

Regulatory Analysis Form (Completed by Promulgating Agency)		INDEPENDENT REGULATORY REVIEW COMMISSION RECEIVED	
(All Comments submitted on this regulation will appear on IRRC's website)		FEB 10 2022	
(1) Agency: Pennsylvania Department of Education		Independent Regulatory Review Commission	
(2) Agency Number: 006 Identification Number: 349		IRRC Number: 3315	
(3) PA Code Cite: Title 22. Education Part XX. Charter Schools Chapter 713. Charter Schools and Cyber Charter Schools			
(4) Short Title: Charter Schools and Cyber Charter Schools			
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Randall Seely, Division Chief Pennsylvania Department of Education Division of Charter Schools 333 Market Street, 3 rd Floor Harrisburg, PA 17126 717-787-9744 rseely@pa.gov Secondary Contact: Eric Levis, Deputy Director Pennsylvania Department of Education Policy Office 333 Market Street, 10 th Floor Harrisburg, PA 17126 717-783-6788 elevis@pa.gov			
(6) Type of Rulemaking (check applicable box): <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less) The final-form regulation clarifies elements of the Charter School Law (CSL) and sets conditions that emphasize accountability, equity, quality, and transparency. The regulation establishes a minimum standard for charter school, regional charter school, and cyber charter school applications; better ensures			

non-discriminatory student enrollment policies as required by the CSL; clarifies that charter and cyber charter school boards of trustees are subject to the Public Official and Employee Ethics Act; requires standard fiscal management and auditing practices; details the tuition payment redirection process for charter schools entities and school districts; and a clarifies that charter schools, cyber charter schools, and regional charter schools must comply with section 1724-A of the CSL related to the provision of health care benefits.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 1732-A(c)-and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A), authorize the Pennsylvania Department of Education (Department or PDE) to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any federal or state law or court order or federal regulation. However, the Commonwealth Court, in *Insight PA Cyber Charter School v. Department of Education*, 162 A.3d 591 (Pa. Cmwlth. 2017), noted “the Department has the express authority to promulgate regulations to implement the portions of the [Charter School Law] relating to cyber charter schools...” and that, in the context of management organization contracts, promulgated regulations “would be beneficial to charter school applicants and chartering authorities.”

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

In enacting Pennsylvania’s Charter School Law in 1997, the General Assembly intended to provide opportunities for teachers, parents, students, and community members to establish and maintain charter schools that operate independently from the existing school district structure as a method to:

- Improve student learning;
- Increase learning opportunities for all students;
- Encourage the use of different and innovative teaching methods;
- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site;
- Provide parents and students with expanded choices in the types of educational opportunities that are available within the public school system; and
- Hold the schools established under the CSL accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

At the heart of these principles is the idea that charter schools will serve as laboratories of innovation. However, apart from amendments enacted in 2001 to authorize the establishment of cyber charter schools, the CSL has remain largely unchanged since its enactment.

Charter schools are expected to receive nearly \$3 billion in publicly paid tuition during the 2021-22 school year, plus additional federal funding provided through pandemic emergency and recovery relief.

Accordingly, the Department is proposing regulations to ensure public awareness of the expenditure of these resources.

For the 2021-22 school year, there are 179 charter schools and cyber charter schools authorized to operate in the Commonwealth; all 67 counties in Pennsylvania have students enrolled in some form of charter school. Transparency, equity, quality, and accountability in the establishment, governance, and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities – including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities, and authorizers of charter school entities – adhere to the statutory requirements and structural norms that maintain the effectiveness of the CSL.

(11) 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 regulations.

There are no provisions more stringent than federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Charter school laws and regulations are unique to each state based on state authorizing structure, charter finance policies, broader school finance policy, and labor organizing laws of the state, among other factors. To inform cross-state analysis for this component of the Regulatory Analysis Form, the Department generated a purposeful sample based on the following: 1) as many of the previous factors listed as possible, 2) proximity to Pennsylvania, and 3) consultation with the nonpartisan Education Commission of the States.

Pennsylvania's ability to compete with other states is not impacted by the regulation as students cannot arbitrarily choose to attend a "competing" public school in another state without physically moving to that state. As demonstrated below, the regulation clarifies statutory requirements currently enacted by most of the Commonwealth's contiguous states as well as other states across the country. A consistent regulatory environment is expected to reduce administrative and legal expenses for charter schools, school districts, and the state and make it easier for all parties to navigate and comply with state requirements.

A cross-state analysis, organized by each component of the rulemaking, follows below:

Contents of Application

Colorado - The Colorado Code of Regulations, at 1 CCR 302-1, Rule 4.00 (relating to Institute Charter School application contents), prescribes the contents of charter school applications, which mirrors the criteria the Department is proposing, e.g., description of the educational program, student performance standards and curriculum; governance and operations structure; proposed budget; enrollment policy; plan for serving students with special needs; and the use of education management service providers.

Delaware - The Delaware Administrative Code, at 14 Del. Admin. C. § 275-4.0 (relating to standards and criteria for granting charter), outlines application qualifications that must be met for a charter to be granted, including the following that reflect the Department's rulemaking: curriculum and instruction strategies; business management, including accounting and school finance; personnel management; diversity issues, including student recruitment and instruction; at risk populations and children with disabilities; school operations, including facilities management; bylaws, including a commitment to

comply with the Freedom of Information Act; performance requirements tied to the state assessment and accountability system; education programming aligned to State content standards; and economic viability, including documentation of the sources and amounts of all proposed revenues and expenditures.

Maryland - The Code of Maryland Regulations, at Md. Code Regs. Title 13A (relating to Maryland State Board of Education), does not address the specific regulatory items in the Department's rulemaking. However, many of the Department's efforts to better implement the CSL are thoroughly prescribed in Maryland statute, Md. Code Ann., Education §§ 9-101 to 9-112. Specifically, Md. Code Ann., Education §9-104 (relating to public charter school – application) addresses application requirements.

Massachusetts - The Code of Massachusetts Regulations, at 603 Mass. Code Regs. 1.04 (relating to applications for and granting of charters), prescribes the minimum conditions an applicant must meet for approval. The requirements mirror the Department's rulemaking and include enrollment projections; management structure; bylaws to govern the board of trustees; performance standards; enrollment policy; and financial plan.

Minnesota - While Minnesota Administrative Rules do not address charter school application requirements, Minnesota statute, at Minn. Stat. § 124E.06 (relating to forming a school), outlines application requirements that reflect much of the detail in the Department's rulemaking including, crucially, the charter school developer's background and experience.

New Jersey - The New Jersey Administrative Code, at N.J.A.C. § 6A:11-2.1 (relating to application and approval process), outlines application qualifications, including the following that reflect the Department's rulemaking: educational program; goals and objectives; at-risk populations; staffing information; financial plan; governance and organizational plan; facilities; and daily and annual schedule. Documentation supporting the application is required and must include but is not limited to course and curriculum outlines, graduation requirements, school scheduling information, professional backgrounds of administrators and staff, professional development and evaluation plans, an organizational chart, and documentation of fiscal and legal compliance.

Ohio - The Ohio Administrative Code, at Ohio Admin. Code 3301:102-03 (relating to approval of sponsors), requires an applicant to submit a written application as established by the Education Department. An applicant must submit supporting documentation including mission statement; strategic plan (if the applicant has one); board structure; annual report (examples related to the board's review of its performance, continuous improvement plan); financial and independent audits; organizational chart; staff resumes/biographies with current roles indicated; job descriptions; budget of the organization's yearly revenue and expenditures; conflict of interest policy; list of any schools ever sponsored, their current status and performance data (if applicable); and professional development opportunities.

Random Selection Policies

Colorado - The Colorado Code of Regulations, at 1 CCR 302-1 (relating to rules for the administration of the state charter school institute), does not address random enrollment policies. However, Colo. Rev. Stat. § 22-30.5-109(3) (relating to charter schools – reporting – publicizing – limits on enrollment – moratorium prohibited) requires that “greater consideration be given to charter school applications designed to increase the educational opportunities of at-risk pupils.” Also, Colo. Rev. Stat. § 22-30.5-104(3) requires that enrollment decisions be made in a nondiscriminatory manner.

Delaware - The Delaware Administrative Code, at 14 Del. Admin. C. § 275-8.1 (relating to enrollment preferences), requires charters to identify the standard used to provide enrollment preferences to children of a charter school's founders. It does not explicitly discuss random selection processes for enrollment, but Delaware statute, at 14 Del. C. §506(a)(3)(b) (relating to restrictions), states that a charter school shall not restrict student admissions except "by lottery in the case of over-enrollment."

Maryland - While Maryland regulations do not address the specific regulatory items outlined by the Department, Maryland's statute thoroughly prescribes much of the detail in the Department's rulemaking (Md. Code. Ann., Education §§ 9-101 to 9-112). Specifically, Md. Code. Ann., Education §9-102(3) (relating to "public charter school" defined) defines a public charter school as one that, in part, "admits students on a lottery basis if more students apply than can be accommodated." Md. Code. Ann., Education §9-102.2 (Lottery - Weighting and guaranteed placement) outlines conditions for enrollment preferences, including the order of preferences and weighting.

Massachusetts - The Code of Massachusetts Regulations, at 603 Mass. Code Regs. 1.05(1-13) (relating to student recruitment, enrollment, and retention), requires a lottery system when there are more applicants than spaces; prescribes preferences for enrollment; and requires that student enrollment lotteries be conducted in public and with a neutral party drawing names to ensure that the selection process is random.

Minnesota - While Minnesota Administrative Rules do not address charter school selection processes, Minnesota statute, at Minn. Stat. §124E.11 (relating to admission requirements and enrollment), requires a lottery system when there are more applicants than spaces and prescribes preferences for enrollment.

New Jersey - The New Jersey Administrative Code, at N.J.A.C. § 6A:11-4.5(a) (relating to lottery), requires a charter to use a random selection process when there are more applicants than spaces available. Conditions for enrollment preferences are also prescribed in N.J.A.C. § 6A: 11-4.5.

Ohio - The Ohio Administrative Code, at Ohio Admin. Code 3301:102 (relating to community schools), does not address random enrollment policies. Ohio Rev. Code Ann. § 3314.06(H) (relating to administrative procedures) prescribes preferences for enrollment and states that students will be admitted "by lot" if the number of applicants exceeds capacity restrictions.

Boards of Trustees

Colorado - The Colorado Code of Regulations, at 1 CCR 302-1, Rule 4.00 (relating to Institute Charter School application contents), requires applicants to provide an "explanation of any existing or potential conflicts of interest between the governing board of the proposed Institute Charter School and the Education Management Provider." Also, 1 CCR 301-88, Rule 2.01 (relating to conflict of interest, nepotism, and excessive compensation) requires the adoption of "conflict of interest policies that comply with federal and state laws applicable to public officials."

Delaware - The Delaware Administrative Code, at 14 Del. Admin. C. § 275-3.0 (relating to application process), requires charter applicants and members of a charter school board to "make the financial disclosures relating to ownership and financial interest as required by [Delaware statute]," which states "The charter school application shall include a disclosure of any ownership or financial interest in the charter school, including but not limited to the building and real property to be used in the operation of the charter school, by the charter school founders and the board of directors of the proposed charter school." 14 Del. C. §511(q). Also, the Delaware Administrative Code, at 14 Del. Admin. C. § 275-4.0 (relating to standards and criteria for granting charter), requires a charter's board of directors, as a public

body, to comply with the state's Freedom of Information Act (29 Del. C. Ch. 100) in conducting charter school business. Delaware statute, at 14 Del. C. §512(15) (relating to approval criteria), requires a school to have a "satisfactory plan to ensure the effectiveness of its board of trustees...."

New Jersey - The New Jersey Administrative Code, at N.J.A.C. § 6A:11-3.1 (relating to board of trustees and administrators), states that members of the board of trustees "shall be school officials as defined in the School Ethics Act" (N.J. Stat. §18A:12-23), avoid conflicts of interest (N.J. Stat. §18A:12-24) and shall file financial and personal/relative disclosure statements annually (N.J. Stat. §18A:12-25). A board of trustees is also subject to the state's Open Public Meetings Act pursuant to N.J.A.C. § 6A:11-4.12(b).

Maryland - While the Code of Maryland Regulations, at Md. Code Regs. Title 13A (relating to Maryland State Board of Education), does not address the specific regulatory items outlined by the Department, Maryland statute thoroughly prescribes expectations for charter school governance. Specifically, Md. Code. Ann., Education §9-106 (relating to public charter school – obligations and waiver) provides that a charter school "shall comply with the provisions of law and regulation governing other public schools." Md. Code, General Provision §5-817(a)(1)(ii) requires school boards to adopt financial disclosure regulations applicable to members of the school board and §817(a)(2)(i)(2) applies the requirements to "other officials and employees designated by the school board."

Massachusetts - The Code of Massachusetts Regulations, at 603 Mass. Code Regs. 1.06 (relating to board of trustees and staff), outlines the responsibilities of the board of trustees, and requires that the bylaws of charter school boards of trustees attend to "compliance by members of the board of trustees with the Commonwealth's state ethics requirements, including meeting all training requirements, filing all required disclosures under M.G.L. c. 268A, and the filing of statements of financial interest under M.G.L. c. 71, § 89(u)" (603 Mass. Code Regs. 106.(2)(e)).

Minnesota - While Minnesota Administrative Rules do not address charter school board of trustees, Minnesota statute, at Minn. Stat. § 124E.14 (relating to conflicts of interest), clearly defines the conditions of a conflict of interest for board members under which a charter school contract would become void, including having a financial interest in the entity in which the charter school is contracting. Further, a charter school board member is defined as a local official for purposes of Minn. Stat. § 471.895 (relating to certain gifts by interested persons prohibited) regarding receipt of gifts.

Ohio - The Ohio Administrative Code, at Ohio Admin. Code 3301:102 (relating to definitions), defines "governing authority" as the board responsible for operating and managing a community school, and stipulates that "[n]o present or former member, or immediate relative of a present or former member of the governing authority of any community school established under Chapter 3314 of the Revised Code shall be an owner, employee or consultant of any nonprofit or for-profit operator of a community school, as defined in section 3314.014 of the Revised Code, unless at least one year has elapsed since the conclusion of the person's membership." "Immediate relatives" are defined as spouses, children, parents, grandparents, siblings, and in-laws (Ohio Admin Code 3301:102-02(L)). Additionally, sponsors of community schools must "pose no conflict of interest" in accordance with Ohio Rev. Code Ann. Ch. 102 (relating to public officers – ethics) and Ohio Rev. Code Ann. Ch. 3301 (relating to Education).

Fiscal and Auditing Standards

Colorado - The Colorado Code of Regulations, at 1 CCR 302-1, Rule 4.00(1)(g) (relating to Institute Charter School application contents), requires applicants to "describe the method for obtaining an independent annual audit of the proposed Institute Charter School's financial Statements consistent with generally accepted auditing standards and Circular A-133 of the United States Office of Management

and Budget, as originally published in the Federal Register of June 30, 1997, and as subsequently amended.” Colo. Rev. Stat. § 22-30.5-104 (4)(a)) prescribes that “a charter school shall annually complete a governmental audit that complies with the requirements of the department of education.”

Delaware - The Delaware Administrative Code, at 14 Del. Admin. C. § 275-7.0 (relating to financial audit), requires charter schools to “contract” to perform an annual audit of the “business and financial transactions, records, and accounts of the school, in a form and manner satisfactory to the Department.”

New Jersey - The New Jersey Administrative Code, at N.J.A.C. §6A:23A-16.1(b) (relating to GAAP accounting), requires financial bookkeeping systems to be “fully consistent” with generally accepted accounting principles established by the Governmental Accounting Standards Board. Also, N.J.A.C. §6A:23A-16.2 (relating to principles and directives for accounting and reporting) requires the annual financial report to comply with the Government Auditing Standards by the Comptroller General of the U.S.

Maryland - The Code of Maryland Regulations, at Md. Code Regs. Title 13A.02.07.04 (relating to audits of financial statements), requires local school boards to perform an annual audit in accordance with generally accepted auditing standards. Maryland statute, at Md. Code. Ann., Education § 9-106 (relating to public charter school – obligations and waiver), provides that charter schools may not be granted a waiver from provisions of law or regulation relating to audit requirements.

Massachusetts - The Code of Massachusetts Regulations, at 603 Mass. Code Regs. 1.08(3), requires charters to have an “independent audit conducted of its accounts, consistent with generally accepted government auditing standards and any guidelines issued by the Department. Audits shall be filed annually by November 1 with the Department and the Office of the State Auditor.”

Minnesota - While Minnesota Administrative Rules do not address charter school fiscal and auditing standards, Minnesota statute, at Minn. Stat. § 124E.16 (relating to reports), requires charter schools to submit an annual audit report to both the state commissioner of education and the charter school authorizer that complies with generally accepted governmental auditing.

Ohio - The Ohio Administrative Code, at Ohio Admin. Code 3301:102-05(6) (relating to monitoring and reporting requirements for all sponsors), requires sponsors to comply with financial reporting requirements in accordance with “applicable accounting standards and as prescribed by all applicable sections of the Revised Code and rules of the Administrative Code.” Ohio Admin. Code Ch. 117 (relating to auditor of state) requires school districts to follow guidelines established by the Governmental Accounting Standards Board. Ohio Admin. Code 117-1-01(c) defines “generally accepted governmental auditing standards” as the “standards for the conduct of audits promulgated by the auditor of state pursuant to section 117.19 of the Revised Code, including, but not limited to, ‘Government Auditing Standards’ promulgated by the comptroller general of the United States.”

Redirection Requests

Colorado - The Colorado Code of Regulations, at 1 CCR 302-1, Rule 4.00(1) (relating to Institute Charter School application requirements), requires applicants to include a “dispute resolution process,” as provided for in Colorado statute at Colo Rev. Stat. § 22-30.5-107.5 (relating to charter application – process). The statute provides a specific timeline for submitting and resolving disputes.

Delaware - Delaware statute, at 14 Del.C. § §509(b)(2) (relating to school financing), provides that school districts must advance at least 35% of the local cost per student to charters at the start of the fiscal

year provided the charter provides a preliminary roster by May 1. Final rosters must be submitted by September 30. For school districts that do not make “timely” payments to charters, the Department may transfer funds directly to the charter after the school district receives “reasonable notice” and an opportunity to be heard. The Delaware Administrative Code, at 14 Del. Admin. C. § 275- 6.1 (relating to funding), provides that “[t]he Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.”

New Jersey - The New Jersey Administrative Code, at N.J.A.C. § 6A:23A-15.3 (relating to enrollment counts, payment process, and aid adjustments), specifically addresses the timeline and steps for charters to submit and receive payments from school districts. In general, the regulation requires school districts to pay charters in 12 equal installments after the charter submits by October 15 an enrollment list of students “in a format prescribed by the school district.” At the end of each year, charter enrollments are reconciled against the October data and charter payments are adjusted accordingly. If a school district falls behind in payments by 15 days, the charter school may petition the state education commissioner to have the amounts deducted from the district’s state aid and paid directly to the charter school.

Maryland - Maryland Regulations do not address payment procedures.

Massachusetts - While Massachusetts Regulations, at 603 Mass. Code Regs. 1.0 (relating to charter schools), do not address a complaint process for tuition payment disputes, Massachusetts statute, at Mass. Gen. Laws. Ann. Ch. 71 (related to public schools), directs the commonwealth to pay tuition amounts directly to charter schools calculated and based on actual per pupil spending as if the student attended the district school, minus certain deductions. Mass. Gen. Laws. Ann. Ch. 71 § 89(w) requires Horace Mann charters to submit an annual budget request to the district in which the charter is located and may appeal to the education commissioner if the charter thinks it received a “disproportionate budgetary allocation” from the district.

Minnesota - While Minnesota Administrative Rules do not address a complaint process for tuition payment disputes, Minnesota statute, at Minn. Stat. § 127A.41 (relating to distribution of school aids; appropriation), requires the commissioner of education to distribute state funding to school districts and to increase/decrease the amount of aid if errors are found in the distribution. Minn. Stat. § 127A.45 (relating to payment aids and credits to school districts) further provides for an appeal process for payment dates and percentages.

Ohio - The Ohio Administrative Code, at Ohio Admin. Code 3301:102-03 (relating to payments, adjustments, and deductions for community schools), references payment procedures in the Education Department’s manuals for enrollment and education management systems, which in turn provides for an appeal process to the Education Department to correct/challenge data reporting used to calculate funding to charter schools (OH Education Department EMIS Manual, Section 1.1.1: EMIS Data Review & Verification and EMIS Data Appeals).

Health Care Benefits

Colorado - The Colorado Code of Regulations, at 1 CCR 302-1, does not address health care benefits for charter employees as they relate to school district employees.

Delaware - The Delaware Administrative Code, at 14 Del. Admin. C. § 275, does not address health care benefits for charter employees. However, Delaware statute, at 14 Del.C. § 512 (relating to approval criteria), requires that a charter school’s financial and administrative operations “meet or exceed the

same standards, procedures and requirements as a school district.” Moreover, if a charter school chooses to operate “outside” of the state’s pension and/or benefits systems, a memorandum of understanding—involving the charter school, the approving authority, and various state agencies—must be developed to ensure that the “interests of charter school employees are protected.”

New Jersey - While the New Jersey Administrative Code does not address health care benefits for charter employees, New Jersey statute, at N.J.Stat. §18A:36A-14 (relating to authority of board of trustees; employees), states that charters “shall adopt any health and safety provisions of the [school district’s collective bargaining] agreement.”

Maryland - The Code of Maryland Regulations does not address parity in health care benefits.

Massachusetts - Pursuant to Mass. Gen. Laws. Ann. Ch. 71 § 89(jj), the Department is charged with promulgating regulations creating the reporting requirement for a net asset balance which must include “compensation and benefits for teachers, staff, administrators, executives, and board of trustees.” The Code of Massachusetts Regulations, at 603 Mass. Code Regs. 1.04(1)(b)(3) (relating to applications for granting of charters), states that Horace Mann charter schools may be exempt from certain provisions of the local collective bargaining agreement, provided charter school employees receive, at a minimum, salary and benefits established by the local collective bargaining agreement.

Minnesota - While Minnesota Administrative Rules do not address charter school health care benefits. Minnesota statute, at Minn. Stat. § 124E.12 (relating to employment), allows charter school bargaining units to remain part of the bargaining unit of the authorizing district upon agreement between the employees and board of directors of the charter school and the bargaining unit representative and the board of directors of the authorizing district.

Ohio - The Ohio Administrative Code, at Ohio Admin. Code 3301:102 (relating to community), does not specifically reference health care benefits, but refers to duties required of the sponsor as specified in statute. Specifically, Ohio Rev. Code Ann. § 3314.03(a)(12) requires a contract between the sponsor and the charter school governing authority covering “arrangements for providing health and other benefits to employees.”

