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Vision and Leadership Uniting Education

Nonpublic, Private and
Charter School Services

December 31, 2007

Dr. Linda O. Rhen
PA Department of Education
333 Market Street
Harrisburg, PA 17126-0333

RE: 22 PA Code Chapter 711

Dear Dr. Rhen:

Thanks so much for this opportunity to comment on the above proposal. I write today on behalf of the VALUE Coalition, composed of representatives of well-respected advocacy organizations representing an impressive collective effort: **ACHIEVA, The Arc of Pennsylvania; the Disability Rights Network; the Early Intervention Coalition of Advocates; the Education Law Center; Kids Together; the Mental Health Association in Pennsylvania; The Mentor Parent Program, Inc.; Pennsylvania's Education for All Coalition; the PEAL Center; Parents Involved Network; Pennsylvania Parents and Caregivers Resource Network; Pennsylvania TASH; and the Western Pennsylvania Coalition of Education Advocates**, as well as countless individual parents and advocates.

The coalition and many of its members were active participants in the recent discussions with the Department and the State Board relating to Chapter 14. Unfortunately, several important changes that were included in the final version of Chapter 14 are not reflected in this document. VALUE understands that charter schools are not, in general, subject to Chapter 14. But to the extent that Chapter 711 provides additional protections (as it does in the following critical areas) the rules should be the same for children with disabilities in regular public schools and in charter schools.

22 PA Code §711.46 (Behavior Support) is an older – and very problematic – version of 22 PA Code §14.133 on “Positive Behavior Support.” It **MUST** be changed to reflect the positive behavior support language in the proposed final form Chapter 14.

22 PA Code §711.24 (Evaluation) gives charter schools 60 school days (rather than 60 calendar days which is the current rule for charter schools, or the 60 calendar days with the exception of the summers which is the rule adopted in 22 PA Code §14.123(b)). These items should also be aligned.

Contact VALUE:

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A third important area in which Chapters 14 and 711 do not align relates to "extended school year" programs at 22 PA Code §711.44. The rules on ESY programs are based on federal law and court decisions interpreting that law and should be the same for public charter schools as for schools district. In Chapter 14, the State Board agreed to include, at §14.132(d), specific timelines to ensure timely identification of and planning for children who need ESY. We recommend including the same language in this regulation.

One of the most important protections in Chapter 14 is 22 PA Code §14.143, which provides that "a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered to be a "change in educational placement." This means that certain protections, including a determination as to whether the student's conduct is a manifestation of her disability, click in. The final Chapter 14 retains this important protection (see 22 PA Code §14.143(a)), and it should be inserted into §711.61.

Moreover, it is not enough to tell charter schools that, if they expel a student with a disability, they must provide the student with the education that is required under 22 PA Code §12.6(e)(they "shall be provided an education"). This is the standard that applies when a student who is not disabled is expelled. Federal law requires that students with disabilities who are expelled continue to receive a "free appropriate public education." This provision must be changed to include the correct legal standard as set out in 34 C.F.R. §300.530.

VALUE has the following additional concerns:

- §711.5 (Personnel): This provision states that persons who provide special education and related services must have appropriate certification. The regulation does not, however, make clear that the new rules relating to paraprofessional (22 PA Code §14.105) also apply in the charter school context. The regulation should be amended to include the appropriate reference. Of course, we want to be clear that we do not intend any of these requirements to apply to parents of children who attend cyber charters and assist their children with the program.
- §711.22(a) (Reevaluation): This provision gives the parent the right to request a reevaluation – it does not require the school to honor that request by evaluating the child. 34 C.F.R. §300.303(a) requires that an evaluation be "conducted." We propose the following language to fix this problem:

The parent or teacher of a child with a disability has the right ... to request and have conducted a reevaluation annually and more frequent reevaluations may occur only if the parent and the charter school or cyber charter school agree.

- §711.23(d) (Screening): This subsection states that a parent can skip screening or pre-referral intervention activities and request a special education evaluation at any time. However, as with §711.22(a), the provision does not clarify that the school must conduct an evaluation if so requested. The following addition would fix this problem:

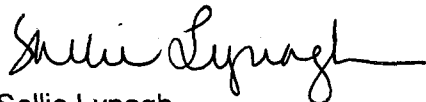
Screening or pre-referral intervention activities shall not serve as a bar to the right of a parent to request and have conducted an evaluation, at any time, including prior to or during the conduct of screening or pre-referral intervention activities.

- §711.42(a) (Transportation): This subsection provides that the local school district must transport the child to a charter if, inter alia, the school is located no further than 10 miles from

the school district. But students with disabilities' right to appropriate transportation to their special education programs cannot be so limited. If this responsibility does not explicitly devolve on the school district, then it must specifically devolve on the charter school and the regulations must so provide. The students cannot be left between a rock and a hard place.

Thanks so much for this opportunity to participate in the process.

Very truly yours,

A handwritten signature in cursive script, reading "Sallie Lynagh", followed by a horizontal line.

Sallie Lynagh
Director, Children's Project
Disability Rights Network
On behalf of the VALUE Coalition