervals, reflecting formal monitoring of student progress during the interventions.

(6) A determination as to whether the student's assessed difficulties are the result of a lack of instruction or limited English proficiency.

(7) A determination as to whether the student's needs exceed the functional ability of the regular education program to maintain the student at an appropriate instructional level.

(8) Documentation that information about the student's progress as identified in paragraph (5) of this section was periodically provided to the student's parents.

(d) Screening or pre-referral intervention activities shall not serve as a bar to the right of a parent to request an evaluation, at any time, including prior to or during the conduct of screening or pre-referral intervention activities.

711.24 Evaluation.

- (a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under [34 CFR 300.534(a)(1)] 34 CFR 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.
- (b) In addition to the requirements incorporated by reference in [34 CFR 300.531—300.535] 34 CFR 300.301 the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the agency receives written parental consent for evaluation.
- (c) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team unless this requirement is waived by a parent in writing.

§ 711.25 Criteria for the Determination of Specific Learning Disabilities.

Following are state-level criteria for determining the existence of a specific learning disability. Each charter school and cyber charter school shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school's charter application. In order to determine that a child has a specific learning disability, the charter school or cyber charter school:

(a) Must address whether the child does not achieve adequately for the child's age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based instruction appropriate for the child's age or State-approved grade-level standards.

- (1) Oral expression
- (2) Listening comprehension
- (3) Written expression
- (4) Basic reading skill
- (5) Reading fluency skills
- (6) Reading comprehension
- (7) Mathematics calculation
- (8) Mathematics problem solving, and

(b) Must use one of the following procedures:

- (1) a process based on the child's response to scientific, research-based intervention, which includes documentation that:
 - (i) the student received high quality instruction in the general education setting.
 - (ii) research-based interventions were provided to the student.
 - (iii) student progress was regularly monitored.
- (2) a process that examines whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.

(c) Must have determined that its findings under this section are not primarily the result of:

- (1) A visual, hearing, or orthopedic disability.
- (2) Mental retardation.
- (3) Emotional disturbance.
- (4) Cultural factors.
- (5) Environmental or economic disadvantage.
- (6) Limited English proficiency.

(d) Must ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that:

(1) Prior to, or as a part of, the referral process, the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction.

(2) Repeated assessments of achievement were conducted at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

IEP

§ 711.41. IEP.

(a) When a child with an IEP transfers to a charter school or cyber charter school [from another public agency, private school, approved private school or private agency in this Commonwealth], the charter school or cyber charter school is responsible upon enrollment for ensuring that the child receives special education and related services in conformity with the IEP, either by adopting the existing IEP or by developing a new IEP for the child in accordance with the requirements of the IDEA.

(b) For students who are 14 years of age or older, the charter school or cyber charter school shall include a transition plan which includes appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills.

(c) The IEP of each student shall be implemented as soon as possible but no later than 10 school days after its completion.

§ 711.42. Transportation.

(a) [A child with a disability who resides in the school district in which the charter school is located, or who is a resident of a school district which is part of a regional charter school, shall be provided transportation to the charter school on the same terms and conditions as transportation is provided to students attending the schools of the district. Nonresident students shall be provided transportation under section 1361 of the Public School Code of 1949 (24 P. S. § 13-1361).]

School districts must provide transportation to students with disabilities eligible under IDEA and to protected handicapped students under Section 504, to the charter school in which they are enrolled, if the charter school is located in

their school district of residence, a regional charter school of which the school district is a part or a charter school located outside district boundaries at a distance not exceeding ten (10) miles by the nearest public highway. This includes transportation to an extended school year program, if that program is held at the charter school.

(b) Students with disabilities and Section 504 students may require modifications or accommodations for transportation to the charter school. Provision of modifications or accommodations, including but not limited to specialized equipment and bus aides, in a student's IEP or Section 504 Service Agreement, are the obligation of the charter school.

(c) Cyber charter school students are not required to attend a specific facility to receive their educational services. The charter school law does not require that a student's school district of residence provide transportation for cyber charter school students. Should transportation be required as a related service in the IEP of the student with disabilities, who is enrolled in a cyber charter school, the cyber charter school must provide the required transportation.

(d) This chapter does not prohibit a charter school or cyber charter school and a school district from entering into agreements regarding the provision of transportation as a related service or accommodation to children with disabilities eligible under IDEA, or students eligible under Section 504.

§ 711.43. Educational placement.

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

§ 711.44. ESY.