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

The regulation will not affect any other regulations promulgated by the Department or any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

On August 24, 2019, the Department published an advance notice of proposed rulemaking (ANPR) in the Pennsylvania Bulletin announcing its intention to exercise its statutory authority and submit a rulemaking to amend Part XX (related to charter schools) of Title 22 of the Pennsylvania Code. There was no time limit for submitting public comment, and a link to the ANPR has been available on the Department’s website since August 2019. To date, the Department has received approximately 50

comments from stakeholders. While most comments concerned desired statutory changes, other commenters addressed important goals of this rulemaking. For example:

- In a letter to the Secretary of Education, the solicitor for the School District of Pittsburgh wrote, “It is our hope that these proposed regulations, when combined with comprehensive charter reform legislation...will address several important tasks. Among these are to codify charter case law in areas where the Charter School Law (CSL) has been interpreted by the Courts; to clarify open questions regarding charter funding, to improve charter schools’ transparency and accountability and to begin to right the imbalance between school districts and charter schools that is imbedded into current law and policy.” More specifically, the School District of Pittsburgh supports the development of a statewide application for charter applicants and charter renewals; better enforcement of non-discriminatory enrollment practices; clarification that charter school board trustees are subject to the Public Official and Employee Ethics Act; requirements that educational management service providers be more transparent about expenditure of public funds; and enactment of standard accounting and auditing practices.
- Organizations such as Asian Americans United, Education Law Center-PA, Justice At Work, Nationalities Service Center, VietLead, IHAS-PA, and Arc of Greater Pittsburgh/ACHIEVEA expressed support for comprehensive regulatory reform to ensure charter schools, as public schools, are equitably and inclusively educating all students, including students with disabilities, English Learners, and other students historically less served by charter schools.

On November 22, 2019, the Department hosted a public roundtable in State College for interested stakeholders to provide feedback on priorities as outlined in the ANPR.

On March 11, 2021, the Pennsylvania Coalition for Public Charter Schools (PCPCS) sent a letter to Governor Wolf, Acting Secretary of Education Noe Ortega, members of the General Assembly, and the superintendents of the School District of Philadelphia and the School District of Pittsburgh, calling for “meaningful reforms to Pennsylvania School Law and Public School Code that improves the quality of education for every public school student in charter schools and school districts.” In its letter, PCPCS calls for a more defined and consistent process for new charter school applications to ensure the process is “fair, equitable, and efficient.” PCPCS further indicates support for modifying the payment process between public school districts, charter schools and the Department to reduce conflicts over non-payments. Finally, PCPCS argues for codification of additional accountability and transparency standards for all public schools. The final-form regulation addresses each of these aims.

As of April 5, 2021, a total of 396 school districts, nearly 80% of public school districts, across Pennsylvania have adopted resolutions calling for charter reform that includes transparency and accountability.

On April 15, 2021, the Department’s policy director, government relations director, deputy secretary of the Office of Elementary and Secondary Education, and staff from the Division of Charter Schools held briefings on the proposed rulemaking with the Republican and Democratic staff from the Senate and House Education Committees; the School District of Philadelphia and Pittsburgh Public Schools, the two largest charter school authorizers in the commonwealth; PA Partnerships for Children, Philadelphia Charters for Excellence, A+ Schools, and the PA Coalition of Public Charter Schools; and American Federation of Teachers (AFT-PA), Education Voters of PA, LEARN, Pennsylvania State Education Association (PSEA), Pennsylvania Association Rural and Small Schools (PARSS), Pennsylvania Association of School Administrators (PASA), PA School Boards Association (PSBA), Pennsylvania

Association of School Business Officials (PASBO), Public Citizens for Children and Youth, the Urban League of Greater Philadelphia, and the Urban League of Greater Pittsburgh. During those briefings, the Department explained the rulemaking process, the proposed sections and purpose of the rulemaking, and a tentative timeline. Attendees provided feedback on the proposal during the meetings and were encouraged to submit additional feedback to the Division of Charter Schools.

On September 16, 2021, the Department held another set of briefings with from the same groups from April 2021 to notify them that the proposed regulation would be published in the *Pennsylvania Bulletin* on September 18, 2021 and to review the process for submitting comments to IRRC.

The proposed rulemaking was published in the *Pennsylvania Bulletin* for a 30-day public comment period on September 18, 2021. On September 24, 2021, the Department issued a PennLink email to approximately 800 local education agencies (LEAs), including charter schools, cyber charter schools, regional charter schools, and school districts, reminding them of the opportunity to submit comments on the proposed regulation and providing instructions for commenting by the October 18 deadline. Also included on this distribution list were the PA Coalition of Public Charter Schools, PA Partnerships for Children, Philadelphia Charters for Excellence, Children First, AFT-PA, PSEA, PARSS, PASA, PASBA, and PASBO, as well as the other entities that attended the briefings in April and September 2021. Additionally, on October-12, 2021, the Department emailed a reminder to these stakeholders.

Every major stakeholder submitted comments, as well as nearly two dozen charter schools, including Agora Cyber Charter; Chester Community Charter School; Commonwealth Charter Academy; Freire Charter School; Insight PA Cyber Charter; PA Cyber; and Propel, Mastery, and KIPP Charter Schools. Comments were also received from several organizations that focus on educational issues impacting students, including Arc of Philadelphia, Children First, Disability Rights PA, Education Law Center, and PA Partnerships for Children. The Department also received comments from Sen. Scott Martin on behalf of the republican members of the Senate Education Committee; Sen. Lindsey Williams on behalf of the democratic members of the Senate Education Committee; Rep. Curt Sonney, chairman of the House Education Committee; and Sen. Tim Kearney, who serves as a member of the Senate Education Committee. Overall, the Department received 223 comments and 1,557 form letters, with each roughly split between support of and opposition to the proposed regulation.

On October 20, 2021, four members of PDE leadership testified at a hearing related to the proposed regulations held by the Senate Education Committee and listened to the testimony of other stakeholders, which included professional organizations and charter school administrators from Propel Charter School, Richard Allen Preparatory Charter School, Charter School for Excellence, Commonwealth Charter Academy, Insight Cyber Charter School and Reach Cyber Charter School. The testimonies and comments from the hearing were considered as part of the final-form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations, which will be affected by the regulation. How are they affected?

Contents of Application

Regulations concerning the contents of charter school and cyber charter school applications will impact all charter school, regional charter school, or cyber charter school applicants seeking to establish a charter school, regional charter school, or cyber charter school beginning in the 2024-2025 school year, and any educational management service providers used by a charter school entity, in Pennsylvania, along with the school boards and the Department, which are charged by the CSL with authorizing responsibilities.

As a result of the final-form regulations, some authorizers may need to revise their current charter school application and entities applying to establish a charter school after the regulation effective date may need to provide different information or provide it in a different form. If a charter school contracts with an educational management service provider, the provider may need to make available additional information for the charter school to meet the application requirements in section 713.2(c). For charter schools, regional charter schools, and cyber charter schools and their authorizers, any short-term adjustments in the provision and collection of application data should be mediated by greater consistency over multi-year charter terms. Further, a better-defined application process will improve the efficiency of authorizing activities, provide for more consistent evaluation of charter applications, and equip parents and families with vital information on local public school options.

Random Selection Policies

Regulations pertaining to random selection enrollment policies will impact current and future charter schools, regional charter schools, and cyber charter schools, as well as the students and families they serve. As of the 2021-22 school year, there are 179 charter school entities authorized to operate in Pennsylvania and nearly 2 million students enrolled in public and non-public schools statewide. The regulation requires charter schools, regional charter schools, and cyber charter schools, when applicable, to include admission and selection policies in its charter application as well as on the student application and on the charter school's, regional charter school's, or cyber charter school's, if applicable, publicly accessible website, ensuring transparency for authorizers, students, and families. Students will benefit by charter schools and regional charter schools enacting random selection policies that do not discriminate based on intellectual or physical ability or disability, as required under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, the Individuals with Disabilities Education Act (IDEA), and other federal and state nondiscrimination laws and regulations. Finally, taxpayers, families, and students will benefit from seeing exactly how preferences in admissions are considered and weighted by the charter schools serving their communities.

Boards of Trustees

Regulations pertaining to boards of trustees will impact the boards of trustees and members of those boards at all current and future charter school entities, including MCSOs, authorized to operate in Pennsylvania. As of the 2021-22, there are 179 charter school entities operating in Pennsylvania, each with its own governing board. Since all charter school entities are public school entities, the regulations clarify the requirement that trustee members file a statement of financial interest with the charter school board of trustees, State Ethics Commission, and each authorizer of the charter school entity. As a result of the clarifications in the regulations, a board of trustees may need to alter its business practices or have members recuse themselves from certain administrative and financial decisions to avoid conflicts of interest. The regulations also clarify that boards and trustee members also will be impacted by the penalties for violating the ethics requirements outlined in the regulation.

Fiscal and Auditing Standards

Regulations pertaining to fiscal and auditing standards impact all charter school entities and their staff responsible for accounting, budgeting, and fiscal management. There is no anticipated additional cost or impact to requiring financial statements be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Government Auditing Standards (GAGAS) as that is standard accounting practice for public schools. Under the CSL, charter school entities already complete certain financial audits each year. However, contracts with auditing firms may need to be amended to account for requirements listed in section 713.7(c) of the final-form rulemaking. Since many of the

auditing firms that conduct these types of reviews are small business, this regulation will result in increased professional opportunities. Finally, consistent, generally accepted accounting and auditing standards will make it easier for charter school authorizers to annually assess a charter school entity's operation, as required by the CSL.

Redirection Process

Regulations pertaining to the redirection process will impact the Department, all 500 school districts, and all current and future charter school entities authorized to operate in Pennsylvania. The regulations are expected to reduce the number of redirection requests submitted by charter school entities to the Department and increase payments directly to charter school entities by resident school districts. Each year, the Department receives approximately 14,000 redirection requests. Based on the amount of time Department staff spend on processing each request and maintenance costs for the various information technology systems, the Department calculates that each redirection costs the state approximately \$15. At \$15 each, the annual cost to process 14,000 requests is \$210,000 a year. Fewer redirection requests will allow the Department to realize cost savings and reallocate limited staff time to other urgent duties. The process outlined in the regulation will create predictability and transparency for both charter school entities and the school districts from which they are seeking payment.

Health Benefits

Section 1724-A of the CSL (24 P.S. § 17-1724-A) requires charter schools, regional charter schools, and cyber charter schools to provide employees with the same health care benefits as the local school district. Regulations pertaining to these requirements will potentially impact all current and future charter schools, regional charter schools, and cyber charter schools authorized to operate in Pennsylvania and the individuals they employ. As of October 1, 2021, the 179 charter school entities authorized in Pennsylvania employ approximately 13,699 professional staff and 5,672 support staff.

School district health plans can vary widely since each school district determines their respective plan benefits and plans are independently and individually collectively bargained. Health plan contribution levels also vary by school entity and location. However, the CSL clearly requires charter schools, regional charter schools, and cyber charter schools to provide its employees with the same health care benefits as they would be provided if they were an employee of the local school district. The final-form rulemaking clarifies that regional charter schools and cyber charter schools, which enroll students from more than one school district, must align its employee health care benefits to health care benefits provided to employees of the school district where the regional charter school or cyber charter school administrative office is located. The regulation does not require charter schools to spend a specific amount on health care plans.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

- The Department, as the authorizer of cyber charter schools.
- All 500 school districts in Pennsylvania, as the authorizers of charter schools and regional charter schools.
- All 179 Pennsylvania charter schools, regional charter schools, and cyber charter schools currently authorized in Pennsylvania.
- Anyone interested in establishing a charter school entity in Pennsylvania.
- The educational management service providers hired by certain charter school entities.

- All current and future charter school entity boards of trustees and trustee members.
- Auditing and accounting firms that contract with charter school entities to prepare financial statements and/or conduct financial audits. Currently, there are at least 40 of these firms in the Commonwealth.
- All current and future charter school entity employees. As of October 1, 2021, the 179 charter school entities authorized in Pennsylvania employed approximately 13,699 professional staff and 5,672 support staff.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There may be a financial impact on charter school entities that are not currently contracting for annual independent financial audits. Under the CSL, charter school entities already complete certain financial audits each year, and schools that receive more than \$750,000 in federal funding must complete an annual independent audit. The range for these engagements is between \$20,000 and \$30,000. Thus, the regulatory requirements would increase business opportunities for Pennsylvania's approximately 40 auditing and CPA firms.

Charter school entities and school districts that use an information system to process invoices may need to update those systems to account for the new redirection process, but these expenses should not be material, since the process envisioned by the regulation is not substantially different from what currently exists. Employees in these offices may have to adjust internal processes to address the changes; any such efforts may be offset by school districts having additional information that can support timely, accurate payments to charter schools.

Current and future charter school entity employees will benefit by knowing their employers are required by statute and regulation to provide them with the same health care benefits as those of the local school district.

This regulation will benefit taxpayers by ensuring that their financial investment in charter school entities is being accurately and reasonably represented. Relatedly, requiring that financial statements be prepared in accordance with GAAP, a standard accounting practice, ensures consistency in financial statements between charter school entities, which will allow for comparisons between organizations and is already possible with public school districts.

The regulations may impact small businesses to the extent that any educational management service providers. To be impacted, providers would have to be for-profit entities with annual receipts of up to \$12 million, according to federal Small Business Administration size standards. Educational management service providers that are private companies are not required to disclose financial information to the public. Due to a lack of publicly available financial data, the Department is unable to analyze the potential impact on these providers or how many may meet this requirement.

Transparency, equity, quality, and accountability in the establishment, governance, and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities – including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities, and authorizers of charter school entities – adhere to the structural norms that maintain the effectiveness of the CSL.

From a societal perspective, all public schools in Pennsylvania should be held to the same safeguards and high standards for accountability, transparency, quality, and equity. While many charter schools are working hard to meet the needs of students in their communities, there are still too many cases of fraud and abuse, a lack of attention to equity, and no guarantee of innovation or excellence. Charter school entity governing boards also must operate as public bodies and represent the communities and districts they serve. The oversight and transparency resulting from the regulations address all these concerns. These regulations will promote trust in the commonwealth's public education system and ensure the state is serving the collective good of all students and families.

The regulation directly benefits students and ensures students have equal access to charter school education and are not discriminated against based on intellectual or physical ability or disability, as required under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and Individuals with Disabilities Education Act (IDEA). In order for charter schools to contribute to the commonwealth's public education system, they must serve a diverse student body and not be permitted to have enrollment policies that discourage or preclude enrollment.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Initially, the Department, charter school entities, and authorizers may incur modest costs to implement the regulations (e.g., revising enrollment policies, updating application materials, posting information on websites, etc.). However, charter entities are expected to receive nearly \$3 billion in publicly paid tuition during the 2021-22 school year, plus additional federal funding provided through federal pandemic emergency and recovery relief. The regulations will ensure public awareness of the expenditure of this funding and divert funding from charter school entities unable to meet the needs of their communities, engaged in unethical behavior, or not effectively using public dollars.

The benefits of the Department's regulation include promoting transparency, equity, quality, and accountability in the implementation of the CSL's provisions relating to the establishment of new charter school entities and the governance and operation of existing charter school entities. Transparency, equity, quality, and accountability in the establishment, governance, and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities – including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities, and authorizers of charter school entities – adhere to the structural norms that maintain the effectiveness of the CSL.

(19) 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. Explain how the dollar estimates were derived.

To comply with the fiscal management and audit requirements, a charter school entity may need to contract with an accounting firm for an annual independent financial audit, which typically costs between \$20,000 and \$30,000. However, charter school entities are required to annually audit financial accounts in accordance with section 437 of the School Code. 24 P.S. §§ 4-437, 17-1719-A, 17-1749-A. Furthermore, charter schools that receive at least \$750,000 in federal funds already contract with an auditing firm for an annual single audit. Currently, 76% of charter school entities meet the minimum \$750,000 threshold.

There may be minor financial costs to charter school entities and school districts that use an information system to process invoices under the redirection process. To comply with the redirection requirements,

a charter school will submit a request to the Department using the CSR tool in the Department's CFRS, which all public schools, including charter schools, currently access. The process and form are completely web-based with no documentation being submitted outside of CFRS. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts also can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests, and then use that information that work with a charter school to resolve payment before redirection occurs. There may be minor financial costs to charter school entities and school districts that use an information system to process invoices under the final-form redirection process. However, the process is not substantially different from how schools produce invoices currently. Based on the Department experience, updating an accounting system costs around \$5,000.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

For purposes of this analysis, the Department has addressed local school district impacts in field 19, above. There will be no cost or savings to local (municipal) governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There is no additional cost to the Department's general funding to implement the regulation.

The Department anticipates it will realize a cost savings by receiving fewer redirection requests from charter school entities and having more information on which to reconcile the requests it does receive. Each year, the Department receives approximately 14,000 redirection requests from charter school entities for amounts ranging from a few cents to a few million dollars. Based on the amount of time Department staff spend on processing each request and maintenance costs for the various information technology systems, the Department calculates that each redirection costs the state approximately \$15. At \$15 each, the annual cost to process 14,000 requests is \$210,000 a year. By streamlining the process and requiring charter school entities to invoice and wait at least 10 days for payment, the Department expects to realize a cost savings, along with increased capacity for other activities. Accordingly, the Department conservatively estimates it will receive 3,500 fewer requests at a total cost savings of \$52,500 a year.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

For the Department, there are no additional legal, accounting or consulting procedures. The Department will need to develop a model charter school application and update the cyber charter application to reflect the requirements in the regulation and post those applications online. The Department also will need to revise the charter school redirection request form and update its electronic payment system to reflect the new redirection process. The applications and forms referenced in the regulation will be posted online and submitted electronically to the Department.

For charter school entities that already align policies and practices with the CSL and those of other public school entities, there will be no additional legal, accounting or consulting procedures, nor additional reporting, recordkeeping or other paperwork, including copies of forms or reports.

For charter school entities that will need to update policies and practices to implement the rulemaking and comply with provisions of the CSL, there may be a need to contract with an accounting firm to implement the fiscal management and audit requirements or to implement an annual independent financial audit. However, charter schools already are required to annually audit financial accounts in accordance with section 437 of the School Code. 24 P.S. §§ 4-437, 17-1719-A, 17-1749-A. Furthermore, charter schools that receive at least \$750,000 in federal funds already contract with an auditing firm for an annual single audit. Currently, 76% of charter school entities meet the minimum \$750,000 threshold. Charter schools, regional charter schools, and cyber charter schools also may need to develop policies related to enrollment procedures, post those policies on their websites in an accessible format, and/or add the policies and procedures to the student application for their schools. They also may need to provide their policy to their authorizer.

Charter school entities will need to update websites and applications to include enrollment policies if such policies are not currently posted.

Charter school entities and school districts that use an information system to process invoices may incur minor financial costs to implement the regulatory redirection process. However, the process is not substantially different from how schools produce invoices currently. To comply with the redirection requirements, a charter school will submit a request to the Department using the CSR tool in the Department's CFRS, which all public schools, including charter schools, currently access. The process and form are completely web-based with no documentation being submitted outside of CFRS. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts also can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests, and then use that information that work with a charter school to resolve payment before redirection occurs. There may be minor financial costs to charter school entities and school districts that use an information system to process invoices under the final-form redirection process. However, the process is not substantially different from how schools produce invoices currently. Based on the Department's experience, updating an accounting system costs around \$5,000.

Authorizers of charter schools, regional charter schools, and cyber charter schools may need to revise existing charter school applications and supporting materials, and charter school applicants may need to provide different information, in a different form, depending on these standard applications.

For taxpayers and the public, the regulation carries no additional legal, accounting or consulting procedures or additional reporting, recordkeeping, or other paperwork, including copies of forms or reports.

(22a) Are forms required for implementation of the regulation? Yes

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

- **Charter School Application Form** – The Department will revise the model charter school application found on the Department’s website to include the items identified in section 713.2(c). The current model application is available at <https://www.education.pa.gov/Documents/K-12/Charter%20Schools/Applications/Charter%20School%20Application%20Fillable.pdf>. Charter school authorizers may, but will not be required, to use the charter school application that will be developed by the Department or their own application, provided it includes the items identified in section 713.2(c). When complete, the Department will post the template application on the Department’s website in a widely used accessible format.
- **Cyber Charter School Application Form** – The Department will amend the current Cyber Charter School Application to be in compliance the items identified in section 713.3. The current application is available at <https://www.education.pa.gov/Documents/K-12/Charter%20Schools/Applications/Charter%20School%20Application%20Fillable.pdf>. The form will be amended to include the following items, which are not currently part of the Department’s cyber school application:
 - If there is an educational management service provider, evidence of their record in serving student populations including demonstrated academic achievement and growth;
 - Demonstrated management of non-academic school functions;
 - Final or proposed contract between the charter and the provider;
 - Names/contact information for the officers, chief administrator, and other administrators of the provider;
 - Proposed duration of the service contract (not to exceed the length of the charter term);
 - Roles/responsibilities of the board of trustees, the charter school staff, and the management service provider;
 - Scope of services to be provided by the provider;
 - Methods of contract enforcement;
 - Conditions for renewal and termination of the contract;
 - Compensation structure including clear identification of all fees, and a total of fees expressed as a percentage of school expenditures;
 - Performance evaluation measures and timelines;
 - Disclosure of any investment/planned investment or advance of moneys by the provider on behalf of the charter school; and
 - Disclosure and explanation of any conflicts of interest between any members of the board of trustees and the provider.
- **Redirection Form** – In accordance with section 713.8 of final-form rulemaking, the Department will make available a web-based form for charter school entities to request subsidy redirection from the Department. The form will include the following information, as specified in section 713.8(d):
 1. Name and contact information for the requesting charter school.
 2. Date of submission.
 3. For each student for which the charter school entity is seeking payment:
 - a. PAsecureID.
 - b. Home address.
 - c. School district of residence.
 - d. Date of birth.
 - e. Grade in which the student is enrolled at the charter school.
 - f. Date enrollment notification form was sent to school district of residence.

- g. First day educated by the charter school.
 - h. Last day educated by the charter school, if applicable.
 - i. Special education status, if applicable.
 - j. Date of current Individualized Education Plan (IEP), if applicable.
 - k. Date of prior IEP, if applicable.
4. The source of the tuition rate used by the charter school entity in its withholding request to the Department.

Schools will complete the redirection form using the Charter School Redirection CRS module within the Department's Consolidated Financial Reporting System (CFRS), which was implemented in February 2022. The process is completely web-based, with no documentation submitted outside of CFRS. The student enrollment information required for the form is available in a charter school entity's student information system and uses information that charter school entities report to the Department annually for the purposes of federal reporting. The CSR tool is expected to result in fewer requests being returned to charter school entities due to errors and a more efficient process for charter school entities, school districts, and the Department. School districts can use the system to see in real-time which charter school entities submitted redirection requests and the status of those requests.

(23) 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 20-21	FY +1 Year 21-22	FY +2 Year 22-23	FY +3 Year 23-24	FY +4 Year 24-25	FY +5 Year 25-26
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$52,500	\$52,500	\$52,500	\$52,500	\$52,500
Total Savings	\$0	\$52,500	\$52,500	\$52,500	\$52,500	\$52,500
COSTS:						
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated Community	\$0	\$0	\$0	\$0	\$0	\$0
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Revenue Losses	\$0	\$0	\$0	\$0	\$0	\$0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 17-18	FY -2 18-19	FY -1 19-20	Current FY 20-21
PDE Division of Charter Schools	\$2,235.82	\$367,556.21	\$501,832.88	\$318,002.57
PDE Division of Subsidy Administration	\$183,624.93	\$123,000.42	\$168,048.39	\$162,419.97

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Although this regulation primarily impacts charter schools, regional charter schools, and cyber charter schools, which must be organized as public, nonprofit corporations as defined in the CSL and Annex of this regulation, it is possible that some charter schools, regional charter schools, and cyber charter schools are organized as businesses and that some educational management service providers affiliated with charter schools, regional charter schools, and cyber charter schools may qualify as small businesses under the definition cited in the Regulatory Review Act. PDE has limited information on the scope and size of educational management service providers.

A dozen or more Pennsylvania charter schools, regional charter schools, and cyber charter schools received Paycheck Protection Program (PPP) loans in 2020 under the federal CARES Act, which may indicate they qualify as small businesses, although the program was also open to not-for-profit organizations. Among those, only Crispus Attucks Charter School in York is classified in Small Business Administration data as a "corporation;" the others are classified as having not-for-profit status. Recipients of PPP include Eric Rise Leadership Academy Charter School, Young Scholars of Central Pennsylvania Charter School, Passport Academy Charter School, Franklin Towne Charter High School, Collegium Charter School, Chester Community Charter, Esperanza Academy Charter, Crispus Attucks Charter School, I-Lead, KIPP, and two cyber charter schools: Pennsylvania Leadership Charter and Pennsylvania Virtual Charter.

PDE has limited information on the scope and size of educational management service providers. Many are private companies and as such they are not required to disclose financial information to the public. To be impacted, providers would have to be for-profit entities with annual receipts of up to \$12 million, according to federal Small Business Administration size standards. Because of the lack of publicly available financial data, the Department is unable to analyze the potential impact on these providers.

Reporting, recordkeeping, and other administrative costs would not exceed those required by law for all public school entities; it would only require a change in practice for any educational management service

providers not already undertaking these activities on behalf of client charter school entities. Regardless of current practices, clarity of requirements will ultimately lower the cost of doing business and facilitate sound long-term financial planning.

The regulations are focused on clarifying statutory requirements. As such, there is not a less intrusive or less costly alternative to achieve the purpose of this regulation.

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

The regulations do not include any special provisions.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative provisions were considered. The Department deems the regulation to be the least burdensome option for carrying out the identified portions of the CSL.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Except as described in field 24, small businesses are not part of the regulated community affected by the rulemaking, and the Department does not anticipate any adverse impact as a result of final-form regulation.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data from the America Rescue Plan Act of 2021 (Pub L. No 117-1), Elementary and Secondary School Emergency Relief Fund Allocations to Title I-A recipients, which can be found on the PDE website, informed the economic impact of requiring charter schools to obtain independent audits.

Data from the Pennsylvania Charter School Enrollment - 2020-2021, which is reported to PDE annually by charter school entities and is posted on the PDE website, was used to assess the footprint of the charter school sector in Pennsylvania.

The following reports informed the quality and standards requirements of the contents of the charter school applications:

- *Charter School Performance in Pennsylvania*, CREDO (Center for Research on Education Outcomes), Stanford University, 2019.
- *Equity-Focused Charter School Authorizing Toolkit* (November 2019)
- J.L. Woodworth, et al., *Charter Management Organizations: 2017*, CREDO, Stanford University, 2017.
- J.L. Woodworth, et al., *Online Charter School Study: 2015*, Center for Research on Education Outcomes (CREDO), Stanford University, 2015.

(29) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The length of the public comment period: | <u>30 days (for proposed)</u> |
| B. The date or dates on which any public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of delivery of the final-form regulation: | <u>February 2022</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication of the final-form regulation in the Pa. Bulletin.</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Upon publication of the final-form regulation in the Pa. Bulletin.</u> |
| F. The expected date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department of Education will review the rulemaking on a regular basis and closely monitor these regulations for their effectiveness and recommend updates as needed.

CDL-1

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

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**Independent Regulatory
Review Commission**

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**FINAL-FORM RULEMAKING
DEPARTMENT OF EDUCATION
CHARTER SCHOOLS
CHARTER SCHOOLS AND CYBER CHARTER SCHOOLS
22 PA. CODE CHAPTER 713**

FINAL-FORM RULEMAKING

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 713]

Charter Schools and Cyber Charter Schools

The Department of Education (Department) proposes to add Chapter 713 (relating to charter schools and cyber charter schools) to read as set forth in Annex A.

Statutory Authority

Sections 1732-A(c) and 1751-A of the Charter School Law (CSL) (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A—17-1751-A). The Department is exercising this authority with this final-form rulemaking to add a new chapter under Part XX (relating to charter schools).

Purpose and Background

In enacting the CSL in 1997, the General Assembly intended, as described in section 1702-A of the CSL (24 P.S. § 17-1702-A), to provide opportunities for teachers, parents, pupils, and community members to establish and maintain charter schools that operate independently from the existing school district structure as a method to:

- Improve pupil learning.
- Increase learning opportunities for all pupils.
- Encourage the use of different and innovative teaching methods.
- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- Hold the schools established under the CSL accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

At the heart of these principles is the idea that charter schools will serve as laboratories of innovation; however, apart from amendments enacted in 2001 to authorize the establishment of cyber charter schools, the CSL has remained largely unchanged since its enactment.

Charter school entities are generally divided into four types—charter schools, regional charter schools, cyber charter schools and multiple charter school organizations (MCSO). Both charter schools and regional charter schools are independent public schools established and operated under a charter from the local school board or boards and in which students physically attend. These schools are commonly referred to as "brick-and-mortar" charter schools and focus on teacher-led discussion and teacher knowledge imparted to students through face-to-face interaction at the schools' physical facilities located within the boundaries of the school district or districts that granted the charter. A cyber charter school is an independent public school established and operated under a charter from the Department. Cyber charter schools use technology to provide a significant portion of curriculum and to deliver a significant portion of instruction to their students through the internet or other electronic means without a school-established requirement that students be present at a supervised physical facility designated by the school, except on a very limited basis, such as for standardized assessments. The fourth type of charter school entity is an MCSO. Section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A) permits, under certain circumstances, the merger of two or more existing charter schools or regional charter schools into an MCSO, which may operate under the oversight of a single board of trustees and a chief administrator. An MCSO is considered the holder of a charter for each individual charter school in the organization but is not a charter school itself. 24 P.S. § 17-1729.1-A(e). There are currently no MCSOs operating in this Commonwealth.

The Department's final-form regulation will promote transparency, equity, quality, and accountability in the implementation of the CSL's provisions relating to the establishment of new charter school entities and the governance and operation of existing charter school entities. Charter schools are expected to receive nearly \$3 billion in publicly paid tuition during the 2021-2022 school year, plus additional Federal funding provided through Federal pandemic emergency and recovery relief. Accordingly, the Department is proposing regulations to ensure public awareness of the expenditure of these resources.

Transparency, equity, quality and accountability in the establishment, governance and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities—including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities and authorizers of charter school entities—adhere to the structural norms that maintain the effectiveness of the CSL.

The regulation is not mandated by any Federal or State law or court order or Federal regulation. However, the Commonwealth Court, in *Insight PA Cyber Charter School v. Department of Education*, 162 A.3d 591 (Pa. Cmwlth. 2017), noted "the Department has the express authority to promulgate regulations to implement the portions of the [Charter School Law] relating to cyber charter schools. . ." and that, in the context of management organization contracts, promulgated regulations "would be beneficial to charter school applicants and chartering authorities."

At 49 Pa.B. 4817 (August 24, 2019) the Department published an advance notice of proposed rulemaking (ANPR) announcing its intention to exercise its statutory authority and submit a

rulemaking to amend Part XX. There was no time limit for submitting public comment, and a link to the ANPR has been available on the Department's web site since August 2019. On November 22, 2019, the Department hosted a public roundtable in State College for interested stakeholders to provide feedback on priorities as outlined in the ANPR. The Department received approximately 50 comments from stakeholders during that public comment period. While most comments concerned desired statutory changes, other commenters addressed important goals of this rulemaking.

In a letter to the Secretary of Education, the solicitor for the School District of Pittsburgh wrote, "It is our hope that these proposed regulations, when combined with comprehensive charter reform legislation, . . . will address several important tasks. Among these are to codify charter case law in areas where the Charter School Law (CSL) has been interpreted by the Courts; to clarify open questions regarding charter funding, to improve charter schools' transparency and accountability and to begin to right the imbalance between school districts and charter schools that is imbedded into current law and policy." More specifically, the School District of Pittsburgh supports the development of a statewide application for charter applicants and charter renewals, better enforcement of non-discriminatory enrollment practices, clarification that charter school board trustees are subject to 65 Pa.C.S. 1101—1113 (relating to Public Official and Employee Ethics Act) requirements that educational management service providers be more transparent about expenditure of public funds, and enactment of generally accepted standards of fiscal management and audit requirements.

Organizations such as Asian Americans United, Education Law Center-PA, Justice At Work, Nationalities Service Center, VietLead, IHAS-PA and Arc of Greater Pittsburgh/ACHIEVEA expressed support for comprehensive regulatory reform to ensure charter schools, as public schools, are equitably and inclusively educating all students, including students with disabilities, English learners and other students historically less served by charter schools.

On March 11, 2021, the Pennsylvania Coalition for Public Charter Schools (PCPCS) sent a letter to Governor Tom Wolf, Secretary of Education Noe Ortega, members of the General Assembly, and the superintendents of the School District of Philadelphia and School District of Pittsburgh, calling for "meaningful reforms to Pennsylvania School Law and Public School Code that improves the quality of education for every public school student in charter schools and school districts." In its letter, PCPCS calls for a more defined and consistent process for new charter school applications to ensure the process is "fair, equitable, and efficient." PCPCS further indicates support for modifying the payment process between public school districts, charter schools and the Department to reduce conflicts over non-payments. Finally, PCPCS argues for codification of additional accountability and transparency standards for all public schools. This final-form rulemaking addresses each of these aims.

Relatedly, as of April 5, 2021, a total of 396 school districts, nearly 80% of public school districts, across this Commonwealth have adopted resolutions calling for charter reform that includes transparency and accountability.

On April 15, 2021, the Department's policy director, government relations director, deputy secretary of the Office of Elementary and Secondary Education, and staff from the Division of

Charter Schools held briefings on the proposed rulemaking with the Republican and Democratic staff from the Senate and House Education Committees; the School District of Philadelphia and Pittsburgh Public Schools, the two largest charter school authorizers in the commonwealth; PA Partnerships for Children, Philadelphia Charters for Excellence, A+ Schools and the PA Coalition of Public Charter Schools; and American Federation of Teachers (AFT-PA), Education Voters of PA, LEARN, Pennsylvania State Education Association (PSEA), Pennsylvania Association Rural and Small Schools (PARSS), Pennsylvania Association of School Administrators (PASA), PA School Boards Association (PSBA), Pennsylvania Association of School Business Officials (PASBO), Public Citizens for Children and Youth, the Urban League of Greater Philadelphia, and the Urban League of Greater Pittsburgh. During those briefings, the Department explained the rulemaking process, the proposed sections and purpose of the rulemaking, and a tentative timeline. Attendees provided feedback on the proposal during the meetings and were encouraged to submit feedback at any time to the Division of Charter Schools.

On September 16, 2021, the Department held another set of briefings with the individuals from April to notify them that the proposed regulation would be published in the *Pennsylvania Bulletin* that weekend and to review the process for submitting comments to the Independent Regulatory Review Commission (IRRC).

The proposed rulemaking was published in the *Pennsylvania Bulletin* for a 30-day public comment period on September 18, 2021. On September 24, 2021, the Department issued a PennLink email to approximately 800 local education agencies (LEAs), including charter schools, reminding them of the opportunity to submit comments on the proposed regulation and providing instructions for commenting by the October deadline. Included on this distribution list were the PA Coalition of Public Charter Schools, PA Partnerships for Children, Philadelphia Charters for Excellence, Children First, American Federation of Teachers, Pennsylvania State Education Association, PA Rural and Small Schools, School District of Philadelphia, Pittsburgh Public Schools, PA School Administrators Association, PA School Boards Association, and the PA School Business Officials. Additionally, on October 12, 2021, the Department emailed a reminder to these major stakeholders. Every major stakeholder submitted comments, as well as nearly two dozen charter schools, including Agora Cyber Charter, Chester Community Charter, Commonwealth Charter Academy, Freire Charter Schools, Insight PA Cyber Charter, PA Cyber, and Propel, Mastery and KIPP Charter Schools. Comments were also received from several organizations that focus on educational issues impacting students, including Arc of Philadelphia, Children First, Disability Rights PA, Education Law Center, and PA Partnerships for Children. The Department also received comments from Sen. Scott Martin on behalf of the republican members of the Senate Education Committee; Sen. Lindsey Williams on behalf of the democratic members of the Senate Education Committee; Rep. Curt Sonney, chairman of the House Education Committee; and Sen. Tim Kearney, who serves as a member of the Senate Education Committee. Overall, the Department received 223 comments and 1,557 form letters, with each roughly split between support and opposition.

On October 20, 2021, four members of PDE leadership testified at a charter school regulation hearing held by the Senate Education Committee and listened to the testimony of other

stakeholders, which included professional organizations and charter school administrators from Propel Charter School, Richard Allen Preparatory Charter School, Charter School for Excellence, Commonwealth Charter Academy, Insight Cyber Charter School and Reach Cyber Charter School. The testimonies and comments from the hearing also were considered as part of the final-form rulemaking. However, the hearing made clear that both statutory reform and regulation are necessary to bring order, consistency, and clarity to the regulated community. As stated at the hearing, the Department would welcome the opportunity to work with the General Assembly on comprehensive Charter School Law reform that improves educational choice for all students in the commonwealth.

Summary of Major Public Comments and Responses

Overall, the Department received 223 comments and 1,557 form letters, with each roughly split between support and opposition. In addition to comments from the public, the Department received comments from charter schools, traditional public schools, professional organizations, and child advocate organizations. The Department's comment and response document summarizes the written comments received during the public comment period and the Department's responses. The document also summarizes comments received from the Senate Education Committee (Republican members), Senate Education Committee (Democratic members), House of Representatives Education Committee Chairman Curt Sonney, Senator Tim Kearney, and IRRC, along with the Department's responses. The full comment and response document is available by emailing the Department at ra-edcharterregs@pa.gov. They also may be found on the IRRC website. A summary of the major comments and the Department's responses is below.

In addition to providing general support, commenters in favor of the regulations offered amendments to make definitions clearer and to connect them to federal requirements; reiterated the need for random enrollment policies to ensure that all students are provided opportunities to enroll in charter schools; supported additional clarity in the application process; and maintained that the requirements around the Boards of Trustees and Fiscal and Auditing Standards are necessary to maintain transparency and accountability to parents and taxpayers who support charter schools. Commenters in opposition maintained that the Department does not have the legal authority to promulgate the regulations; that the application requirements are excessive; that the regulations are redundant of state law; and that there are too many variables to the health care components, making implementation of that requirement difficult. The Department reviewed all comments and made several changes to the Annex based on them as explained in the next section.

Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) clearly authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A). While some commenters believe the Department of using the regulatory process to "circumvent the law," the Department believes the final-form regulations provide much needed clarity for how charter schools, charter school authorizers, and the Department can comply with current CSL standards, and that the regulated community would benefit from both regulation and

comprehensive statutory reform. As stated by PDE leadership at the Senate Education Committee's charter school regulation hearing on October 20, 2021, the Department would welcome the opportunity to work with the General Assembly on comprehensive CSL reform that improves educational choice for all students in the commonwealth. Since releasing the ANPR in 2019, the Department has received no evidence that regulations will harm the regulated community or result in "a net opposite effect to the Legislature's intent." However, in the past two years, the Department has provided guidance to charter schools and school districts attempting to navigate the process to establish a charter school outlined in the CSL; to charter schools requesting redirection payments and submitting financial reports to the Department; to parents asking how to enroll their children in charter schools; and to students and families seeking compensatory education when a charter school closes.

As noted by IRRC, commenters raised numerous concerns related to §713 related to random selection policies. Some commenters urge greater prescription in this area, while others object to this section in its entirety. The Department believes the final-form regulation reflects an important middle ground – one that will require charter school applicants and existing charter schools to enact, publicize, and implement policies to effectuate the CSL requirements and to provide data using existing Federally-required parameters to understand whether these policies are fair, inclusive, and navigable for students and parents. The Department also believes the regulation makes a significant contribution to these goals by requiring charter schools to: 1) timely adopt an enrollment policy, 2) publicly post this policy and include it in renewal applications, 3) ensure public notice of the policy to include translation and accessibility provisions, 4) detail optional enrollment preferences, and 5) report on the impact of the enrollment policy relative to student demographics. Research by Education Voters of Pennsylvania and the Education Law Center found that charter schools enrolled fewer students from historically underserved populations comprised of students with special education needs, English Language Learners, and economically disadvantaged students than would be expected based on the sending district's demographics. These regulations will protect the public welfare by helping to ensure that charters adhere to their legal responsibilities to educate all students, including these student groups.

An area that the regulation does not address is the renewal process. Final-form § 713.2 applies to entities applying to a local school district to *establish* a charter school or regional charter school; § 713.3 applies to entities applying to the Department to *establish* a cyber charter school. Section 1728-A of the CSL (24 P.S. § 17-1728-A) charges the charter school authorizer with assessing whether a charter school or regional charter school is meeting the goals of its charter and determining whether the charter should be renewed or terminated in accordance with the CSL. Section 1742-A of the CSL (24 P.S. § 17-1742-A) charges the Department with assessing cyber charter schools. The CSL (24 P.S. § 1728-A(a)) requires local boards of school directors to conduct a comprehensive review prior to granting a charter renewal and states that "the local board of school directors shall have ongoing access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and this act and that requirements for testing, civil rights and student health and safety are being met." The admissions policy is one of the records to help local school boards in their review.

Section 1729-A of the CSL (24 P.S. § 17-1729-A) outlines the causes for nonrenewal and revocation. The Department asserts changes to these provisions related to the renewal process should be addressed through amendments to the CSL and not through rulemaking.

In final-form rulemaking the Department addresses concerns raised by charter schools, school districts, professional education associations, educators, parents, and lawmakers, as well as comments from IRRC. Those revisions align the definition of English Learner to that contained in federal law, aligning the definition of “educational management service provider” with that contained in the Public School Code, clarify how the application to establish a charter school relates to the charter renewal process, connect items in the application to establish a charter school with other regulatory and statutory requirements, remove application requirements related to performance standards for the Board of Trustees of the charter school, clarify the timeline for a charter school to submit a payment request to a school district, and replace the health care benefits proposal with a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the requirements of section 1724-A(d) of the CSL. The Department made additional amendments in its final rulemaking based on comments from IRRC and others. All amendments are explained in detail in the next section.

Provisions of the Final-Form Rulemaking

This final-form rulemaking clarifies the minimum standard for charter school, regional charter school and cyber charter school application requirements, ensures non-discriminatory student enrollment policies as required by the CSL, clarifies that charter school entities' boards of trustees are subject to 65 Pa.C.S. §§ 1101—1113, requires the use of generally accepted principles for accounting and auditing, details the tuition payment redirection process for charter school entities and school districts, and provides a method for regional and cyber charter schools to demonstrate compliance to the provision of health care benefits for employees of charter schools, regional charter schools and cyber charter schools as required by the CSL.

Section 713.1 Definitions

Final-form § 713.1 (relating to definitions) establishes definitions for the following terms used in this final-form rulemaking: authorizer, charter school, charter school entity, charter school foundation, Charter School Law, cyber charter school, Department, educational management service provider, English learner, multiple charter school organization, PAsecureID, regional charter school, School Code and Secretary. The Department did not include the term “economically disadvantaged” in the definitions, since leaving this term undefined will not lead to confusion for the regulated community but defining the term could lead to unintended consequences in other contexts.

In response to IRRC’s request and comments received during proposed rulemaking, the Department revised the definition of educational management service provider to be consistent with section 501(b)(3) of the Public School Code (24 P.S. § 5-501(b)(3)). This definition captures entities that receive public funds from charter school entities and ensures these providers are transparent about the expenditure of public funds and adhere to generally accepted standards of fiscal management and audit requirements.

Final-form rulemaking revises the definition of English Learner to align to that which is contained in the federal Elementary and Secondary Education Act (ESEA)(20 U.S.C. § 7801(20)). The Department also added the term and definition for “charter school foundation.”

Commenters suggested expanding the definition of “authorizer” to include the Department as the authorizer of an MCSO. Final-form rulemaking does not make this change, since an MCSO is an administrative unit, not a charter school. An MCSO is formed when two or more charter schools or regional charter schools consolidate as a public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator, in accordance with section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A). An MCSO is considered the holder of a charter for each individual charter school in the organization. The CSL charges the Department with approving an MCSO, but the Department is not its charter authorizer, since an MCSO is not a charter school. The Department took great care and intention in distinguishing which of the regulation applies to *charter schools* and which apply to *charter school entities*, which includes MCSOs.

Final-form rulemaking aligns the definitions of “regional charter school” and “cyber charter school” to those contained in the CSL; the definitions were not changed to indicate that each is administered from a single-identified central office, since the location of the charter school administration office is written into its charter. Each charter school, regional charter school and cyber charter school only has one central administrative location for its articles of incorporation and its charter. A school may operate from more than one physical location, but there is only one administrative office. This is akin to a school district operating several school buildings but having only one address of record for administration. Per *Discovery Charter Sch. v. Sch. Dist. Philadelphia*, 166 A.3d 304 (Pa. 2017), the court ruled that for a charter school to change a location, the charter must be amended and agreed upon by the school and the authorizer. Therefore, a regional charter school or cyber charter school could not change its location for any reason without approval of its authorizer.

Section 713.2 Contents of Charter School or Regional Charter School Application

Final-form § 713.2 (relating to contents of charter school or regional charter school application) relates to the content of a charter school or regional charter school application required under section 1719-A of the CSL (24 P.S. § 17-1719-A). A charter school is a public school that operates independently of school districts under a charter issued by a local board of school directors or a board of public education. A regional charter school is a public school that operates independently of school districts under a charter issued by more than one local board of school directors or boards of education. As required under section 1719-A of the CSL, individuals interested in establishing a charter school or regional charter school must submit an application to the local board of school directors of the school district or districts in which the charter school or regional charter school will be located. Ensuring that these applications conform to statutory requirements—and are well understood by charter school organizers, charter school authorizers and stakeholders—is an important aim of this final-form rulemaking. A rigorous charter application process allows authorizers to hold prospective charter schools to high standards academically, fiscally, and administratively, and helps authorizers ensure charter

schools are prepared to equitably serve all students. Clear application requirements, that include examples of the type of documentation that may be submitted, also make it easier for entities to submit applications to authorizers that do not often receive such applications and for authorizers to review those applications in a timely and effective manner.