To implement [34 CFR 300.309(relating to day; business day; school day)] 34 CFR 300.106 (relating to extended school year services), the State ESY Standards are as follows:

(1) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

(6) Consideration of the need for ESY services shall occur at the IEP team meeting to be convened annually, or more frequently if conditions warrant consistent with Federal requirements in [34 CFR 300.343(c) (relating to IEP meetings)] **34 CFR 300.324 (b) (relating to development, review and revision of IEP)**. Consideration means that ESY services are raised and discussed at the IEP team meeting. In making a determination that a student is eligible for ESY services, the IEP team shall rely on criteria in this section and applicable judicial decisions.

(7) The need for ESY services is most applicable to students with disabilities that are thought of as severe (that is, students with autism/pervasive developmental disorder, serious emotional disturbance, severe levels of mental retardation, degenerative impairments with mental involvement and severe multiple disabilities) and to IEP goals that are associated with self-sufficiency and independence from caretakers. IEP teams may not limit their consideration of need for ESY services to students with particular types or degrees of disability, particular student goals, particular methods of programming provided during the regular school term, or the availability of retrospective data on regression and recoupment.

(8) ESY services shall be designed to maintain skills and behaviors established in IEP goals and objectives.

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

- (i) Progress on goals in consecutive IEPs.
 - (ii) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
 - (iii) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
 - (iv) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.
 - (v) Observations and opinions by educators, parents and others.
 - (vi) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological life skills assessments and other equivalent measures.
- (10) Documentation that ESY services have been considered shall be made on each eligible student's IEP. When determined to be necessary by the IEP team, ESY services shall be reflected on a student's IEP.

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

- (i) The desire or need for day care or respite care services.
- (ii) The desire or need for a summer recreation program.
- (iii) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of FAPE.

711.45 Access to Instructional Materials.

(a) The Department adopts the National Instructional Materials Accessibility Standard (NIMAS) as defined in 20 U.S.C. §1474(e)(3)(B) and set forth in 71 F.R. 41084 (July 19, 2006) for the purpose of providing print instructional materials in alternate accessible formats or specialized formats to blind persons or other persons with print disabilities in a timely manner. In order to insure the timely provision of high quality, accessible instructional materials to children who are blind or other persons with print disabilities, charter schools and cyber charter schools shall adopt the NIMAS. The NIMAS refers to a standard for source files of print instructional materials created by publishers that may be converted into accessible instructional materials.

(b) Charter schools and cyber charter schools shall provide print instructional materials in specialized, accessible formats (i.e. Braille, audio, digital, large-print, etc.) to children who are blind or other persons with print disabilities, as defined in the Act to provide books for adult blind approved March 3, 1931, 2 U.S.C. §135a, in a timely manner.

(c) Charter schools and cyber charter schools act in a timely manner in providing instructional materials under subsection (a) if they take all reasonable steps to ensure that children who are blind or other persons with print disabilities have access to their accessible format instructional materials at the same time that students without disabilities have access to instructional materials. Charter schools and cyber charter schools shall not withhold instructional materials from other students until instructional materials in accessible formats are available.

(d) Receipt of a portion of the instructional materials in alternate accessible or specialized format shall be considered receipt in a timely manner if the material received covers the chapters that are currently being taught in the student's class.

(e) If a child who is blind or other person with a print disability enrolls in school after the start of the school year, a charter school or cyber charter school must take all reasonable steps to ensure that the student has access to accessible format instructional materials within ten school days from the time it is determined that the child requires printed instructional materials in an alternate accessible or specialized format.

(f) The Department, charter schools or cyber charter schools may coordinate with the National Instructional Materials Access Center (NIMAC) to facilitate the production of and delivery of accessible materials to children who are blind or other persons with print disabilities. The NIMAC refers to the central repository, established pursuant to 20 U.S.C. §1474(e), which is responsible for processing, storing and distributing NIMAS files of textbooks and core instructional materials.

(g) Charter schools and cyber charter schools coordinating with NIMAC must require textbook publishers to deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the charter schools or cyber charter schools. Charter schools or cyber charter schools that choose not to coordinate with NIMAC may require that publishers deliver the contents of print instructional materials to the NIMAC in NIMAS format files on or before delivery of the print instructional materials to the charter schools or cyber charter schools.

§ 711.46. Behavior support.

(a) Positive rather than negative measures shall form the basis of behavior support programs to ensure that all students shall be free from demeaning treatment and

aversive techniques or the inappropriate use of restraints. Behavior support programs include a variety of techniques to develop and maintain skills that will enhance an individual student's opportunity for learning and self-fulfillment. The types of intervention chosen for a particular student shall be the least intrusive necessary.