Final-form § 713.2 requires applicants seeking to establish a charter school or regional charter school to apply using either an application form created by the Department that includes minimum information requirements set forth in subsection (c) or an application developed by the authorizing school district or districts if such application meets the minimum requirements set forth in subsection (c) and is needed by the local board of directors, as the authorizer, to evaluate the application in accordance with section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)). In response to numerous comments, in final-form § 713.2(a), the word “operate” is replaced with “establish” to clarify that the items listed in subsection (c) apply to applicants seeking to establish a charter school or regional charter school.

IRRC and other commenters requested final-form rulemaking limit application requirements to those established by the General Assembly in the CSL and identified in the final regulation. The CSL does not permit the Department to limit the requirements that an authorizer may include in a charter school or regional charter school application. Section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)) states the local board of school directors is to evaluate a charter school application based on criteria, “*including, but not limited to, the following:*

- i. The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d).
- ii. The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter.
- iii. The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- iv. The extent to which the charter school may serve as a model for other public schools.”

For this reason, final-form § 713.2(c) serves to clarify the minimum application requirements under section 1719-A of the CSL (24 P.S. § 1719-A) and support authorizers with meeting their statutory obligations.

Final-form § 713.2(c) clarifies minimum standards for each application requirement specified in section 1719-A of the CSL. Subsection (c)(1) and (2) relate to contact information for the school. Based on feedback received during proposed rulemaking, subsection (c)(2) was changed to remind applicants that the name of the school must include the words “charter school”, as required by section 1714-A(1) of the CSL (24 P.S. § 17-1714-A(1)).

Subsection (c)(3) details data that must be provided for each grade and age level the school intends to serve. The intent of section 713.2(c)(3) is to clarify the requirement of sections 1719-A(3) and 1717-A(e)(2)(ii) of the CSL (24 P.S. § 17-1719-A; 24 P.S. § 17-1717-A(e)(2)(ii)). Whereas section 1719-A(3) requires the applicant to identify “[t]he grade or age levels served by

the school,” section 1717-A(e)(2)(ii) requires authorizers to consider “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted charter.” An entity must apply for a charter by November 15 of the year prior to the school year in which the school plans to open. To ensure the entity is capable of providing students with a quality education and safe environment when the next school year begins, an authorizer must be confident the applicant understands the needs of the anticipated student population and is prepared to serve them. In response to comments, final-form rulemaking revises section 713.2(c)(3) to clarify applicants are to provide data for each grade or age level proposed to be served by the charter school or regional school for the “...for the proposed term of the charter,” the proposed overall enrollment capacity by grade level; and projected *share* of student enrollment receiving special education services by primary disability and English Learners. Applicants could use national, state, and local data sources (e.g., data from the U.S. Census Bureau, National Center for Education Statistics, Pennsylvania Department of Education, etc.) to estimate the composition of the student body by age, race, ethnicity, income level, disability, and primary household language, as well as community outreach, survey results, letters of intent to enroll, and pre-enrollment forms. The applicant also could use data from the Future Ready PA Index, a public-facing dashboard maintained by the Department that shows student enrollment by student group for every public school in the commonwealth, to approximate student enrollment in the district it intends to serve.

Subsection (c)(4) outlines the artifacts that a charter school or regional charter school must provide related to governance structure. In response to comments received during the 30-day comment period and from IRRC, final-form rulemaking clarifies § 713.2(c)(4)(iv) that the applicant is to provide the name of any foundation or other entity, such as a charter school foundation, that the applicant anticipates associating during the term of the charter and removes § 713.2(c)(4)(v) pertaining to boards of trustees’ performance in its entirety. The Department also removed the first reference to “affiliated business entities” from § 713.2(c)(4)(vii), now renumbered to § 713.2(c)(4)(vi) and replaced the second reference to “affiliated business entities” with “charter school foundation,” since this requirement relates only to charter school foundations that qualify as a support organization under section 509(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 509(a)(3)). Final-form rulemaking inserts the following statement into § 713.2(c)(4)(vi)(F), now renumbered to § 713.2(c)(4)(v)(F), for emphasis: “If the charter school or regional charter school plans to contract with a for-profit educational management service provider, the school shall provide evidence that the charter school’s board of trustees will retain real and substantial authority over the operation of the school, educational decisions, and staff of the charter school entity.” A charter school must be operated by a non-profit entity governed by a board of trustees. If a for-profit entity has a role in the establishment of a charter school, the charter applicant must demonstrate that the charter school’s board of trustees will retain real and substantial authority over the operation of the school, educational decisions, and staff. *Insight PA Cyber Charter School v. Department of Education*, 162 A.3d 591 (Pa. Cmwlth. 2017). A management agreement between the proposed charter school and for-profit management company is evidence of this type of arrangement. *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400 (Pa. Cmwlth. 2003); *School District of York v. Lincoln-Edison Charter School*, 798 A.2d 295 (Pa. Cmwlth. 2002); *Brackbill v. Ron Brown*

Charter Sch., 777 A.2d 131 (Pa. Cmwlth. 2001); and *West Chester Area School District v. Collegium Charter School*, 760 A.2d 452 (Pa. Cmwlth. 2000), *aff'd* 812 A.2d 1172 (Pa. 2002).

Subsection (c)(5) requires the charter school or regional charter school to provide the authorizer with its mission and vision as well as curriculum and assessment strategies. As requested by IRRC, final-form rulemaking inserts “...(For example, intent to enroll forms, letters of support, memoranda with community organizations and petitions)” in § 713.2(c)(5)(i) to clarify the type of evidence applicants may submit to show demonstrated, sustainable support. A charter applicant must demonstrate that it has sustainable support from teachers, parents, other community members, and students to be granted a charter; further, a charter applicant must detail strategies for meaningful parent and community involvement. The State Charter Appeal Board (CAB) has defined sustainable support as “support sufficient to sustain and maintain the proposed charter school as an on-going entity.” *Brackbill v. Ron Brown Charter School*, 777 A.2d 131 (Pa. Cmwlth. 2001). Sustainable support is measured in the aggregate and not by individual categories. *Carbondale Area School District v. Fell Charter School*, 829 A.2d 400, (Pa.Cmwlth. 2003). Final-form rulemaking does not include references to culturally responsive or sustaining education, as some commenters suggested, since Chapter 4 (relating to academic standards and assessment) and Chapter 49 (relating to certification of professional personnel) of Title 22 of the Pennsylvania Code, as promulgated by the State Board of Education, require culturally responsive and sustaining education for all public schools, which includes charter schools, regional charter schools and cyber charter schools. For emphasis, the Department inserted a reference to Chapter 4 (relating to academic standards and assessments) in § 713.2(c)(5); § 713.2(c)(13) also requires charter school applicants to provide a professional development plan that complies with Chapter 4 and 49 regulations.

Subsection (c)(6) clarifies information to be provided related to the school's admission policy. No changes were made to § 713.2(c)(6) in final-form rulemaking.

Subsection (c)(7) relates to the charter school's or regional charter school's planned procedures for suspending or expelling students. In final-form § 713.2(c)(7) the Department clarifies that procedures regarding suspension or expulsion of students must be consistent with Chapter 12 (relating to Students and Student Services). At the request of commenters, final-form § 713.2(c)(7)(ii) allows an applicant that has not yet developed a Student Code of Conduct to describe the rules and policies that will guide the Code, such as mandatory student attendance.

Subsection (c)(8) requires information as to how the school will engage community groups in the school planning process. No changes were made to § 713.2(c)(8) in final-form rulemaking.

Subsection (c)(9) details the artifacts and data that a charter school or regional charter school must provide as part of its financial plan and auditing requirements under section 437 of the Public School Code of 1949 (24 P.S. § 4-437). No changes were made to § 713.2(c)(9) in final-form rulemaking.

Subsection (c)(10) relates to the procedures the school will establish to review complaints from parents and families regarding the operation of the school. Final-form rulemaking changes § 713.2(c)(10) from “Procedures for reviewing and addressing complaints...” to “Procedures

which shall be established to review complaints...” to mirror 1719-A(10) of the CSL (24 P.S. § 17-1719-A(10)).

Subsection (c)(11) requires the charter school to submit a school calendar consistent with the provisions of section 1502 of the School Code (24 P.S. § 15-1502). No changes were made to § 713.2(c)(11) in final-form rulemaking.

Subsection (c)(12) clarifies the type of information that must be submitted as part of the description of the charter school's physical facility and arrangements. Multiple commenters, including IRRC, questioned this subsection as being beyond the scope of regulation. Section 1719-A(11) of the CSL (24 P.S. § 17-1719-A(11)) requires the application to establish a charter school include “[a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” In *Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006), Commonwealth Court remanded the case to the CAB for purposes of a hearing to determine whether the proposed facility is suitable under the CSL; additionally in *Souderton Area School Dist. v. Souderton Charter School Collaborative*, 764 A.2d 688 (Pa. Cmwlth. 2000), the Court noted a local board of school directors should be afforded an opportunity to consider whether a facility is appropriate under the CSL. Final-form rulemaking revises § 713.2(c)(12)(i) as follows: “Whether the facility will be leased or owned, *as demonstrated by a copy of the deed to the facility showing ownership, a signed lease agreement, or, if contingent upon establishment of the charter school, a letter of intent to sell or lease from the property owner;*” removes § 713.2(c)(12)(ii) its entirety, since facility costs would be included in the applicant’s financial plan; and revises § 713.2(c)(12)(iii), now renumbered to § 713.2(c)(12)(ii), to include a description of how the facility is suitable for the proposed school and to request the applicant consider the necessity for renovation to the facility and compliance with applicable building codes and accessibility for individuals with disabilities. No changes were made to section 713.2(c)(12)(iv), now renumbered to § 713.2(c)(12)(iii), or section 713.2(c)(12)(v), now renumbered to § 713.2(c)(12)(iv). The Department did not include additional requirements under subsection (c)(12), as some lawmakers and commenters suggested, since the information cited is included in other sections of the application such as the financial plan.

Subsection (c)(13) details information to be included in the school's proposed faculty and professional development plan for the proposed faculty that complies with Chapters 4 and 49 (relating to academic standards and assessment; and certification of professional personnel). In response to numerous comments, final-form rulemaking revises § 713.2(c)(13)(ii) by replacing “[c]aseloads of staff for students receiving special education services” with “[d]escribe how the school will provide special education programs and services” at appropriate levels to ensure a free appropriate public education (FAPE) as required by Chapter 711 (relating to charter school and cyber charter school services and programs with children with disabilities) and federal law. Since neither the School Code nor Chapter 711 include or require case load requirements for staff of charter school students receiving special education services, this application requirement was removed. Final-form rulemaking clarifies in § 713.2(c)(13)(iii) that the professional development plan for faculty must include an induction program as required under Chapter 49 (relating to certification of professional personnel); and includes subsection § 713.2(c)(13)(iv) to

reiterate that section 1724-A(b) of the School Code (24 P.S. § 17-1724-A(b)) requires the application to include a list of general qualifications needed to staff any non-certified positions.

Subsection (c)(14) relates to extracurricular activities. Subsection (c)(15) and (16) clarify that criminal history records and child abuse clearances are required for all employees having direct contact with students and requires the applicant to provide certain information. Subsection (c)(17) clarifies how a charter school or regional charter school must demonstrate its ability to provide adequate liability and other appropriate insurance for the charter school, its employees, and the board of trustees as required by section 1719-A of the CSL. Commenters questioned the ability of an applicant to have the information requested in subsections (c)(14)-(17) when applying to establish a charter school or regional charter school. It is important to note these requirements are specifically listed in section 1719-A(14)-(17) of the CSL (24 P.S. § 17-1719-A(14)-(17)) and cannot be changed in final-form rulemaking. No changes were made to these sections in final rulemaking.

Final-form rulemaking inserts § 713.2(d)-(f) to explain the connection between the process to establish a charter school or regional charter school and the process to renew a charter. Subsection (d) reiterates that section 1717-A of the CSL (24 P.S. § 17-1717-A) requires that, upon approval of a charter application, a written charter must be developed which contains the provisions of the charter application. Subsection (e) reiterates that pursuant to section 1728-A of the CSL (24 P.S. § 17-1728-A) authorizers must annually assess whether a charter school or regional charter school is meeting the goals of its charter. At the suggestion of multiple commenters subsection (f) permits applicants to submit supplemental information to the authorizer as part of the process to establish a charter school or regional charter school and to renew a charter.

Final-form rulemaking clarifies that the regulation will be phased-in to accommodate the regulated community. Since the CSL requires entities apply no later than November 15 of the year prior to opening a charter school, § 713.2(g) is added to provide authorizers six months from the regulation effective date to ensure the authorizer's application to establish a charter school or regional charter school includes the items listed in § 713.2(c). Subsection (h) is added to allow applicants that submit applications prior to November 15, 2022, to continue with the application process in effect at the time of application, without the need to submit additional information to meet the requirements of § 713.2(c), or to reapply using the revised application, if so desired. The same clarifications were added to § 713.3 (relating to contents of cyber school application). As such, the new application will be used by entities seeking to establish a charter school, regional charter school, or cyber charter school for the 2024-25 school year.

Section 713.3 Contents of Cyber Charter School Application

Final-form § 713.3 (relating to contents of cyber charter school application) relates to the content of cyber charter school applications under section 1747-A of the CSL (24 P.S. § 17-1747-A). Specifically, final-form § 713.3 requires applicants seeking to establish a cyber charter school in this Commonwealth to apply using an application form created by the Department that includes the items identified in § 713.2(c) and the provisions of section 1747-A of the CSL.

In response to comments, in final-form rulemaking the Department inserted § 713.3(b) to reiterate that upon approval of a charter application under section 1741-A of the CSL (24 P.S. 17-1741-A), a written charter must be developed which contains the provisions of the cyber charter application; and inserted § 713.3(c) to reiterate that pursuant to section 1742-A(1) of the CSL (24 P.S. 17-1742-A) the Department must annually assess whether a cyber charter school is meeting the goals of its charter. At the suggestion of commenters, § 713.3(d) was inserted to permit a cyber charter school to submit additional information to the Department as part of the process to establish or renew a charter. In response to IRRC, the legislative education committees, and other commenters, subsection (e) directs the Department to incorporate the items listed in § 713.2(c) into the cyber charter school application no later than six months after the effective date of the regulation; and subsection (f) allows applicants that apply prior to November 15, 2022 to continue the application process without the need to provide supplemental materials or to reapply using the application that includes the items in § 713.2(c), unless the applicant requests to reapply. Since entities must apply at least a year in advance of opening a cyber charter school, the regulation would impact entities applying to establish a cyber charter school for the 2023-2024 school year.

Section 713.4 Random Selection Policies for a Charter School or Regional Charter School

Final-form § 713.4 (relating to random selection policies for a charter school or regional charter school) relates to section 1723-A of the CSL (24 P.S. § 17-1723-A) as it pertains to the admissions policies of charter schools and regional charter schools. Section 1723-A of the CSL provides that all children in this Commonwealth qualify for admission to a charter school or regional charter school as provided for in that section, and it permits a charter school or regional charter schools to adopt admission policies and practices if certain criteria are met. Under section 1723-A of the CSL, if more students apply to the charter school or regional charter school than the number of attendance slots available in the school building, then students must be selected on a random basis from a pool of qualified applicants meeting the established eligibility criteria, with limited exceptions. Subsections (b) and (c) set minimum requirements for charter school or regional charter school random selection policies and require these policies be included in application or renewal application materials.

Some commenters urged greater prescription in this section, while others objected to this section in its entirety. The final-form rulemaking reflects an important middle ground – one that will require charter school applicants and existing charter schools to enact, publicize, and implement policies to effectuate CSL requirements and to provide data using existing Federally-required parameters to understand whether these policies are fair, inclusive, and navigable for students and parents. The final-form rulemaking contributes to these goals by requiring charter schools and regional charter schools to: 1) timely adopt an enrollment policy; 2) publicly post this policy and include it in renewal applications; 3) ensure public notice of the policy to include translation and accessibility provisions; 4) detail optional enrollment preferences; and 5) report on the impact of the enrollment policy relative to student demographics.

At the request of lawmakers, authorizers and professional education organizations, final-form revises § 713.4(b) to reinforce that the charter school or regional charter school's policy must comply with all applicable non-discrimination laws and regulations.

Subsection 713.4(c)(4) requires charter schools and regional charter schools make their enrollment policies accessible to the public, including to parents with limited English proficiency and individuals with a disability. To further ensure equity and awareness, final-form § 713.4(c)(4) was revised to require the school's public notice of the selection process include the number of available slots and applicants. These requirements are to ensure that all students and parents, including parents with limited English proficiency or individuals with disabilities, are able to access and understand the information, consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000a—2000h-6) and existing obligations to parents with disabilities under the ADA (42 U.S.C.A. §§ 12101—12213). A charter school will be considered to have met this requirement if its policy is posted in English and the second most common home language, after English, that is used in the community or in accordance with the school's language access policy. This standard is derived from review of PDE's prior submissions to the U.S. Department of Education (USDE); evaluation of assessment translation practices using the federal Office of Civil Rights' four-factors; and analysis of home language and other data sources at the state, grade span, and local levels.

Final-form § 713.4(d) sets forth information that charter schools and regional charter schools must include in annual reports and post online to better assure transparency. In response to comments, subsection (d) is revised to require the data elements included in the annual report to the authorizer and posted to the charter school's website be disaggregated by student group, in accordance with ESEA. Through this regulation, charter schools and regional charter schools can ensure their admission policies are transparent to the public they serve, and community taxpayers, families and students will know exactly how preferences in admissions are considered and weighted.

This final-form rulemaking directly benefits students and ensures students have equal access to charter school education and are not discriminated against based on intellectual or physical ability or disability, as required under section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794), Title II of the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12131—12165), and Individuals with Disabilities Education Act (IDEA) (20 U.S.C.A. §§ 1400—1482).

Section 713.5 Random Selection Policies for a Cyber Charter School

Final-form § 713.5 (relating to random selection policies for a cyber charter school) relates to section 1723-A of the CSL (as applied to cyber charter schools in section 1749-A of the CSL (24 P.S. § 17-1749-A)) as they pertain to the admission policies of cyber charter schools. Under section 1723-A of the CSL, all resident children in this Commonwealth qualify for admission to a cyber charter school. A cyber charter school may not restrict admission or enrollment based on availability of attendance slots unless such terms are agreed to by the Department and the cyber charter school as part of a written charter under section 1723-A(d) and section 1745-A of the CSL (24 P.S. § 17-1745-A). Therefore, § 713.5 sets minimum requirements for a cyber charter

school to ensure random selection of students should more students apply than the number of attendance slots the cyber charter school's charter allows.

Section 713.5(b) requires that, within three months of the effective date of the regulation or upon the granting of a charter, cyber charter schools with enrollment terms agreed to by the Department and the cyber charter school as part of a written charter under section 1745-A of the CSL must enact a policy to ensure random selection of students for enrollment should more students apply to the cyber charter school than the number of attendance slots available and have that policy approved by the school's board of trustees. Section 1728-A(a) of the CSL (24 P.S. § 1728-A(a)) requires local boards of school directors to conduct a comprehensive review prior to granting a charter renewal and states that "the local board of school directors shall have ongoing access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and this act and that requirements for testing, civil rights and student health and safety are being met." A charter school's enrollment policy is one of the records to help local school boards in their review.

Like § 713.4, § 713.5(c)(1) requires a cyber charter school to make the enrollment policy publicly available on the school's web site. Section 713.5(c)(2) requires the policy be included in any renewal application of the cyber charter school. Section 713.5(c)(3) requires the policy describe the method to be utilized by the cyber charter school to effectuate selection of students for enrollment on a random basis. Section 713.5(c)(4) requires cyber charter schools, when applicable, to make their enrollment policies accessible to the public, including to parents with limited English proficiency and individuals with a disability. In response to numerous comments from lawmakers and others, final-form rulemaking stipulates the cyber charter school also must post online the number of available enrollment slots and number of applicants. These requirements are intended to ensure that all students and parents, including parents with limited English proficiency or individuals with disabilities, are able to access and understand the information, consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000a—2000h-6) and existing obligations to parents with disabilities under the ADA (42 U.S.C.A. §§ 12101—12213). A charter school will be considered to have met this requirement if its policy is posted in English and the second most common home language, after English, that is used in the community or in accordance with the school's language access policy. This standard is derived from review of PDE's prior submissions to the U.S. Department of Education (USDE); evaluation of assessment translation practices using the federal Office of Civil Rights' four-factors; and analysis of home language and other data sources at the state, grade span, and local levels. Subsection (c)(5) require the cyber charter school to detail any optional enrollment preferences under section 1723-A of the CSL for a child of a parent or guardian who has actively participated in the development of the cyber charter school and to siblings of students presently enrolled in the cyber charter school, including the order in which preferences are implemented and any weighting associated with the preferences.

Section 713.5(d) sets forth data elements a cyber charter school must include in its annual report related to its number of total and qualified applicants and number of students offered and accepted enrollment in the most recent school year. In response to comments from lawmakers

and others, final-form rulemaking revises § 713.5(d) to require these data elements be disaggregated by student group, in accordance with the Elementary and Secondary Education Act (20 U.S.C. § 7801(20)). This requirement is not burdensome or unreasonable, since all public schools, including charter schools, must annually submit student group data to the Department for state and federal reporting purposes.

Final-form rulemaking inserts subsection (e) to emphasize that the cyber charter school policy must comply with all applicable non-discrimination state and federal laws and regulations. This final-form rulemaking directly benefits students and ensures students have equal access to charter school education and are not discriminated against based on intellectual or physical ability or disability, as required under section 504 of the Rehabilitation Act of 1973, Title II of the ADA and the IDEA.

As with § 713.4, some commenters urged greater prescription in this section, while others objected to this section in its entirety. The final-form rulemaking reflects an important middle ground – one that will require cyber charter school applicants and existing cyber charter schools to enact, publicize, and implement policies to effectuate CSL requirements and to provide data using existing Federally-required parameters to understand whether these policies are fair, inclusive, and navigable for students and parents. The final-form rulemaking contributes to these goals by requiring cyber charter schools to: 1) timely adopt an enrollment policy; 2) publicly post this policy and include it in renewal applications; 3) ensure public notice of the policy to include translation and accessibility provisions; 4) detail optional enrollment preferences; and 5) report on the impact of the enrollment policy relative to student demographics. Regarding cyber charter schools, the final-form rulemaking does not prevent cyber charter schools from instituting enrollment parameters or caps; rather, the rulemaking makes clear that such limits may not be unilaterally imposed. The distinction in the rulemaking between brick-and-mortar charter schools and cyber charter schools reflects the fact that enrollment limitations are common in the former.

Section 713.6 Boards of Trustees

Final-form § 713.6 (relating to requirements for boards of trustees) relates to members of a charter school entity's board of trustees under sections 1715-A and 1716-A of the CSL (24 P.S. §§ 17-1715-A and 17-1716-A) (as applied to cyber charter schools in section 1749-A of the CSL). Under section 1715-A(11) of the CSL, members of a charter school entity's board of trustees are public officials. For clarity, § 713.6(a) confirms charter school entity's board of trustees are public officials subject to 65 Pa.C.S. §§ 1101—1113. Section 713.6(b) clarifies the requirement that trustee file a statement of financial interest with the charter school's board of trustees, State Ethics Commission, and each authorizer of the charter school entity. Section 713.6(c)—(f) clarify that board of trustee members must recuse themselves from any selection, award, administration, or contract decisions that present a conflict of interest, may not engage in other activity that constitutes a conflict of interest, and sets forth the penalties imposed for violations.

Clarifying that statutory ethics and conflict of interest standards apply to charter school board of trustees is critical to ensuring individuals serving in those positions are aware of their

responsibilities as public officials and do not use charter school tuition and taxpayer funding for personal financial gain. A September 2016 audit by the state Auditor General found that several trustees and administrators of the school were related to other individuals or organizations doing business with PA Cyber; the report was sent to the State Ethics Commission and the U.S. Department of Education Office of Inspector General for review. The former chief executive officer of a Pennsylvania Cyber Charter school was convicted later that year of stealing nearly \$8 million from the school. In 2018, the State Ethics Commission found the board president of Pennsylvania Leadership Charter School violated the State Ethics Act. The CSL establishes charter schools, regional charter schools and cyber charter schools as public schools in Pennsylvania, and their trustee members and school administrators as public officials. This is not the case in other states. As such, the regulation serves to reinforce the public nature of charter schools and their boards for out-of-state entities that establish charter schools in Pennsylvania but operate charter schools under different conditions in other states.

Final-form rulemaking does not include provisions regarding the composition of a charter school's board of trustees and how the board operations administratively, as some commenters recommended. The Department believes it is unable to include such requirements in regulation, since neither the CSL nor other parts of the Public School Code include these provisions. There were no changes made to this section from the proposed stage.

Section 713.7 Fiscal Management and Audit Requirements

Final-form § 713.7 (relating to fiscal management and audit requirements) relates to section 1729-A of the CSL (24 P.S. § 17-1729-A) (and applied to cyber charter schools in section 1749-A of the CSL), which requires a charter school entity to meet generally accepted standards of fiscal management and audit requirements or face nonrenewal or termination of its charter.

Section 1719-A(9) of the CSL (and applied to cyber charter schools in section 1749-A of the CSL) requires a charter school application to include the provisions which will be made for auditing the school under section 437 of the School Code, which requires "[t]he accounts of the school treasurer shall be audited annually as hereinafter provided." Section 713.7(a) clarifies that charter school entities must adhere to generally accepted standards of fiscal management and audit requirements, like all other public schools. Subsections (b) and (c) set forth minimum requirements for charter school entities to satisfy those requirements, such as using Generally Accepted Accounting Principles (GAAP) and Generally Accepted Government Auditing Standards (GAGAS), and by obtaining independent annual financial audits. Section 713.7(c) identifies the components of those audits. Section 713.7 of the final form regulation aligns the financial and fiscal standards with other public schools in Pennsylvania.

The CSL requires charter school entities to complete certain financial audits each year. The regulation identifies the components of those independent annual financial audits, which apply to all other public school entities. Precise accounting and auditing standards make it easier for charter schools to meet the auditing requirement and make it easier for charter school authorizers to annually assess a charter school entity's operation, as required by the CSL.

The Department advises charter schools to create audited financial statements in accordance with GASB. This guidance is based on section 218(b) of the Public School Code (24 P.S. § 2-218(b)) which states LEAs must submit an Audit Certification form in conjunction with the Annual Financial Report (AFR). The AFR must be completed using GASB standards. When a school administrator signs the AFR Audit Certification form, the administrator is certifying that the school's audited financial statements and AFR are materially consistent. Therefore, only by using GASB standards could a charter school administrator certify the audited financial statements. The Department also is aware of some schools changing from GASB to FASB to hide pension obligations and provide a false picture of overall financial health. FASB does not include the reporting of pension liability which can make a school appear to be operating in the black when in reality are operating at a loss.

While many charter schools are independently operated, it is not uncommon for a charter school to be managed by an external organization such as an educational management service provider. The extent to which the EMSP is involved in the administration, governance, daily operations, and educational offerings varies widely and depends on the contract terms. Charter schools that work with these organizations often have the same mission, education models, and curriculum, but different names. An EMSP also may be a nonprofit organization or a for-profit business entity. This creates a unique challenge in Pennsylvania where state statute designates charter schools to be public schools and eligible to receive federal and state funding. The fees mentioned § 713.7(c)(2) refer to the costs charged by the EMSP for their services. A September 22, 2016 audit by the state Auditor General found PA Cyber Charter School's board and administration failed to oversee the curriculum and management by provided the EMSP Lincoln Learning Solutions (formerly National Network of Digital Schools). Between 2011 and 2014, the school paid the EMSP \$153.8 million, nearly half of the schools annual expenditures. The report indicates that rather than a cost-based fee formula, the EMSP received 12% of the schools revenue from school districts and was paid \$100 million for curriculum, despite missing three of four deadlines to deliver new curriculum. As a fiduciary of the school, the charter school is responsible for reviewing the costs charged by the EMSP and ensuring the costs are necessary and reasonable. By including a review of the EMSP cost of services in the regulation, the Department is ensuring providers benefiting from public funds are transparent about the expenditure of public funds and adhere to generally accepted standards of fiscal management and audit requirements. There were no changes made to this section from the proposed stage.

Section 713.8 Redirection Process

Final-form § 713.8 (relating to redirection process) pertains to section 1725-A(a)(5) of the CSL (24 P.S. § 17-1725-A(a)(5)) (and applied to cyber charter schools in section 1749-A of the CSL). Under section 1725-A of the CSL, a charter school entity may request the Department redirect a school district's subsidy to the charter school entity when the school district fails to pay the charter school entity for educating resident students.

Subsection (a) requires charter school entities to invoice school districts at least 10 days before the 5th of each month. In response to IRRC's request, final-form rulemaking § 713.8(a) clarifies that the length of time refers to business days, not calendars days. Subsection (b)

requires school districts to make payment by the 5th of each month. A significant number of comments questioned the timeframe a school district has for reviewing invoices and making payment to a charter school under the CSL and the proposed regulation. The Department agrees that a longer timeframe for charter schools to submit and for school districts to review invoices would be optimal. However, section 1725-A(a) of the CSL (24 P.S. § 17-1725-A(a)) obligates school districts to pay for students enrolled in charter schools by the fifth day of each month. Due to the everchanging nature of charter enrollments throughout the school year, a school district does not know how much a charter school is owed without an invoice from the charter school. A school district is incapable of making a payment to a charter school without monthly enrollment information from the charter school. The timely submission of charter enrollment information by charter schools is essential for school districts to meet the statutory deadline to make payment to charter schools by the fifth of each month. The Department believes a change to the date by which a payment must be made by school districts requires an amendment to the CSL and beyond the Department's regulatory authority.

The Department revised section 713.8 of the regulation by inserting the word "business" to clarify that charter school entities are to submit a payment request to a school district no later than 10 business days prior to the fifth of the month. Any adjustments to enrollments throughout the school year would be applied in the following month's invoice process and, ultimately, during the end-of-year reconciliation process following the end of the school year.

Subsections (c) and (d) outline a process and timeline for charter school entities to submit redirection requests to the Department, including use of a standard form developed by the Department that includes information that will assist school districts with reconciling disputes. The process outlined in this final-form rulemaking will provide predictability and transparency for both charter schools and the school districts from which they are seeking payment by creating an orderly process whereby a charter school must submit enrollment information to the school district enables school districts to meet their statutory requirement to make payment by the 5th of each month. Charter schools will use existing data from their student information systems to complete a web-based form using the Charter School Redirection (CSR) tool in the Department's Consolidated Financial Reporting System (CFRS), which all public schools, including charter schools, currently access. The process is completely web-based with no documentation being submitted outside of CFRS. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts also can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests. In addition, this final-form rulemaking clarifies the process when a school district fails to make payment and the charter school may submit a redirection request to the Department. Fewer redirection requests will allow the Department to realize cost savings and reallocate limited staff time to other urgent duties.

Final-form § 713.9(d)(2) requires the charter school entity to include in its redirection request to the Department the source of the tuition rate used by the charter school entity. There are three sources for tuition rates: 1) tuition rates posted on the PDE website, which is updated annually; 2) the tuition rate calculated by a school district using the PDE-363 Form; or 3) the tuition rate

calculated by a charter school using the PDE-363 Form, with notes on the source of the financial and Average Daily Membership (ADM) data used in the calculation. The PDE Form 363 is used by school districts to calculate their nonspecial education and special education school funding rates under section 1725-A of the CLS (24 P.S. § 17-1725-A). Section 713.8 clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL (P.S. 24 § 17-1725-A); the final-form regulation does not change the formula for rates set forth in the CSL or the PDE Form 363.

Final-form § 713.8(e) refers to the timeline for charter school entities to request the Department withhold a district's state subsidy payment and for the Department to redirect those funds to the charter school. Due to the schedule for payment of school district subsidies and the corresponding deadlines for submission of information from the Department to the Office of Comptroller Operations and Office of Comptroller Operations to the Department of Treasury, a charter school redirection for June enrollment is not possible before the end of the school year, June 30. However, section 1725-A(a)(5) provides a reconciliation process whereby a charter school may seek funds from a current school year for a prior year's underfunding thereby satisfying any remaining balances. 24 P.S. § 17-1725-A(a)(5). The CSL provides for an end-of-year reconciliation process whereby a charter school may seek funds from a current school year for a prior year's underfunding thereby satisfying any remaining balance. While section 1725-A references "equal monthly payments," payments are rarely equal given that students are constantly enrolling in and withdrawing from a charter school throughout the school year. The final-form rulemaking is intended to provide the regulated community with a structured process that allows for compliance with the CSL and the state and schools' administrative environment.

Section 713.9 Health Care Benefits

Final-form § 713.9 (relating to health care benefits) relates to section 1724-A of the CSL (24 P.S. § 17-1724-A) (as applied to cyber charter schools in section 1749-A of the CSL), which requires that every employee of a charter school be provided the same health care benefits the employee would receive if they worked for the chartering school district. Section 713.9 specifies how a charter school, regional charter school or a cyber charter school shall meet this statutory requirement.

The Department received a significant volume of comments concerning § 713.9 (Health Care Benefits) during proposed rulemaking. Many commenters – including Pennsylvania's two largest school districts, statewide education associations, and a coalition of school district superintendents – expressed support for this aspect of the rulemaking, arguing it would ensure that charter schools comply with an important provision of the CSL that did not envision the advent of regional or cyber charter schools and promote comparability in health care benefits across two sectors of public education. Other commenters expressed concern with the Department's proposal, and raised a series of legal, practical, and other considerations; the backdrop to all these concerns was an argument that, in seeking to provide charter schools with flexibility for implementing this provision of the CSL, the Department created a framework that might prove onerous and unworkable. The level of opposition underscores that there is likely a difference in the scope and quality of health care benefits between school districts and

charters, and that there is a compelling public interest – especially during an unrelenting global pandemic – to correct any such inequities. Given this feedback, the Department removed § 713.9(a)(i) through § 713.9(e) related to health care benefits from proposed rulemaking and revised the final-form regulation to reiterate the requirements of section 1724-A(d) of the CSL, and retain a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance. Though final-form rulemaking removed most of the proposed section 713.9, the current processes used by charter schools to compare benefits will not be affected. Charter schools may at any time contact their authorizer to review this information.

In the final-form rulemaking, pursuant to section 1724-A of the CSL (24 P.S. § 17-1724-A), § 713.9 (a)(1) reiterates that a charter school shall provide the same employee health care benefits that are provided to employees of the authorizing school district; § 713.9 (a)(2) directs a regional charter to provide the same employee health benefits that are provided to employees of the school district within which the regional charter school's administrative office is located; and § 713.9 (a)(3) directs a cyber charter school to provide the same employee health care benefits that are provided to employees of the school district within which the cyber charter school's administrative office is located. For a regional charter school or cyber charter school, the school district in which the school's administrative office is located is used as the point of comparison since the administrative location is written into the school's charter. Per *Discovery Charter Sch. v. Sch. Dist. Philadelphia*, 166 A.3d 304 (Pa. 2017), the court ruled that for a material term of the charter to be amended, the charter must be amended through mutual agreement by the charter school and the authorizer. As such, a regional charter school or cyber charter school cannot change its location for any reason without approval of its authorizer.

Section (b) permits authorizers to consider evidence provided by charter schools, regional charter schools, and cyber charter schools when making charter renewal determinations. Section 1729-A(a)(1) of the CSL (24 P.S. § 17-1729-A(a)(1)) permits a local board of school directors to revoke or not renew a charter when the charter school violates any provision of law from which the charter school has not been exempted. Section 1724-A of the CSL (24 P.S. § 17-1724-A), § 713.9 (a)(1) requires a charter school to provide the same employee health care benefits that are provided to employees of the authorizing school district.

Final-form removes § 713.9(d) pertaining to the complaint process in response to commenters' concerns. The Department notes, however, that, the CSL does not provide for a complaint process for school employees. Without clear direction in the CSL, a complaint would be submitted to the authorizer for review and a determination of finding. Any action taken by the authorizer to resolve the complaint (e.g., revoking the charter) would be appealable to CAB. The CSL does not provide the Department with authority to mitigate complaints and believes this must be addressed by comprehensive CSL reform.

Final-form § 713.9 impacts charter schools, regional charter schools, and cyber charter schools. An MCSO is formed when two or more charter schools or regional charter schools consolidate as a public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator, in accordance with section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A). The MCSO holds the charters for the individual charter schools or regional charter schools, but the

MCSO is not a charter school itself. Therefore, each charter school and regional charter school in the MCSO is required to comply with section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)) and is subject to the regulation. The location of the MCSO administrative office is immaterial. A charter school in the MCSO would use the school district that authorized the charter school for the purposes of health care comparison; a regional charter school would use the school district in which the regional charter school's administrative office for the purposes of health care comparison.

Affected Parties

This regulation affects the Department, all 500 school districts in this Commonwealth, the approximately 165 charter schools and regional charter schools currently in operation, 14 cyber charter schools currently authorized to operate in this Commonwealth, and any entity interested in establishing a charter school entity in this Commonwealth in the future; all current and future charter school entity boards of trustees and member trustees; educational management service providers hired by charter school entities; auditing and accounting firms in this Commonwealth contracted by charter school entities; and all current and future charter school entity employees.

Fiscal Impact

Implementation will not require additional staffing or costs for the Department. The Department expects to rely on previously established procedures and any burden in adapting those procedures to comply with the regulations would be negligible. Last year, the Department received approximately 14,000 redirection requests from charter school entities. It costs the Department approximately \$15 to process each redirection request. Processing these requests cost the Department an estimated \$210,000. This final-form rulemaking is expected to help the Department achieve efficiencies, as a more standard process for seeking and administering redirection requests can be expected to reduce the number of these redirection requests over time and allow for quicker resolution when redirection and reconciliation requests do occur. The Department conservatively estimates it will see 3,500 fewer requests at a total cost savings of \$52,500 a year.

For charter school entities that already align policies and practices with the CSL, the Department expects charter school entities will rely on currently established procedures and any burden in adapting those procedures to comply with the regulations would be negligible. For charter school entities where this is not the case, the final-form regulation may have practical costs or adverse financial effects. However, the Department does not anticipate any greater cost or adverse effect to the charter school entity community as a whole, because of this final-form rulemaking.

To comply with the fiscal management and audit requirements, a charter school entity may need to contract with an accounting firm for an annual independent financial audit, which typically costs between \$20,000 and \$30,000. However, charter school entities are required to annually audit financial accounts in accordance with section 437 of the School Code and sections 1719-A and 1749-A. Furthermore, charter school entities that receive at least \$750,000 in

Federal funds already contract with an auditing firm for an annual single audit. Currently, more than 75% of charter school entities meet the minimum \$750,000 threshold.

To comply with the redirection requirements, a charter school will submit a request to the Department using CSR tool in the Department's CFRS, which all public schools, including charter schools, currently access. The process and form are completely web-based with no documentation being submitted outside of CFRS. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts also can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests, and then use that information that work with a charter school to resolve payment before redirection occurs. There may be minor financial costs to charter school entities and school districts that use an information system to process invoices under the final-form redirection process. However, the process is not substantially different from how schools produce invoices currently. Based on the Department's experience, updating an accounting system costs around \$5,000.

There are no anticipated fiscal impacts to local governments.

Paperwork Requirements

For the Department, there are no additional legal, accounting or consulting procedures. The Department will need to develop a model charter school application and update the cyber charter application to reflect the requirements in this final-form rulemaking and post those applications online. The Department will need to revise the charter school redirection request form and update its electronic payment system to reflect the new redirection process. The applications and forms referenced in the regulation will be submitted electronically to the Department. Schools will complete the redirection form using the CRS module within the Department's CFRS, which will be implemented in February 2022. The process is completely web-based, with no documentation submitted outside of CFRS. The student enrollment information required for electronic submission in the CRS module system is available in a charter school's student information system and is information that they report to the Department annually for the purposes of federal reporting. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests.

For charter school entities that already align policies and practices with those of other public school entities, there will be no additional legal, accounting or consulting procedures, nor additional reporting, recordkeeping, or other paperwork, including copies of forms or reports.

For charter school entities that will need to update policies and practices to implement the final-form rulemaking and comply with provisions of the CSL, there may be a need to contract with an accounting firm to implement the fiscal management and audit requirements or to implement an annual independent financial audit. However, any public school that receives at least \$750,000 in Federal funds already contracts with an auditing firm for an annual single

audit. Under the American Rescue Plan (ARP) Act of 2021 (Pub.L. No. 117-2), all eligible school districts and charter school entities were allocated funding through the Elementary and Secondary School Emergency Relief Fund (ARP ESSER). Nearly 76% of charter school entities received more than \$750,000 in Federal ARP ESSER funds beginning in spring 2021. Charter schools, regional charter schools and cyber charter schools also may need to develop policies related to enrollment procedures, post those policies on their web sites in an accessible format, and add the policies and procedures to the student application for their schools. They also may need to provide their policy to their authorizer. If a charter school contracts with an educational management service provider, the provider may need to make available additional information for the charter school to meet the application requirements in § 713.2(c)(4)(iv).

School districts that authorize charter schools or regional charter schools may need to revise existing charter school applications and supporting materials, and charter school applicants may need to provide different information, in a different form, depending on the standard applications that are developed by the Department under § 713.2 of this final-form rulemaking.

For taxpayers and the public, the regulation carries no additional legal, accounting or consulting procedures or additional reporting, recordkeeping, or other paperwork, including copies of forms or reports.

Effective Date

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

Sunset Date

No sunset date is necessary. The Department will review on a regular basis in accordance with the Department's policy and practice respecting all its regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 8, 2021, the Department submitted a copy of the proposed rulemaking published at 51 Pa.B. 6032 and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the public, and the House and Senate Education Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House Committee on INSERT DATE, and by the Senate Committee on INSERT DATE. Under section 5.1(e) of the Regulatory Review Act, IRRC met on INSERT DATE, and approved the final-form rulemaking.

The Office of Attorney General (OAG) approved the final-form rulemaking as to form and legality on INSERT DATE.

Contact Person

Persons who require additional information about this final-form rulemaking may submit inquiries to Randy Seely, Division Chief, Division of Charter Schools, Pennsylvania Department of Education, 333 Market Street, Harrisburg, PA 17126, rseely@pa.gov, or Eric Levis, Deputy Policy Director, Office of Policy, Pennsylvania Department of Education, 333 Market Street, Harrisburg, PA 17126, elevis@pa.gov.

Findings

The Department finds that:

- (1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act on July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1201).
- (3) The final-form rulemaking is necessary and appropriate for the administration of the code.

Order

The Board, acting under authorizing statute, orders that:

- (a) The regulations of the Department, 22 Pa. Code Chapter 713, are amended to read as set forth in Annex A.
- (b) The Department shall submit this final-form rulemaking to the Office of General Counsel and the Office of Attorney General for review and approval as required by law.
- (c) The Department shall submit this final-form rulemaking to IRRC and the Legislative Standing Committees as required by law.
- (d) The Department shall certify this final-form rulemaking, as approved for legality and form, and shall deposit it with the Legislative Reference Bureau as required by law.
- (e) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

NOE ORTEGA,
Secretary

Fiscal Note: 6-349. No fiscal impact; (8) recommends adoption.



Charter Schools and Cyber Charter Schools

Title 22. Education
Part XX. Charter Schools
Chapter 713. Charter Schools and Cyber Charter Schools
(Independent Regulatory Review Commission #3315)

Comment and Response Document

Commenters Requesting Copy of Final-Form Regulations – Names and Addresses (* Names with only email did not provide mailing address.)

Thomas Adams Godsaveamerica2755@gmail.com	Jeff Coyne jcoyne@aftpa.org American Federation of Teachers – PA 600 North 2 nd Street, 5 th Floor Harrisburg, PA 17101	Amy Rupp arupp@redbankvalley.net Redbank Valley School District 920 Broad Street New Bethlehem, PA 16242
Lisa Augustin Laugustin1@pghschools.org Director of Charter Schools Pittsburgh Public Schools 341 S. Bellfield Ave., RM 340 Pittsburgh, PA 15213	Jessica Hickernell jessica@hickernellconsulting.com	Jason Smith Jdswild51@comcast.net
Nicole Bartholomew tigressfair@gmail.com	Megan Kovacs mkovacs@smgglaw.com Strassburger McKenna Gutnick & Gefsky 444 Liberty Avenue, Suite 2200 Pittsburgh, PA 15222	Laurel Zydney Liz12@scasd.org
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INTRODUCTION

On September 18, 2021, the Department of Education published a *Pennsylvania Bulletin* notice of public comment period on a proposed rulemaking to add Chapter 713 (relating to charter schools and cyber charter schools) to Title 22 (relating to education) of the Pennsylvania Code. The proposed regulation clarifies elements of the Charter School Law (CSL) and sets conditions that emphasize accountability, equity, quality, and transparency. The regulation establishes a minimum standard for charter school, regional charter school and cyber charter school applications; better ensures non-discriminatory student enrollment policies as required by the CSL; clarifies that charter and cyber charter school boards of trustees are subject to the Public Official and Employee Ethics Act; requires standard fiscal management and auditing practices; details the tuition payment redirection process for charter schools entities and school districts; and provides a method for regional and cyber charter schools to demonstrate compliance to the health care benefits provision required by the CSL.

This document summarizes the written comments received during the public comment period and the Department's responses. In addition, the document summarizes comments received from the Senate Education Committee (Republican members), Senate Education Committee (Democratic members), House of Representatives

Education Committee Chairman Curt Sonney, Senator Tim Kearney, and the Independent Regulatory Review Commission (IRRC) and includes the Department's responses.