(b) Notwithstanding the requirements incorporated by reference in 34 CFR 300.34, 300.324, 300.530 (relating to related services, development, review, and revision of IEP, and authority of school personnel), with regard to a child's behavior, the following words and terms when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Aversive techniques—Deliberate activities designed to establish a negative association with a specific behavior.

Behavior support—The development, change and maintenance of selected behaviors through the systematic application of behavior change techniques.

Positive techniques—Methods which utilize positive reinforcement and other positive techniques to shape a student's behavior, ranging from the use of positive verbal statements as a reward for good behavior to specific tangible rewards.

Restraints—Devices and techniques, that last longer than 30 consecutive seconds, designed and used to control acute, episodic behaviors, including aggressive or self injurious behaviors. Redirection or physical prompting as a teaching technique when a student does not exhibit active resistance is not considered a restraint. Devices, objects, or techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatments are excluded from this definition. Examples excluded from this definition include devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets for balance and safety, safety harnesses in buses, functional positioning devices, or hand over hand assistance with feeding or task completion.

(c) Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself, to other students or to employees, and only when less restrictive measures and techniques have proven to be or are less effective.

(1) When there is evidence to suggest that the emergency use of restrictive procedures, such as restraints may be necessary to ensure a student's safety or the safety of others, parental consent should be obtained. If a restrictive procedure is needed on an emergency basis, parents should be informed and consent for future uses be obtained within 10 school days following the need for the use of a restrictive procedure. The need for restrictive procedures for safety should be noted in the student's IEP.

(2) The use of restraints to control the aggressive and self injurious behavior on the part of an individual student shall cause a meeting of the IEP team within ten school days of the behavior causing the use of restraints unless the use of restraint was consistent with the explicit provisions of the existing IEP and that IEP remains current and appropriate for the student. At this meeting, the team shall consider whether the student needs a behavioral assessment, reevaluation, a new or revised behavior plan, or a change of placement to address the inappropriate behavior.

(3) The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

(4) Charter schools and cyber charter schools shall maintain and report data on the use of restraints as prescribed by the Secretary.

(d) Mechanical restraints, which are used to control involuntary movement or lack of muscular control of students when due to organic causes or conditions, may be employed only when specified by an IEP and as determined by a medical professional qualified to make the determination, and as agreed to by the student's parents. Mechanical restraints shall prevent a student from injuring himself or others or promote normative body positioning and physical functioning.

(e) The use of prone (face down) restraints is prohibited in educational programs, unless specifically directed by a physician and documented in the student's current IEP.

(f) The following aversive techniques of handling behavior are considered inappropriate and may not be used by charter schools or cyber charter schools in educational programs:

(1) Corporal punishment.

(2) Punishment for a manifestation of a student's disability.

(3) Locked rooms, locked boxes or other locked structures or spaces from which the student cannot readily exit.

(4) Noxious substances.

(5) Deprivation of basic human rights, such as withholding meals, water or fresh air.

(6) Suspensions constituting a pattern.

(7) Treatment of a demeaning nature.

(8) Electric shock.

(g) Charter schools and cyber charter schools have the primary responsibility for ensuring that behavior support programs are in accordance with this chapter, including the training of personnel for the use of specific procedures, methods and

techniques, and for having a written policy and procedures on the use of behavior support techniques and obtaining parental consent prior to the use of highly restraining or intrusive procedures.

(h) Charter schools and cyber charter schools shall notify parents within 24 hours of the school's awareness of injuries requiring treatment by medical personnel that occur as the result of self injurious behavior or a non-accidental act by another student. The charter school or cyber charter school shall conduct a review within 10 school days, which shall include consideration as to whether the student causing the injury needs a behavioral assessment, reevaluation, a new or revised behavior plan, or other change in program or placement. Any recommended changes or determinations should be communicated to the parent and other IEP team members who may request that an IEP meeting be held.

(i) Charter schools and cyber charter schools may convene a review, including the use of human rights committees, to oversee the use of restrictive or intrusive procedures or restraints.

PROCEDURAL SAFEGUARDS

§ 711.61. Suspension and expulsion.

- (a) For purposes of this chapter, the terms "suspension" and "expulsion" have the meanings as set forth in § 12.6 (relating to exclusions from school).
- (b) Charter schools **and cyber charter schools** shall comply with Chapter 12 (relating to students) and [34 CFR 300.519—300.529] 34 CFR 300.530 – 300.537 (relating to discipline procedures).
- (c) Any removal from the current educational placement is a change of placement for a student who is identified with mental retardation.
- (d) When a child with a disability has been expelled from a charter school **or cyber charter school**, the charter school **or cyber charter school** shall provide the child with a disability with the education required under § 12.6(e) until the charter school **or cyber charter school** is notified in writing that the child is enrolled in another public agency, private school, approved private school or private agency.