COPIES OF COMMENTS

Copies of all comments received by the Department are posted on IRRC's website at <http://www.irrc.state.pa.us>. Search by Regulation #6-349 or IRRC #3315.

COMMENTS AND RESPONSES

SENATE EDUCATION COMMITTEE – REPUBLICAN MEMBERS

The Department of Education (Department) appreciates comments submitted by Senator Scott Martin and the republican members of the Senate Education Committee (218) on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools.

The Department believes both statutory reform and regulation are necessary to bring order, consistency, and clarity to the regulated community. The Department would welcome the opportunity to work with the General Assembly on comprehensive Charter School Law reform that improves educational choice for all students in the commonwealth.

The Department's responses to the committee's comments appear below.

1. **Comment:** Sen. Martin maintains that the Department has circumvented the legislative process, the proposed regulation goes beyond the scope of providing clarifications to the Charter School Law, and the policy changes would have the effect of creating new law. He states as an example that some information requested in the application section would be impossible for a charter applicant to know at the time of submission, such as the numbers of English Language Learners and special education students to be served. He maintains that the Department does not have the authority "to expand" minimum requirements in the CSL and believes it would be more appropriate for the Department to provide recommendations to authorizing school districts.

Response: Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A). The intent of section 713.2(c)(3) of the regulation is to clarify the requirement of sections 1719-A(3) and 1717-A(e)(2)(ii) of the CSL (24 P.S. § 17-1719-A; 24 P.S. § 17-1717-A(e)(2)(ii)). Whereas section 1719-A(3) requires the applicant to identify "[t]he grade or age levels served by the school," section

1717-A(e)(2)(ii) requires authorizers to consider “[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter.” An authorizer needs to know the applicant understands the needs of the anticipated student population at the school and is prepared to serve them.

2. Comment: Sen. Martin states that the CSL lays out the intent of the General Assembly “to improve pupil learning, increase learning opportunities, encourage innovative teaching methods, create professional opportunities for teachers, provide parents and pupils with expanded educational choices and hold these schools accountable.” He refers to statements from a Senate Education Committee hearing in which individuals said the proposed regulations may lead to additional closures of charter schools and reducing school choice.

Response: The Department asserts that the regulations, by providing clarification and consistency to the CSL, will ensure charter school applicants are prepared and able to provide quality programs and services to students and will increase educational choice. The Department has not been provided information as to how the regulation will result in a net opposite effect.

3. Comment: Sen. Martin states that a lack of clarity in some of the regulation will result in “significant negative impacts.” He specifically cites the Health Care section and states that a “one-size-fits-all” approach does not work and that charter schools should be provided with the same ability as traditional public schools to be flexible when negotiating health care benefits.

Response: In addition to Sen. Martin’s comments, the Department received a significant volume of comments concerning section 713.9 (Health Care Benefits). Many commenters—including Pennsylvania’s two largest school districts, statewide education associations, and a coalition of school district superintendents—expressed support for this aspect of the rulemaking, arguing it would ensure that charter schools comply with an important provision of the CSL that did not envision the advent of regional or cyber charter schools and promote comparability in health care benefits across two sectors of public education.

Meanwhile, many other commenters, like Sen. Martin, expressed concern with the Department’s proposal, and raised a series of legal, practical, and other considerations; the backdrop to all these concerns was an argument that, in seeking to provide charter schools with flexibility for implementing this provision of the CSL, the Department created a framework that might prove onerous and unworkable.

The Department takes these concerns, both for and against the proposed provision, seriously. We believe the level of opposition underscores that there is

likely a difference in the scope and quality of health care benefits between school districts and charters, and that there is a compelling public interest—especially during an unrelenting global pandemic—to correct any such inequities.

Given this feedback, the Department has: 1) deleted much of the proposed regulation related to health care benefits; 2) reiterated the requirements of section 1724-A(d); and 3) proposed a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance.

4. Comment: Sen. Martin states that the proposed section on the Board of Trustees is clearly stated in the CSL and maintains that the Department should instead direct resources to outreach and compliance with existing law. He references one statement from the Senate Education Committee hearing in which an individual stated the requirement goes beyond what is required by the State Ethics Commission.

Response: Section 1715-A(11) of the CSL (24 P.S. § 17-1715-A(11)) states that trustees of a charter school are public officials. As such, they are subject to section 1104 of the State Ethics Act which requires each public official to file with the State Ethics Commission a statement of financial interests for the preceding calendar year no later than May 1 of each year that the individual holds the position and of the year after the individual leaves such a position. In the final-form regulation, the Department exercises its regulatory authority under sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) to clarify the ethics provisions of the CSL and ensure charter school entities and authorizers receive the filings to comply with the duties imposed on them by the law.

5. Comment: Sen. Martin states that clarification is needed in Sections 713.4 and 713.5 related to the posting of admissions policies online “in a language that students and parents can understand.” He asks if charters should be posting information in “all languages believed to be the first language of their community or posted in English but available for translation.”

Response: A charter school, regional charter school or cyber charter school would be considered compliant with this requirement if its policy is posted in English and the second most common home language, after English, used in the community or in accordance with the school’s language access policy. This standard is derived from review of PDE’s prior submissions to the U.S. Department of Education (USDE); evaluation of assessment translation practices using the Office of Civil Rights’ four-factors; and analysis of home language and other data sources at the state, grade span, and local levels.

6. Comment: Sen. Martin states that the Department should clarify whether it is calendar days or business days referenced in Section 713.8 regarding Redirection Process.

Response: The Department agrees that there should be a clarification to this section. Final-form rulemaking revises section 713.8 by inserting the word “business” to clarify that charter school entities are to submit a payment request to a school district no later than 10 business days prior to the fifth of the month. Any adjustments to enrollments throughout the school year would be applied in the following month’s invoice process and, ultimately, during the end-of-year reconciliation process following the end of the school year.

7. Comment: Sen. Martin states that the proposed regulation should clearly indicate that a charter will not need to have its locally developed application approved by the Department. Additionally, he states that a cyber charter who has already submitted an application prior to the effective date of the regulation will not have to submit a new application.

Response: The CSL does not require the Department to approve an authorizer’s application for establishing a charter school or regional charter school, and there is nothing in the regulation indicating that such approval is required. To the latter point about cyber charter applications submitted before the effective date of the regulation, the Department agrees and changed the language to reflect this. See final-form sections 713.2(h) and 713.3(f).

8. Comment: Sen. Martin states that some stakeholders have indicated that the Department’s process for handling redirection requests, specifically related to the month of June, could result in significant cash flow problems for a charter school.

Response: Section 713.8(e) is reasonable, appropriate, and necessary to carry-out the requirements of the CSL. Section 1725-A(a)(5) of the CSL (24 P.S. § 17-1725-A(a)(5)) requires *school districts* to make 12 monthly payments, by the fifth day of each month, within the operating school year, to the charter school in which a district student is enrolled. Final-form regulation does not change this requirement.

Section 713.8(e) of the regulation refers to the timeline for charter school entities to request the Department withhold a school district’s state subsidy payment and for the Department to redirect those funds to the charter school. Due to the schedule for payment of school district subsidies and the corresponding deadlines for submission of information from the Department to the Office of Comptroller Operations and Office of Comptroller Operations to the Department of Treasury, a charter school redirection for June enrollment is not possible before June 30, the end of the school year. 24 P.S. § 17-1725-A(a)(5). While

section 1725-A of the CSL references "equal monthly payments," payments are rarely equal given that students are constantly enrolling in and withdrawing from a charter school throughout the school year. Section 1725-A(a)(5) of the CSL (24 P.S. § 17-1725-A(a)(5)) provides a reconciliation process whereby a charter school may seek funds from a current school year for a prior year's underfunding thereby satisfying any remaining balances.

SENATE EDUCATION COMMITTEE – DEMOCRATIC MEMBERS

The Department appreciates comments submitted by Senator Lindsey Williams and the democratic members of the Senate Education Committee (219) on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools.

The Department believes both statutory reform and regulation are necessary to bring order, consistency, and clarity to the regulated community. The Department would welcome the opportunity to work with the General Assembly on comprehensive Charter School Law reform that improves educational choice for all students in the commonwealth.

The Department's responses to the committee's comments appear below.

Charter Applications (713.2-3). The committee recommends:

1. **Comment:** Districts that elect to create their own form with additional information should be permitted to require use of the local form.

Response: The Department agrees. Section 713.2(a)(2) allows a local authorizer to create and adopt its application form provided, at minimum, it includes the information identified in subsection (c). Section 713.2(b) also states "An authorizer may require an applicant submit additional information for the local board of directors to evaluate the application in accordance with section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2))."

2. **Comment:** The application should include plans for culturally responsive and sustaining education.

Response: Chapters 4 and 49 (relating to academic standards and assessment and certification of professional personnel) of Title 22 of the Pennsylvania Code, as promulgated by the State Board of Education, require culturally responsive and sustaining education for all public schools, which includes charter schools and cyber charter schools. For emphasis, final-form rulemaking inserts a reference to Chapter 4 (relating to academic standards and assessments) in section 713.2(c)(5). Section 713.2(c)(13) of the regulation also requires charter

school applicants to provide a professional development plan that complies with Chapter 4 and 49 regulations.

3. Comment: The application should require a letter of intent to provide property for the proposed charter school as proof that an adequate facility will be available.

Response: The Department agrees that applicants and authorizers would benefit by knowing the type of evidence that may be submitted as proof of lease or ownership. In addition to a deed or lease, an applicant may satisfy this element by providing a letter of intent which was found acceptable by the Commonwealth Court in *Montour School District v. Propel Charter School – Montour*, 889 A.2d 682 (Cmwlth. Ct. 2006). Final-form rulemaking revises section 713.2(c)(12)(i) as follows: “Whether the facility will be leased or owned, as demonstrated by a copy of the deed to the facility showing ownership, a signed lease agreement, or, if contingent upon establishment of the charter school, a letter of intent to sell or lease from the property owner.”

4. Comment: The application should require plans for facility cost payment, specifically the use of state moneys from the charter school facility lease reimbursement project and the charter school facility grant program.

Response: The Department appreciates the recommendation to further increase fiscal transparency but believes including such a requirement is beyond the scope of the CSL and would be difficult for an entity to address when applying to establish a charter school or regional charter school. To qualify for the Charter School Facility Lease Reimbursement Program, a charter school must be an authorized charter school in Pennsylvania and have a signed lease agreement for rental of a building or portions of a building. Section 713.2 pertains to entities applying to establish a charter school or regional charter school. As such, the applicant will not know if they will receive state funding under these programs until it receives a charter from the authorizer and applies for funding. An authorizer could request this information as part of the charter school or regional charter school’s annual report and/or in the charter renewal application.

5. Comment: The application should include plans for induction programming to ensure that the applying charter is aware and prepared for this state requirement, which leads to higher retention rates of educators.

Response: The Department agrees. Chapter 49 (relating to certification of professional personnel) of the Pennsylvania Code (22 Pa. Code § 49.16), as promulgated by the State Board of Education, requires each entity applying to establish a charter school to submit to the Department for approval a plan for the induction experience of first-year teachers, long-term substitutes who are hired

for a position for 45 days or more, and educational specialists. Section 713.2(c)(13) of the final-form regulation requires charter school applicants provide a professional development plan that complies with Chapter 49. For emphasis, the Department revised section 713.2(c)(13)(iv) by adding "including an induction program as required under Chapter 49."

6. Comment: The regulation should provide more clarity about what charter operators should include in their "[p]lans for meeting the needs of...students with disabilities[.]" Specifically, charter operators should have to indicate how they will: (1) comply with their Child Find obligations; (2) assess students' growth and progress and need for new or changed services; and (3) handle student discipline when a child's behavior is a manifestation of his/her disability.

Response: Based on numerous comments to this effect, the Department revised section 713.2(c)(13)(ii) by replacing "[c]aseloads of staff for students receiving special education services" with "[d]escribe how the school will provide special education programs and services" at appropriate levels to ensure a free appropriate public education (FAPE) as required by Chapter 711 (relating to charter school and cyber charter school services and programs with children with disabilities). As neither the School Code nor Chapter 711 include or require case load requirements for staff of charter school students receiving special education services, this application requirement was removed. The Department agrees with the Senator's other suggestions and believes they will be covered as part of the other application requirements under subsection (c).

Ensuring Equitable Enrollment (713.4-5). The committee recommends:

7. Comment: The charter's random selection policies must describe how their admission practices will comply with federal and state nondiscrimination law.

Response: The Department agrees. Section 1723-A(b)(1) of the CSL (24 P.S. 17-1723-A(b)(1)) prohibits a charter school from discriminating in its admissions policies or practices. For emphasis, the Department added "...and must comply with current federal and state non-discrimination law" to the end of subsection 713.4(b) of the final form regulation.

8. Comment: Public notice of the selection process should include the number of available slots and the number of applicants.

Response: The Department agrees. Final-form rulemaking revises section 713.4(c)(4) to include in the public notice the number of enrollment slots and number of applicants in the charter school.

9. Comment: Data required in the annual reports should be disaggregated in a way that is consistent with the disaggregation requirement under PA's ESSA Consolidated State Plan.

Response: The Department agrees and revised sections 713.4(d) (relating to random selection policies for a charter school or regional charter school) and 713.4(d) (related to random selection policies for a cyber charter school) to clarify that data must be disaggregated by student group, in accordance with the federal Elementary and Secondary Education Act (20 U.S.C. § 7801(20)).

10. Comment: Further instruction should be provided on criteria for a random selection process to build greater trust in the process and to prevent abuse.

Response: The Department agrees with the recommendation to provide charter school and regional charter school leaders with instruction on developing criteria for a random selection process but believes requiring such instruction in regulation exceeds the Department's regulatory authority. When implementing the final regulation, the Department will provide resources and model policies to assist charter schools, regional charter schools, cyber charter schools, and authorizers with meeting the regulatory requirements.

Accountability and Ethics Requirements for Board of Trustees (713.6): The committee recommends:

11. Comment: The board of trustees should include at least one parent of a student currently attending the school as a representative on the Board.

Response: The Department is unable to include this requirement in regulation, since neither the CSL nor the Public School Code include provisions for the composition of a school's governing board. However, the Department acknowledges that having a current charter school parent serve on the school's governing board can be beneficial.

Fiscal and Auditing Standards (713.7): The committee recommends:

12. Comment: Requirements should align with generally accepted standards of fiscal management, which include but is limited to audits and preparation of financial statements.

Response: Section 713.7 of the final form regulation aligns the financial and fiscal standards for charter schools with other public schools in Pennsylvania. This includes adhering to generally accepted standards of fiscal management and audit requirements; using Generally Accepted Accounting Principles (GAAP)

and Generally Accepted Government Auditing Standards (GAGAS); and obtaining independent annual financial audits.

The CSL requires a charter school application to include the provisions which will be made for auditing the school under section 437 of the Public School Code (24 P.S. § 4-437), which requires "[t]he accounts of the school treasurer shall be audited annually as hereinafter provided." Section 713.7(c) of the final-form regulation identifies the components of those audits. Consistent, standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity's operation and financial health, as required by the CSL

13. Comment: The Charter Appeal Board (CAB) has identified other financial standards that charters need to meet and regulations should align with these broader requirements, which address such items as failing to pay bills or PSERS contributions, requiring internal financial policies, and others.

Response: The regulations hold charter schools to the same practices used by other public school entities. Imposing additional requirements on charter schools would be inconsistent with current law. That being said, the Department agrees that consistent standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity's operation and financial health, as required by the CSL, and that the school's financial viability and sustainability is critical to the success of the school, staff, and students.

Section 218(b) of the Public School Code (24 P.S. § 2-218(b)) requires LEAs (which includes charter schools, regional charter schools, and cyber charter schools) to submit an Audit Certification form in conjunction with the Annual Financial Report (AFR). The AFR must be completed using GASB standards. When a school administrator signs the AFR Audit Certification form, the administrator is certifying that the school's audited financial statements and AFR are materially consistent. Therefore, only by using GASB standards could a charter school administrator certify the audited financial statements.

The Department is aware of some schools changing from GASB standards to Financial Accounting Standards Board (FASB) standards to hide pension obligations and provide a false picture of the school's overall financial health. FASB does not include the reporting of pension liability which can make a school appear to be operating in the black when in reality it is operating at a loss.

Redirection (713.8): The committee recommends:

14. Comment: The proposed 10-day process for redirection is not enough time to

review and verify residency and enrollment data, especially giving limited staffing resources of many districts and the number of students that may be attending different charters. A longer timeframe is needed.

Response: The Department agrees that a longer timeframe for charter schools to submit and for school districts to review invoices would be optimal. However, section 1725-A(a) of the CSL (24 P.S. § 17-1725-A(a)) obligates school districts to pay for students enrolled in charter schools by the fifth day of each month. Due to the everchanging nature of charter enrollments throughout the school year, a school district does not know how much a charter school is owed without an invoice from the charter school. A school district is incapable of making a payment to a charter school without monthly enrollment information from the charter school. The timely submission of charter enrollment information by charter schools is essential for school districts to meet the statutory deadline to make payment to charter schools by the fifth of each month. The Department believes a change to the date by which a payment must be made by school districts requires an amendment to the CSL and is beyond the Department's regulatory authority.

Final-form rulemaking revises section 713.8(a) by inserting the word "business" to clarify that charter school entities are to submit a payment request to a school district no later than 10 *business* days prior to the fifth of the month. Any adjustments to enrollments throughout the school year would be applied in the following month's invoice process and, ultimately, during the end-of-year reconciliation process following the end of the school year.

Health Care Parity (713.9): The committee recommends:

15. **Comment:** The proposed regulations will allow a cyber or regional charter school to strategically move their administrative offices to an area where health care benefits are more advantageous to them. The regulations should be clarified so that these schools are administered in a single central office.

Response: Each charter school, regional charter school and cyber charter school only has one central administrative location for its articles of incorporation and its charter. A school may operate from more than one physical location, but there is only one administrative office. This is akin to a school district operating several school buildings but having only one address of record for administration. The primary location of the charter school administration office is written into its charter. Per *Discovery Charter Sch. v. Sch. Dist. Philadelphia*, 166 A.3d 304 (Pa. 2017), a charter may not be unilaterally amended. the court ruled that for a charter school to change a location, the charter must be amended and agreed upon by the school and the authorizer. As such, a regional charter school or

cyber charter school could not change its location for any reason without approval of its authorizer.

16. Comment: Further clarity is also needed about complaint process, especially around the authority and remedies available to the authorizing entity when notified of a health care parity violation. An alternative may be to establish a complaint process at PDE, as is in place for other violations.

Response: The Department removed section 713.9(d) pertaining to the complaint process from final-form rulemaking to address commenter's concerns. The Department notes, however, that the CSL does not provide for a complaint process for school employees. Without clear direction in the CSL, a complaint would be submitted to the charter school authorizer for review and a determination of finding. Any action taken by the authorizer to resolve the complaint (e.g., revoking the charter) would be appealable to the CAB. The CSL does not provide the Department with authority to mitigate complaints and believes this must be addressed by comprehensive CSL reform.

17. Comment: The regulations need to be revised to ensure that they do not negatively impact the right of workers to organize and collectively bargain their benefits.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits, and does not relieve charter schools of their duties as public schools. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL.

New Provisions on Renewals: The committee recommends:

18. Comment: The regulations need new provisions on the renewal process, which should include assessment of how students have performed at charters operated by current applicant and composition of student population by race, ethnicity, economically disadvantaged, students with disabilities, and type of disability.

Response: The Department believes the committee's recommendation should be addressed through amendments to the CSL.

19. Comment: The new renewal process should detail how the charter proposes to improve student outcomes if a charter is renewed, but its performance needs improvements.

Response: Final-form rulemaking inserts section 713.2(d)-(f) to explain the connection between the process to establish a charter school or regional charter

school and the process to renew a charter. Subsection (d) reiterates that section 1717-A of the CSL (24 P.S. § 17-1717-A) requires that, upon approval of a charter application, a written charter must be developed which contains the provisions of the charter application. Subsection (e) reiterates that pursuant to section 1728-A of the CSL (24 P.S. § 17-1728-A) authorizers must annually assess whether a charter school or regional charter school is meeting the goals of its charter. At the suggestion of commenters subsection (f) was inserted in final-form rulemaking to permit applicants to submit supplemental information to the authorizer as part of the process to establish a charter school or regional charter school and to renew a charter. Ultimately the authorizer is responsible for assessing whether a charter school is meeting the goals of its charter and determining whether the charter should be renewed or terminated in accordance with the CSL. The Department believes a change to that process should be addressed through amendments to the CSL.

HOUSE EDUCATION COMMITTEE - REPRESENTATIVE CURT SONNEY

The Department appreciates that Representative Curt Sonney, chairman of the House of Representatives, submitted comments (222) on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools.

The Department believes both statutory reform and regulation are necessary to bring order, consistency, and clarity to the regulated community. The Department would welcome the opportunity to work with the General Assembly on comprehensive Charter School Law reform that improves educational choice for all students in the commonwealth.

The Department's responses to Rep. Sonney's comments appear below.

Preamble

1. **Comment:** Rep. Sonney states that the use of "equity" in the Preamble is incorrect and that the word should be replaced with "equality" to reflect the intent of the General Assembly when enacting the Charter School Law.

The Preamble states:

"Transparency, *equity*, quality, and accountability in the establishment, governance, and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities — including the boards of trustees that govern charter school entities, the for-profit and nonprofit organizations that play a role in the management of charter school entities, and authorizers of charter school entities — adhere to the structural norms that maintain the effectiveness of the [Charter School Law]." [emphasis added]

Rep. Sonney writes that:

"While equity and equality may sound similar, words are carriers of meaning and semantic distinctions matter. Where equality means that student A and student B are treated equally, equity means "adjusting shares in order to make students A and B equal." Therefore, 'equity' requires treating some identity groups unequally to ensure that outcomes are equalized in order to redress a perceived imbalance."

Response: The Department agrees with the Representative that words matter and affirms the term "equity" is appropriately used in the Preamble. Section 1723-A(b)(2) of the CSL (Section 1723-A(b)(2)) envisions charter schools serving "a targeted population group composed of at-risk students," which are students who may need additional supports to meet challenging state standards.

Section 713.1 - Definitions

2. Comment: Rep. Sonney states that the definition for "educational management service provider" is overly broad and could include individuals or entities that do not manage charter school operations. The proposed definition is: "[A] nonprofit or for-profit charter management organization, education management organization, school design provider, business manager or any other entity or individual that enters into a contract or agreement with a charter school entity to provide educational design, business services, management or personnel functions or to implement the charter. The term shall not include a charter school foundation." The representative maintains that:

- The definition "should be limited to individuals or entities who contract with a charter school entity to exercise management or operational oversight responsibilities."
- The definition includes terms not used in the Charter School Law and potentially need additional explanation. He cites as an example that "school design provider" could be an "entity that provides architectural design or curriculum design, but neither should not be considered an entity that provides management or operational oversight responsibilities."