§ 711.62. Procedural safeguards.

- (a) The charter school **or cyber charter school** shall ensure that procedures are established and implemented to allow parties to disputes regarding any matter described in 34 CFR 300.503(a)(1) (relating to prior notice by the public agency; content of notice), to resolve the dispute through a mediation process that, at a minimum, must be available whenever a hearing is requested under 34 CFR 300.507 (relating to filing of a due

process complaint) or [300.520—300.528] 34 CFR 300.520 – 300.537 (regarding discipline procedures).

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

(1) The Secretary may contract for coordination services in support of hearings conducted by local charter schools **or cyber charter schools**. The coordination services shall be provided on behalf of charter schools **or cyber charter schools** and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) If a charter school **or cyber charter school** chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if it has obtained the Secretary's approval of procedures that similarly provide for procedural consistency and ensure the rights of the parties. In the absence of approval, a charter school **or cyber charter school** which receives a request for an impartial due process hearing shall forward the request within 5 days of its receipt to the entity providing coordination services under paragraph (1).

(3) The Secretary will contract for the services of panels of appellate hearing officers and may compensate appellate hearing officers for their services. The compensation does not cause the appellate hearing officers to become employees of the Department.

(4) Neither a hearing officer nor an appellate hearing officer may be an employee or agent of a school entity in which the parents or student or young child resides, or of an agency which is responsible for the education or care of the student or young child. A hearing officer or appellate hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(5) Impartial due process hearings, appeal panel proceedings and the hearing officers who conduct the hearings and proceedings shall be subject to Title I Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(c) **A charter school or cyber charter school may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the charter school's or cyber charter school's evaluation or reevaluation. When a parent rejects the charter school's or cyber charter school's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, other than the initial placement, the charter school or cyber charter school may request an impartial due process hearing. If the parent fails to respond or refuses to consent to the initial provision of special education services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.**

(d) The following timeline applies to due process hearings:

- 1. A hearing shall be held after the conclusion of the resolution session under 34 CFR 300.510 or after one of the parties withdraws from mediation or the parties agree to waive or end the resolution session.**
- 2. The hearing officer's decision shall be issued within 45 days after the resolution or mediation session ends without resolution or agreement date.**

(e) Except as provided by 34 CFR 300.533, during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506, unless the school entity and the parents of the child agree otherwise, the child that is the subject of the mediation must remain in his or her then current education placement until the mediation process is concluded.

(f) Resolution Session - The Resolution session required by 34 CFR 300.510 shall be available to parents of both school age and eligible young children with disabilities. Parent advocates may attend such sessions.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
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November 28, 2007

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Kim Kaufman
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of proposed regulations, Title 22 – Education, Chapter 711 General Provisions, Annex A (regulatory package #006-308), for review by the Commission pursuant to the provisions of section 5 (c) of the Regulatory Review Act. The act provides that the Commission may, within thirty days after the close of the public comment period, convey to the Department of Education and committees any comments, recommendations, and objections to the proposed regulation. The comments, recommendations, and objections shall specify the regulatory review criterion which the proposed regulation has not met.

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

I look forward to working with you, your staff, and members of the Commission in the review and consideration of these regulations that address the Charter School and Cyber Charter School services and programs for children with disabilities.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernest N. Helling".

Ernest N. Helling
Assistant Chief Counsel

cc: Gerald Zahorchak, Secretary of Education
Diane Castelbuono, Deputy Secretary of Elementary and Secondary Education
Linda Rhen, Special Assistant to the Secretary

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

I.D. NUMBER: 6-308
SUBJECT: CHARTER SCHOOL AND CYBER CHARTER SCHOOL SERVICES AND PROGRAMS FOR CHILDREN WITH DISABILITIES
AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11/28/07	<u>Rita Markle</u>	HOUSE COMMITTEE ON EDUCATION
11/28/07	<u>April Edwards</u>	MAJORITY CHAIRMAN <u>James Roebuck</u>
11/28	<u>M. Armstrong</u>	SENATE COMMITTEE ON EDUCATION
11-28	<u>A. Rybarczyk</u>	MAJORITY CHAIRMAN <u>James Rhoades</u>
11/28/07	<u>Kathy Coops</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
11/28/07	<u>Marya Garcia</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)