Response: In final-form rulemaking the definition of "educational management service provider" is revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency. This definition captures entities that receive public funds from charter school entities and ensures these providers are transparent about the expenditure of public funds and adhere to generally accepted standards of fiscal management and audit requirements.

Section 713.2 – Contents of Charter School or Regional Charter School Application and 713.3 – Contents of Cyber Charter School Applications

3. Comment: Additional Information Requests by Authorizer. The representative states that much of the information required in the application is more expansive than what is required under the Charter School Law and is concerned that the amount of required information could make it impossible for smaller groups of individuals to establish a charter school. He also states that allowing an authorizer to ask for additional information could create a scenario where an authorizer creates an "open-ended" application where the authorizer repeatedly asks for information and "is never satiated."

Response: The Department acknowledges the representative's concerns but believes the information listed in section 713.2(c) is essential for authorizers to ensure the school meets the General Assembly's intent, as described in section 1702-A of the CSL (24 P.S. § 17-1702-A):

- Improve pupil learning.
- Increase learning opportunities for all pupils
- Encourage the use of different and innovative teaching methods.
- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- Hold the schools established under the CSL accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

Section 1719-A of the CSL (24 P.S. § 17-1719-A) identifies the content to be included in an application to establish a charter school or regional charter school. Section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)) also directs the local board of school directors to evaluate a charter school application based on criteria, "including, but not limited to, the following:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools."

To the representative's comment about the possibility of an "open-ended" application, the CSL does not permit the Department to limit the requirements that an authorizer may include in a charter school or regional charter school

application. Therefore, section 713.2(c) of the final-form regulation clarifies the minimum application requirements under section 1719-A of the CSL (24 P.S. § 17-1719-A) that would enable an authorizer to complete its statutorily prescribed evaluation under section 1717-A of the CSL.

4. Comment: *Projected Grade Level and Age to be Served.* The representative states that requiring an applicant to provide information projecting Grade Level and Age to be Served is unreasonable, and states that an applicant should provide information on how they plan to conduct outreach to students/parents/guardians in the admission policy section of the application.

Response: The Department disagrees that it is unreasonable for a proposed charter school to provide an authorizer with projected enrollment by grade level and age when applying to establish a school. Section 1717-A(c) of the CSL (24 P.S. 17-1717-A(c)) requires an application to establish a charter school be submitted "to the local board of school directors of the school district where the charter school will be located by November 15 of the year preceding the school year in which the charter school will be established." The items required in section 713.2(c)(3) are essential for an authorizer to assess whether a charter school is prepared to serve students when the new school year begins in nine months.

The intent of section 713.2(c)(3) of the regulation is to clarify the provisions of sections 1719-A(3) and 1717-A(e)(2)(ii) of the CSL (24 P.S. §§ 17-1719-A(3) and 17-1717-A(e)(2)(ii)). Whereas section 1719-A(3) of the CSL requires the applicant to identify "[t]he grade or age levels served by the school," section 1717-A(e)(2)(ii) of the CSL requires an authorizer to consider "[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter." In response to comments related to section 713.2(c)(3), the Department clarified the requirements to include the proposed overall enrollment, projected share of student enrollment expected to receive special education services, projected share of student enrollment who are expected to be English Learners, and projected overall composition of the student population by race, ethnicity, and economically disadvantaged status. A proposed charter school that plans to serve the general student population of a community would expect to have a student enrollment proportional to that of the school district which authorizes them. Or depending on the type of programs the school plans to offer, the proposed charter school may be more apt to attract a certain type of student such as English Learners or students with disabilities. Section 713.2(c)(3) is where the proposed school indicates to the authorizer the school's student capacity and signals the type of students the proposed school expects to serve.

For section 713.2(c)(3), applicants could use national, state, and local data sources (e.g., data from the U.S. Census Bureau, National Center for Education Statistics, Pennsylvania Department of Education, etc.) to estimate the composition of the student body by age, race, ethnicity, income level, disability, and primary household language, as well as community outreach, survey results, and pre-enrollment forms. The composition of every public school in Pennsylvania also is available publicly through the Future Ready PA dashboard.

Regarding community outreach, section 713.3(c)(6)(iii) requires a charter school applicant to describe how the charter school or regional charter school will make prospective students aware of the school's program. Section 713.4(c) requires a charter school or regional charter school to post their admissions policy on their publicly accessible website and ensure public notice of the admissions and selection process.

5. Comment: *Admissions Policy.* The representative states that "Requiring an applicant to list enrollment capacity by grade level is an attempt by PDE to institute grade level caps which is not the intent of the statute."

Response: The Department disagrees with the Representative's assertion. The regulation aims to provide authorizers with information necessary to determine that an applicant has the capability, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the charter at each grade level and span. This element of the rulemaking has no relationship to enrollment parameters that must be mutually agreed by both the applicant (charter school) and the authorizer.

6. Comment: *Financial Plan.* The representative maintains that data required under the financial plan of the application (proposed budget, anticipated revenue and expenditures, fund balance, number of full-time employees, and information about who the applicant intends to contract with to provide educational management services) are unreasonable and speculative. Additionally, he maintains that the proposed regulations do not inform school districts how to evaluate this information.

Response: As previously noted, the Department disagrees that application requirements listed in section 713.2(c) are too expansive or difficult to know when applying to establish a charter school, regional charter school, or cyber charter school. The Department asserts this information is essential for authorizers to ensure the school meets the General Assembly's intent, as described in section 1702-A of the CSL (24 P.S. § 17-1702-A):

- Improve pupil learning.
- Increase learning opportunities for all pupils
- Encourage the use of different and innovative teaching methods.

- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- Hold the schools established under the CSL accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

Section 1717-A(c) of the CSL (24 P.S. 17-1717-A(c)) requires an application to establish a charter school be submitted "to the local board of school directors of the school district where the charter school will be located by November 15 of the year preceding the school year in which the charter school will be established." The items required in section 713.2(c) are essential for an authorizer confidently to award a charter to a school opening nine months later.

In response to the proposed regulations not informing school districts how to evaluate this information, the Department maintains that this is outside the scope of what the Department is able to regulate. However, when implementing the final regulation, the Department will provide resources, model policies and technical assistance to support charter schools, regional charter schools, cyber charter schools and authorizers with meeting the regulatory requirements.

7. Comment: *Physical Facility.* The representative states that Commonwealth Court and the Charter Appeal Board have ruled that the Charter School Law only requires a description and address of the physical facility and ownership or lease arrangements and therefore the additional information required in the proposed regulations is not required.

Response: Section 1719-A(11) of the CSL (24 P.S. § 17-1719-A(11)) requires the application to establish a charter school include "[a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." Section 713.2 serves to clarify these requirements relating to the contents of the charter school application.

In *Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Commw. Ct. 2006), Commonwealth Court remanded the case to the CAB for purposes of a hearing to determine whether the proposed facility is suitable under the CSL; additionally in *Souderton Area School Dist. v. Souderton Charter School Collaborative*, 764 A.2d 688 (Pa. Commw. Ct. 2000), the Court noted a local board of school directors should be afforded an opportunity to consider whether a facility is appropriate under the CSL.

Final-form rulemaking revises § 713.2(c)(12)(i) as follows: "Whether the facility will be leased or owned, *as demonstrated by a copy of the deed to the facility showing ownership, a signed lease agreement, or, if contingent upon establishment of the charter school, a letter of intent to sell or lease from the property owner,*" removes § 713.2(c)(12)(ii) its entirety, since facility costs would be included in the applicant's financial plan; and revises § 713.2(c)(12)(iii), now renumbered to § 713.2(c)(12)(ii), to include a description of how the facility is suitable for the proposed school and to request the applicant consider the necessity for renovation to the facility and compliance with applicable building codes and accessibility for individuals with disabilities. No changes were made to section 713.2(c)(12)(iv), now renumbered to § 713.2(c)(12)(iii), or section 713.2(c)(12)(v), now renumbered to § 713.2(c)(12)(iv). The Annex was renumbered accordingly, and the changes were noted in the Preamble.

8. Comment: *Liability Insurance.* The representative questions how the Department will define "other appropriate insurance" and states that his concern is the Department will require insurance products that a charter cannot purchase, resulting in non-compliance and the possibility that an application will not be approved.

Response: The CSL (24 P.S. § 1719-A(17)) requires applicants to provide information on how the charter school will provide "adequate liability and other appropriate insurance." The regulation provides clarity by requiring a description of the type and level of insurance the charter will obtain.

Section 713.4 – Random Selection Policies for a Charter School or Regional Charter School

9. Comment: The representative states that a renewal application process is not required by law and therefore the proposed regulations cannot require that an admissions policy be included in a renewal application.

Response: The renewal process is included in the CSL. The CSL (24 P.S. § 1728-A(a)) requires local boards of school directors to conduct a comprehensive review prior to granting a charter renewal and states that "the local board of school directors shall have ongoing access to the records and facilities of the charter school to ensure that the charter school is in compliance with its charter and this act and that requirements for testing, civil rights and student health and safety are being met." The admissions policy is one of the records to help local school boards in their review.

Section 713.8 – Relating to Redirection Process

10. Comment: The representative maintains the proposed regulation adds unreasonable requirements and timelines, including payment requests for the month of June and the dates to submit payment requests to school districts. Additionally, he

states that the proposed regulations do not address school districts claiming deductions on PDE Form 363 that are more than allowed in the CSL.

Response: The PDE-363 Form is used by school districts to calculate their nonspecial education and special education school funding rates under section 1725-A of the CLS (24 P.S. § 17-1725-A). Section 713.8 clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL (P.S. 24 § 17-1725-A); the regulation does not change the formula for rates set forth in the CSL. The Department contends changes to the funding formula in section 1725-A of the CSL (P.S. 24 § 17-1725-A) require legislative amendments and cannot be addressed through regulation.

The information required for the electronic form is available in a charter school's student information system and is information that public schools, including charter schools, already submit to the Department annually for the purposes of federal reporting. Charter schools will complete the form using the Charter School Redirection (CSR) tool in the Department's Consolidated Financial Reporting System (CFRS), to which all public schools have access. The process is completely web-based with no documentation being submitted outside of CFRS. The CSR tool, which will be implemented in February 2022, is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department.

Section 1725-A(a)(5) of the CSL (24 P.S. § 17-1725-A(a)(5)) requires school districts to make 12 monthly payments, by the fifth day of each month, within the operating school year, to the charter school in which a district student is enrolled. The regulation does not change that requirement.

Section 713.8(e) of the regulation refers to the timeline for charter school entities to request the Department withhold a district's state subsidy payment and for the Department to redirect those funds to the charter school. Due to the schedule for payment of school district subsidies and the corresponding deadlines for submission of information from the Department to the Office of Comptroller Operations and Office of Comptroller Operations to the Department of Treasury, a charter school redirection for June enrollment is not possible before the end of the school year, June 30. However, section 1725-A(a)(5) of the CSL (24 P.S. § 17-1725-A(a)(5)) provides a reconciliation process whereby a charter school may seek funds from a current school year for a prior year's underfunding thereby satisfying any remaining balances. As such, section 713.8(e) of the regulation is reasonable, appropriate, and necessary to carry-out the requirements of the CSL.

Section 713.9 – Relating to Health Care Benefits

11. Comment: The representative states that the Department does not provide guidance on what constitutes “meaningfully similar” benefits.

Response: Based on a significant volume of feedback, the Department deleted much of the proposed section 713.9, including the requirement that charter schools demonstrate health care benefits are “meaningfully similar” to those offered by the local school district.

Additional Comments

12. Comment: The representative states that the proposed regulations do not provide authorizers with guidance to revoke or deny a renewal; and do not provide guidance on how to conduct a comprehensive renewal of a charter.

Response: The Department acknowledges the comment but asserts regulating how authorizers revoke or deny a charter is outside the scope of what the Department is able to regulate.

HOUSE EDUCATION COMMITTEE - SENATOR TIM KEARNEY

The Department of Education (Department) appreciates comments submitted by Senator Tim Kearney (187) on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools.

The Department believes both statutory reform and regulation are necessary to bring order, consistency, and clarity to the regulated community. The Department would welcome the opportunity to work with the General Assembly on comprehensive Charter School Law reform that improves educational choice for all students in the commonwealth.

The Department's responses to Senator Kearney's comments are below.

1. Comment: Section 713.4 Should provide further instruction on criteria for a random selection process to build greater trust in the process and to prevent abuse.

Response: The Department agrees with the recommendation to provide charter school and regional charter school leaders with instruction on developing criteria for a random selection process but believes requiring such instruction exceeds the scope of regulation. When implementing the final regulation, the Department will provide resources and model policies to assist charter schools, regional charter schools, and cyber charter schools as well as authorizers with meeting the regulatory requirements.

2. Comment: Section 713.5 Cyber charters might not be limited by facilities, but there are other real factors limiting how many students they can optimally enroll and support,

and the provisions of this section should reflect the need for enrollment limits for cyber charter schools.

Response: The Department appreciates the Senator's interest in ensuring students enrolled in cyber charter schools have access to quality education and support. The Department believes the regulation makes a significant contribution to these goals by requiring charter schools to: 1) timely adopt an enrollment policy, 2) publicly post this policy and include it in renewal applications, 3) ensure public notice of the policy to include translation and accessibility provisions, 4) detail optional enrollment preferences, and 5) report on the impact of the enrollment policy relative to student demographics. The rulemaking does not prevent cyber charter schools from instituting enrollment parameters or caps; rather, the rulemaking makes clear that such limits may not be unilaterally imposed. The distinction in the rulemaking between brick-and-mortar charter schools and cyber charter schools reflects the fact that enrollment limitations are common in the former.

3. Comment: Section 713.7 should provide stricter standards for audits to assess fiscal management

Response: The Department acknowledges the Senator's recommendation to increase fiscal transparency and accountability. The CSL requires charter school entities to complete certain financial audits each year. Section 713.7 identifies the components of those independent annual financial audits which apply to all other public school entities. Precise accounting and auditing standards make it easier for charter schools to meet the auditing requirement and make it easier for charter school authorizers to annually assess a charter school entity's operation, as required by the CSL.

When any LEA is awarded more than \$750,000 in federal funding, it must submit a Single Audit to the Department. Due to the large amount of federal relief assistance allocated to public schools during the pandemic, most LEAs, including charter schools, meet the Single Audit requirement for at least the next two years. Charter schools are considered LEAs in Pennsylvania; for consistency, the same auditing requirements should apply to all public schools.

INDEPENDENT REGULATORY REVIEW COMMISSION (IRRC)

The Department appreciates comments submitted by IRRC (221) on Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools.

The Department's responses to IRRC's comments appear below.

1. Statutory authority; Determining whether the regulation conforms to the intention of the General Assembly; Comments, objections, or recommendations of a committee.

The Department states in the Preamble that this proposed regulation will promote transparency, equity, quality, and accountability in the implementation of the Charter School Law (CSL) provisions relating to the establishment of new charter school entities and the governance and operation of existing charter school entities.

The proposal has generated significant interest from the regulated community and members of the General Assembly. Commenters and legislators have provided input both for and against this proposed regulation.

The Senate Education Committee comments dated November 8 express concern with many aspects of the proposed regulation as follows:

1. Comment: Despite the introduction of numerous bills and ongoing discussions related to charter and cyber charter school reform in the Legislature, the Department has circumvented the legislative process through proposed regulation #6-349, which goes beyond the scope of providing clarifications to the [CSL] and instead institutes policy changes that have the effect of creating new law.

Response: The Department disagrees with the assertion that it is “circumventing the legislative process.” Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A). However, the Department believes both statutory reform and regulation are necessary to bring order, consistency, and clarity to the regulated community. As stated by PDE leadership at the Senate Education Committee’s charter school regulation hearing on October 20, 2021, the Department would welcome the opportunity to work with the General Assembly on comprehensive CSL reform and to improve educational choice for all students in the commonwealth.

2. Comment: During the October 20, 2021 [Committee] hearing, [the Department] testified that regulations are intended to “clarify and provide some more parameters around the current law,” but this proposed regulation goes well beyond clarifying the law and in some cases makes policy decisions of such a substantial nature that they must be addressed through legislation. For example, [S]ection 1719-A of the [CSL] establishes the minimum requirements for charter school applications and [Section] 1717-A(e)(2) of the [CSL] permits an authorizing school district to consider additional criteria and information from the charter school applicant. It is not for [the Department] to expand those minimum requirements provided in statute and overstep the role of the authorizing local school board of directors and the legislature

to establish new minimum standards as it attempts to do in [S]ection 713.2 of the proposed regulation.

Response: The Department contends the rulemaking is within the regulatory authority granted to the Department under Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) and is necessary to clarify how the regulated community may comply with the CSL minimum standards.

3. Comment: Section 17-1702-A of the [CSL] clearly lays out the intent of the General Assembly to improve pupil learning, increase learning opportunities, encourage innovative teaching methods, create professional opportunities for teachers, provide parents and pupils with expanded educational choices and hold these schools accountable. It is deeply concerning to this Committee to have received testimony that indicates these proposed regulations will have a net opposite effect to the Legislature's intent and may lead to additional closures of schools, many of whom are small, single site, minority[-]operated and [-]attended charter schools – thereby reducing, rather than expanding, school choice.

Response: The Department asserts that the regulations, by providing clarification and consistency to the CSL, will ensure charter school applicants are prepared and able to provide quality programs and services to students and will improve educational choice. The Department has not been provided information as to how the regulation will result in a net opposite effect.

4. Comment: Section 713.9, which requires charter [schools] and cyber charter schools to provide the same level of health care benefits as the benefits provided to teachers at the authorizing school district, is in dire need of clarification as this could have significant financial and practical impacts to charter schools and their employees.

Response: The Department received a significant volume of comments concerning section 713.9 (Health Care Benefits). Many commenters – including Pennsylvania's two largest school districts, statewide education associations, and a coalition of school district superintendents – expressed support for this aspect of the rulemaking, arguing it would ensure that charter schools comply with an important provision of the CSL that did not envision the advent of regional or cyber charter schools and promote comparability in health care benefits across two sectors of public education.

Other commenters expressed concern with the Department's proposal, and raised a series of legal, practical, and other considerations; the backdrop to all these concerns was an argument that, in seeking to provide charter schools with flexibility for implementing this provision of the CSL, the Department created a framework that might prove onerous and unworkable.

The Department takes these concerns, both for and against the proposed provision, seriously. We believe the level of opposition underscores that there is

likely a difference in the scope and quality of health care benefits between school districts and charters, and that there is a compelling public interest – especially during an unrelenting global pandemic – to correct any such inequities.

Given this feedback, the Department has: 1) deleted much of the proposed regulation related to health care benefits; 2) reiterated the requirements of section 1724-A(d) of the CSL; and 3) proposed a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance.

5. Comment: The need for [S]ection 713.9 is also unclear because, as was stated during the hearing, there is fierce competition amongst school entities for certified educators, so benefits packages need to be competitive. Moreover, complaints regarding the quality of health care plans being offered by charters are rare.

Response: Please see previous response.

6. Comment: [S]ection 713.3 requires cyber charter schools to utilize a Department form for applications and it should be plainly stated that cyber charter applicants that have already submitted their applications to the Department prior to the effective date of the regulations will not need to submit a new application and the original application will be honored. It is unclear to the committee and stakeholders how changes to the application requirements will ultimately impact the renewal process.

Response: The Department agrees. Final-form rulemaking clarifies that the regulation will be phased-in to accommodate the regulated community. Since the CSL requires entities apply no later than November 15 of the year prior to opening a charter school, section 713.2(g) provides authorizers six months from the regulation effective date to ensure the authorizer's application to establish a charter school or regional charter school includes the items listed in section 713.2(c). Subsection (h) allows applicants that submit applications prior to November 15, 2022, to continue with the application process in effect at the time of application, without the need to submit additional information to meet the requirements of section 713.2(c), or to reapply using the revised application, if so desired. The same clarifications were added to section 713.3 (relating to contents of cyber school application). The new application will be used by entities seeking to establish a charter school, regional charter school, or cyber charter school for the 2024-25 school year.

7. Comment: While [the Department] reports “modest costs” to charter school entities in section 18 of the Regulatory Analysis Form (RAF), stakeholders have indicated these estimates are inaccurate.

Response: The Department contends the cost to the regulated community will be modest since final-form rulemaking aligns with current practice and any

negative costs being negated by positive efficiencies. For instance, final-form rulemaking helps the Department achieve efficiencies, as a more standard process for seeking and administering redirection requests reduces the number of redirection requests over time and allows for quicker resolution when redirection and reconciliation requests do occur. The Department conservatively estimates it will see 3,500 fewer requests at a total cost savings of \$52,500 a year.

For charter school entities that already align policies and practices with the CSL, the Department expects charter school entities will rely on currently established procedures and any burden in adapting those procedures to comply with the regulations would be negligible. For charter school entities where this is not the case, the final-form regulation may have practical costs or adverse financial effects. However, the Department does not anticipate any greater cost or adverse effect to the charter school entity community as a whole, because of this final-form rulemaking.

To meet the fiscal management and audit requirements, charter schools may need to contract with an accounting firm for an annual independent financial audit, which typically costs between \$20,000 and \$30,000. However, charter school entities are required to annually audit financial accounts in accordance with section 437 of the School Code and sections 1719-A and 1749-A (24 P.S. § 1719-A; 24 P.S. § 1749-A). Furthermore, charter school entities that receive at least \$750,000 in federal funds already contract with an auditing firm for an annual single audit. For the 2022-23 SY, 76% of charter school entities meet the minimum \$750,000 threshold.

To comply with the redirection requirements, a charter school will submit a request to the Department using the CSR tool in the Department's CFRS, which all public schools, including charter schools, currently access. The process and form are completely web-based with no documentation being submitted outside of CFRS. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts also can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests, and then use that information that work with a charter school to resolve payment before redirection occurs. There may be minor financial costs to charter school entities and school districts that use an information system to process invoices under the final-form redirection process. However, the process is not substantially different from how schools produce invoices currently. Based on the Department's experience, updating an accounting system costs around \$5,000.

8. Comment: Due to the overwhelmingly negative impact the proposed regulations would have on charter schools, especially smaller and minority-operated charter

schools, we strongly urge the Department to abandon further development of these proposed regulations and work with members of the legislature to achieve consensus on reform through the legislative process.

Response: The Department has not been provided evidence of how these regulations would negatively impact charter schools. The Department has, however, partnered closely with members of the General Assembly and diverse stakeholders, including representatives of the charter school community, to develop statutory reforms to the CSL—reforms that should supplement this critically-needed rulemaking. Pennsylvania’s public charter schools provide important options for students and families; it is also the case that Pennsylvania’s public charter schools represent a disproportionate number of schools designated for intervention under the ESSA and Pennsylvania’s ESSA State Plan while enrolling smaller populations of the state’s highest need students including students with the most significant disabilities, students involved in the human services and juvenile justice systems, and English learners. Notably, the rulemaking will level the playing field between large, network-backed charter schools and independent charter schools by designated common standards for charter school applications, enrollment and admission, and other procedures—all within the confines of the existing statute.

The letter from the Democratic Chair and members of the Committee dated November 16 supports the proposed regulation and offers the following comments:

Charter Applications (713.2-3)

1. Comment: Districts that elect to create their own form with additional information should be permitted to require use of the local form.

Response: The Department agrees and addresses this concern at the beginning of section 713.2. Section 713.2(a)(2) allows a local authorizer to create and adopt its application form provided, at minimum, it includes the information identified in subsection (c). Section 713.2(b) also states “An authorizer may require an applicant submit additional information for the local board of directors to evaluate the application in accordance with section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)).”

2. Comment: The application should include plans for culturally responsive and sustaining education.

Response: Chapters 4 and 49 (relating to academic standards and assessment and certification of professional personnel) of Title 22 of the Pennsylvania Code, as promulgated by the State Board of Education, require culturally responsive

and sustaining education for all public schools, which includes charter schools and cyber charter schools. For emphasis, the Department inserted a reference to Chapter 4 (relating to academic standards and assessments) in section 713.2(c)(5). Section 713.2(c)(13) of the regulation also requires charter school applicants to provide a professional development plan that complies with Chapter 4 and 49 regulations.

3. Comment: The application should require a letter of intent to provide property for the proposed charter school as proof that an adequate facility will be available.

Response: The Department agrees. Final-form rulemaking revises section 713.2(c)(12)(i) as follows: *"Whether the facility will be leased or owned, as demonstrated by a copy of the deed to the facility showing ownership, a signed lease agreement, or, if contingent upon establishment of the charter school, a letter of intent to sell or lease from the property owner,"* removes section 713.2(c)(12)(ii) its entirety, since facility costs would be included in the applicant's financial plan; and revises section 713.2(c)(12)(iii), now renumbered to section 713.2(c)(12)(ii), to include a description of how the facility is suitable for the proposed school and to request the applicant consider the necessity for renovation to the facility and compliance with applicable building codes and accessibility for individuals with disabilities. No changes were made to section 713.2(c)(12)(iv), now renumbered to section 713.2(c)(12)(iii), or section 713.2(c)(12)(v), now renumbered to section 713.2(c)(12)(iv). The Annex was renumbered, and these changes are noted in the Preamble.

4. Comment: The application should require plans for facility cost payment, specifically the use of state moneys from the charter school facility lease reimbursement project and the charter school facility grant program.

Response: The Department appreciates the recommendation to further increase fiscal transparency but believes that including such a requirement may be difficult for an applicant to address when first applying to establish a charter school or regional charter school. For instance, to qualify for the Charter School Facility Lease Reimbursement Program, a charter school must be an authorized charter school in Pennsylvania and have a signed lease agreement for rental of a building or portions of a building. As such, the applicant will not know if they will receive state funding under this program until it receives a charter and applies for funding. However, if known, the applicant would be expected to provide facility cost repayment and use of state money from reimbursement and grant programs in the financial plan submitted under subsection (c)(9). An authorizer also could request this information as part of the charter school or regional charter school's annual report and/or charter renewal process.

5. Comment: The application should include plans for induction programming to

ensure that the applying charter is aware and prepared for this state requirement, which leads to higher retention rates of educators.

Response: Chapter 49 (relating to certification of professional personnel) of the Pennsylvania Code (22 Pa. Code 49.16), as promulgated by the State Board of Education, requires each entity applying to establish a charter school to submit to the Department for approval a plan for the induction experience of first-year teachers, long-term substitutes who are hired for a position for 45 days or more, and educational specialists. Section 713.2(c)(13) of the final-form regulation requires charter school applicants provide a professional development plan that complies with this regulation. For emphasis, the Department revised section 713.2(c)(13)(iv) by adding “including an induction program as required under Chapter 49.”

6. Comment: The regulation should provide more clarity about what charter operators should include in their “[p]lans for meeting the needs of...students with disabilities[.]” Specifically, charter operators should have to indicate how they will: (1) comply with their Child Find obligations; (2) assess students’ growth and progress and need for new or changed services; and (3) handle student discipline when a child’s behavior is a manifestation of his/her disability.

Response: Based on numerous comments to this effect, the Department revised section 713.2(c)(13)(ii) by replacing “Caseloads of staff for students receiving special education services” with “Describe how the school will provide special education programs and services” at appropriate levels to ensure a free appropriate public education (FAPE) as required by Chapter 711 (relating to charter school and cyber charter school services and programs with children with disabilities). As neither the School Code nor Chapter 711 include or require case load requirements for staff of charter school students receiving special education services, this application requirement was removed. The Department agrees with the other suggestions and believes they will be covered as part of the other application requirements under subsection (c).

Ensuring Equitable Enrollment (713.4-5)

7. Comment: The charter’s random selection policies must describe how their admission practices will comply with federal and state nondiscrimination law.

Response: The Department agrees. Section 1723-A(b)(1) of the CSL (24 P.S. 17-1723-A(b)(1)) prohibits a charter school from discriminating in its admissions policies or practices. For emphasis, the Department added “...and must comply with current federal and state non-discrimination law” to section 713.4(b) of the final-form regulation.

8. Comment: Public notice of the selection process should include the number of

available slots and the number of applicants.

Response: The Department agrees and revised section 713.4(c)(4) to include in the public notice the number of available enrollment slots and number of applicants for the charter school.

9. Comment: Data required in the annual reports should be disaggregated in a way that is consistent with the disaggregation requirement under PA's ESSA Consolidated State Plan.

Response: The Department agrees and revised section 713.4(d) (relating to random selection policies for a charter school or regional charter school) and section 713.4(d) (related to random selection policies for a cyber charter school) to clarify that data must be disaggregated by student group, in accordance with the federal Elementary and Secondary Education Act (20 U.S.C. § 7801(20)).

10. Comment: Further instruction should be provided on criteria for a random selection process to build greater trust in the process and to prevent abuse.

Response: The Department agrees with the recommendation to provide charter school and regional charter school leaders with instruction on developing criteria for a random selection process but believes requiring instruction in regulation exceeds the Department's regulatory authority. However, when implementing the regulation, the Department will provide resources, model policies and technical assistance to support charter schools, regional charter schools, cyber charter schools, and authorizers with meeting the regulatory requirements.

Accountability and Ethics Requirements for Board of Trustees (713.6)

11. Comment: The board of trustees should include at least one parent of a student currently attending the school as a representative on the Board.

Response: The Department is unable to include this requirement in regulation, since neither the CSL nor the Public School Code include provisions for the composition of a school's governing board. However, the Department acknowledges that having a current charter school parent serve on the school's governing board can be beneficial.

Fiscal and Auditing Standards (713.7)

12. Comment: Requirements should align with generally accepted standards of fiscal management, which include but is limited to audits and preparation of financial statements.

Response: Section 713.7 of the final form regulation aligns the financial and fiscal standards with other public schools in Pennsylvania. This includes adhering to generally accepted standards of fiscal management and audit requirements; using Generally Accepted Accounting Principles (GAAP) and Generally Accepted Government Auditing Standards (GAGAS); and obtaining independent annual financial audits.

The CSL requires a charter school application to include the provisions which will be made for auditing the school under section 437 of the Public School Code (24 P.S. § 4-437), which requires “[t]he accounts of the school treasurer shall be audited annually as hereinafter provided.” Section 713.7(c) of the regulation identifies the components of those audits. Consistent, standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity’s operation and financial health, as required by the CSL.

Redirection (713.8)

13. Comment: The proposed 10-day process for redirection is not enough time to review and verify residency and enrollment data, especially giving limited staffing resources of many districts and the number of students that may be attending different charters. A longer timeframe is needed.

Response: The Department agrees that a longer timeframe for school districts to review invoices submitted by charter schools would be optimal. However, the CSL does not include a prescribed timeframe for a charter school to submit a “payment request” to a school district, and the Department believes extending the timeframe may conflict with section 1725-A(5) of the CSL (24 P.S. § 17-1725-A(5)) which requires a school district to verify the information submitted by the charter school and make payment by the fifth of the month. A stipulated timeframe in the regulations allows school districts to pay charter schools quicker instead of charter schools having to wait for their funding through the redirection process, which can take up to a month longer.

Health Care Parity

14. Comment: The proposed regulations will allow a cyber or regional charter school to strategically move their administrative offices to an area where health care benefits are more advantageous to them. The regulations should be clarified so that these schools are administered in a single central office.

Response: Each charter school, regional charter school and cyber charter school only has one central administrative location for its articles of incorporation

and its charter. A school may operate from more than one physical location, but there is only one administrative office. Similarly, a school district has several school buildings but only one address on record for administration. The primary location of the charter school administration is written into its charter. Per *Discovery Charter Sch. v. Sch. Dist. Philadelphia*, 166 A.3d 304 (Pa. 2017), the court ruled that for a material term of the charter to be amended, the charter must be amended through mutual agreement by the charter school and the authorizer. As such, the location of the administrative office, a material term of from § 1719-A of the CSL, a regional charter school or cyber charter school could not change its location for any reason without approval of its authorizer.

15. Comment: Further clarity is also needed about complaint process, especially around the authority and remedies available to the authorizing entity when notified of a health care parity violation. An alternative may be to establish a complaint process at PDE, as is in place for other violations.

Response: The Department removed section 713.9(d) pertaining to the complaint process from final-form rulemaking to address commenter's concerns. The Department notes, however, that, the CSL does not provide for a complaint process for school employees. Without clear direction in the CSL, a complaint would be submitted to the authorizer for review and a determination of finding. Any action taken by the authorizer to resolve the complaint (e.g., revoking the charter) would be appealable to the Charter Appeals Board. The CSL does not provide the Department with authority to mitigate complaints and believes this must be addressed by comprehensive CSL reform.

16. Comment: The regulations need to be revised to ensure that they do not negatively impact the right of workers to organize and collectively bargain their benefits.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits, and does not relieve charter schools of their duties as public schools. However, based on feedback, final-form rulemaking deletes much of the proposed regulation, reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), and includes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL.

New Provisions on Renewals

17. Comment: The regulations need new provisions on the renewal process, which should include assessment of how students have performed at charters operated by current applicant and composition of student population by race, ethnicity, economically disadvantaged status, students with disabilities, and type of disability. The new renewal process should detail how the charter proposes to improve student

outcomes if a charter is renewed, but its performance needs improvements.

Response: The Department acknowledges both comments and believes the recommendations must be addressed through amendments to the CSL. Under current state law, the authorizer is responsible for assessing whether a charter school is meeting the goals of its charter and determining whether the charter should be renewed or terminated in accordance with the CSL.

Senate Education Committee

18. Comment: The Senate Education Committee letter dated November 8, like many commenters, asserts that the Department is seeking to change the CSL through the proposed regulation. That letter encourages the Department to withdraw the proposed regulation and engage the General Assembly in comprehensive charter school reform. Several commenters made similar requests.

Response: Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A). The Department has, however, partnered closely with members of the General Assembly and diverse stakeholders, including representatives of the charter school community, to develop statutory reforms to the CSL—reforms that should supplement this critically-needed rulemaking. Pennsylvania’s public charter schools provide important options for students and families; it is also the case that Pennsylvania’s public charter schools represent a disproportionate number of schools designated for intervention under the ESSA and Pennsylvania’s ESSA State Plan while enrolling smaller populations of the state’s highest need students including students with the most significant disabilities, students involved in the human services and juvenile justice systems, and English learners. Notably, the rulemaking will level the playing field between large, network-backed charter schools and independent charter schools by designated common standards for charter school applications, enrollment and admission, and other procedures—all within the confines of the existing statute.

2. Compliance with the RRA.

1. Comment: Commenters assert that the Department did not seek input from all major stakeholders in drafting the proposed regulations. Section 2 of the RRA, pertaining to legislative intent, provides the following directive: “To the greatest extent possible, this act is intended to encourage the resolution of objections to a regulation and the reaching of a consensus among the commission, the standing committees, interested parties and the agency.” 71 P.S. § 745.2(a). We strongly encourage the Department to organize additional stakeholder meetings with representatives from all segments of the commenters and the regulated community. This would allow the

Department and the regulated community an opportunity to resolve as many remaining concerns as possible prior to the submittal of the final-form regulation.

Response: The Department asserts that it is in compliance with the RRA and disagrees with some commenters' argument that it did not seek input from major stakeholders and that they did not have an opportunity to provide input. As noted in the Preamble, on August 24, 2019, the Department published an advance notice of proposed rulemaking (ANPR) in the Pennsylvania Bulletin announcing its intention to exercise its statutory authority and submit a rulemaking to amend Part XX (related to charter schools) of Title 22 of the Pennsylvania Code. There was no time limit for submitting public comment, and a link to the ANPR has been available on the Department's website since August 2019. On November 22, 2019, the Department also hosted a public roundtable in State College for interested stakeholders to provide feedback on priorities as outlined in the ANPR. The Department received approximately 50 comments from stakeholders during that public comment period and through the Department's link since 2019.

Organizations such as Asian Americans United, Education Law Center-PA, Justice At Work, Nationalities Service Center, VietLead, IHAS-PA and Arc of Greater Pittsburgh/ACHIEVEA expressed support for comprehensive regulatory reform to ensure charter schools, as public schools, are equitably and inclusively educating all students, including students with disabilities, English learners and other students historically less served by charter schools.

In a letter to the Secretary of Education, the solicitor for the School District of Pittsburgh wrote, "It is our hope that these proposed regulations, when combined with comprehensive charter reform legislation...will address several important tasks. Among these are to codify charter case law in areas where the Charter School Law (CSL) has been interpreted by the Courts; to clarify open questions regarding charter funding, to improve charter schools' transparency and accountability and to begin to right the imbalance between school districts and charter schools that is imbedded into current law and policy." More specifically, the School District of Pittsburgh supports the development of a statewide application for charter applicants and charter renewals, better enforcement of non-discriminatory enrollment practices, clarification that charter school board trustees are subject to 65 Pa.C.S. 1101—1113 (relating to Public Official and Employee Ethics Act) requirements that educational management service providers be more transparent about expenditure of public funds, and enactment of generally accepted standards of fiscal management and audit requirements.

On March 11, 2021, the Pennsylvania Coalition for Public Charter Schools (PCPCS) sent a letter to Governor Tom Wolf, Secretary of Education Noe Ortega, members of the General Assembly, and the superintendents of the School District of Philadelphia and School District of Pittsburgh, calling for

"meaningful reforms to Pennsylvania School Law and Public School Code that improves the quality of education for every public school student in charter schools and school districts." In its letter, PCPCS calls for a more defined and consistent process for new charter school applications to ensure the process is "fair, equitable, and efficient." PCPCS further indicates support for modifying the payment process between public school districts, charter schools and the Department to reduce conflicts over non-payments. Finally, PCPCS argues for codification of additional accountability and transparency standards for all public schools. This rulemaking addresses each of these aims.

Relatedly, as of April 5, 2021, a total of 396 school districts, nearly 80% of public school districts, across this Commonwealth have adopted resolutions calling for charter reform that includes transparency and accountability.

On April 15, 2021, the Department's policy director, government relations director, deputy secretary of the Office of Elementary and Secondary Education, and staff from the Division of Charter Schools held briefings on the proposed rulemaking with the Republican and Democratic staff from the Senate and House Education Committees; the School District of Philadelphia and Pittsburgh Public Schools, the two largest charter school authorizers in the commonwealth; PA Partnerships for Children, Philadelphia Charters for Excellence, A+ Schools and the PA Coalition of Public Charter Schools; and American Federation of Teachers (AFT-PA), Education Voters of PA, LEARN, Pennsylvania State Education Association (PSEA), Pennsylvania Association Rural and Small Schools (PARSS), Pennsylvania Association of School Administrators (PASA), PA School Boards Association (PSBA), Pennsylvania Association of School Business Officials (PASBO), Public Citizens for Children and Youth, the Urban League of Greater Philadelphia, and the Urban League of Greater Pittsburgh. During those briefings, the Department explained the rulemaking process, the proposed sections and purpose of the rulemaking, and a tentative timeline. Attendees provided feedback on the proposal during the meetings and were encouraged to submit feedback at any time to the Division of Charter Schools.

On September 16, 2021, the Department held another set of briefings with the individuals from April to notify them that the proposed regulation would be published in the Pennsylvania Bulletin that weekend and to review the process for submitting comments to IRRC.

On September 24, 2021, the Department issued a PennLink email to approximately 800 local education agencies (LEAs), including charter schools, reminding them of the opportunity to submit comments on the proposed regulation and providing instructions for commenting by the October deadline. Included on this distribution list were the PA Coalition of Public Charter Schools, PA Partnerships for Children, Philadelphia Charters for Excellence, Children

First, American Federation of Teachers, Pennsylvania State Education Association, PA Rural and Small Schools, School District of Philadelphia, Pittsburgh Public Schools, PA School Administrators Association, PA School Boards Association, and the PA School Business Officials.

Additionally, on October 12, 2021, the Department emailed a reminder to these major stakeholders. Every major stakeholder submitted comments, as well as nearly two dozen charter schools, including Agora Cyber Charter; Chester Community Charter; Commonwealth Charter Academy; Freire Charter Schools; Insight PA Cyber Charter; PA Cyber; and Propel, Mastery and KIPP Charter Schools. Comments were also received from several organizations that focus on educational issues impacting students, including Arc of Philadelphia, Children First, Disability Rights PA, Education Law Center, and PA Partnerships for Children. Overall, the Department received 223 comments and 1,557 form letters, with each roughly split between support and opposition.

On October 20, 2021, four members of PDE leadership testified at a charter school regulation hearing held by the Senate Education Committee and listened to the testimony of other stakeholders, which included professional organizations and charter school administrators from Propel Charter School, Richard Allen Preparatory Charter School, Charter School for Excellence, Commonwealth Charter Academy, Insight Cyber Charter School and Reach Cyber Charter School. The testimonies and comments from the hearing also were considered as part of the final-form rulemaking.

The Department understands the concerns of various stakeholders and believes it has addressed many issues accordingly prior to submitting the final-form regulation.

3. Section 713.1. Definitions. – Statutory authority; Clarity; Reasonableness.

1. Comment: *Authorizer*. The Department includes as part of the definition of “authorizer” “[t]he Department, for a cyber charter school.” Is the Department also the authorizer of a multiple charter school organization? If so, we ask the Department to clarify the definition of “authorizer” to identify the Department also as an authorizer of a multiple charter school organization.

Response: The CSL charges the Department with approving an MCSO, but the Department is not its charter authorizer because an MCSO is not a charter school. The MCSO application and approval process are outlined in section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A) and are not addressed in the regulation. The CSL provides for three types of *charter schools* (charter schools, regional charter schools, and cyber charter schools) and four types of *charter school entities* (charter schools, regional charter schools, cyber charter schools,

and MCSOs). An MCSO is formed when two or more charter schools or regional charter schools consolidate as a public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator, in accordance with section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A). An MCSO is considered the holder of a charter for each individual charter school in the organization. 24 P.S. § 17-1729.1-A(e). To provide further clarification, the Preamble includes a statement explaining that the MCSO holds the charters for the individual charter schools but is not a charter school itself. The Department took great care and intention in distinguishing which of the regulation applies to *charter schools* and which apply to *charter school entities*, which includes MCSOs.

2. Comment: Educational management service provider. The Department proposes to define “educational management service provider” as:

A nonprofit or for-profit charter management organization, education management organization, school design provider, business manager or any other entity or individual that enters into a contract or agreement with a charter school entity to provide educational design, business services, management or personnel functions or to implement the charter. The term may not include a charter school foundation.

We note that Section 5-501(b)(3) of the Public School Code defines “education management service provider” similarly but does not include the language encompassing any other individual who contracts with a charter school to implement the charter. 24 P.S. § 5-501(b)(3).

Commenters raise various concerns related to the language encompassing any other entity or individual who contracts with a charter school to implement the charter. For example, are there services that an entity or individual can contract to provide to a charter school without being regarded as an educational management service provider? Would teachers, administrators, and administrative staff that enter employment contracts with a charter school be regarded as an educational management service provider? What is the Department’s statutory authority to expand on the definition in the Public School Code? Why is such an expansion necessary, and how is it enforceable?

Response: In response to IRRC’s comments, final-form rulemaking revises the definition of “educational management service provider” to align with 24 P.S. § 5-501(b)(3) for consistency. This definition is critical to ensuring providers receiving public funds from charter schools are transparent about the expenditure of those funds and adhere to generally accepted standards of fiscal management and audit requirements.

3. Comment: English learner. The Department proposes to define “English learner” as

a student with limited English language proficiency who meets certain criteria. Commenters assert that the proposed definition does not mirror the Federal definition and, therefore, likely would be preempted by Federal law. We ask the Department to amend the definition at final to mirror Federal law for clarity and consistency or to explain the reasonableness of the proposed definition.

Response: The Department agrees. Final-form rulemaking replaces the definition of English Learner with the definition contained in the federal Elementary and Secondary Education Act (ESEA)(20 U.S.C. § 7801(20)).

4. Section 713.2. Contents of charter school or regional charter school application. – Statutory authority; Clarity; Reasonableness; Implementation procedures.

1. Comment: The Department states in the Preamble that this section “seeks to promulgate regulations related to the content of a charter school or regional charter school application required under [S]ection 1719-A of the CSL (24 P.S. § 17-1719-A).” A commenter asserts that local boards of school directors have exclusive authority to accept, review, and approve charter school applications under Section 1717-A of the CSL, including under Paragraph (e)(2)(iii) with respect to whether “the application considers the information requested in [S]ection 1719-A and conforms to the legislative intent outlined in [S]ection 1702-A.” 24 P.S. § 17-1717-A. As noted in our first comment, the Committee states, “It is not for [the Department] to expand those minimum requirements provided in statute and overstep the role of the authorizing local school board of directors and the legislature to establish new minimum standards.” We ask the Department to explain its statutory authority regarding the contents of charter school applications.

Response: Section 1732-A(c) of the Public School Code (24 P.S. § 1732-A(c)) provides the Secretary of Education the authority to promulgate regulations relating to charter schools, including Section 1719-A of the CSL. Section 713.2(c) of the regulation seeks to clarify the application requirements established under section 1719-A of the CSL (24 P.S. § 1719-A). This section does not add requirements to the application.

2. Comment: Paragraph (a)(2) states, “The application form created and adopted by an authorizer of a charter school or regional charter school, which **at a minimum**, includes the information identified in [S]ubsection (c).” [Emphasis added.] The use of the phrase “at a minimum” puts no limits on the requirements that an authorizer may include on a charter school or regional charter school application. Under what statutory authority may an authorizer require information beyond that provided for in the CSL? We ask the Department to amend this provision to limit any application requirements to those established by the General Assembly in the CSL and identified

in the final regulation.

Response: The CSL does not permit the Department to limit the requirements that an authorizer may include in a charter school or regional charter school application. Section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)) states the local board of school directors is to evaluate a charter school application based on criteria, "including, but not limited to, the following:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools."

For this reason, final-form section 713.2(c) is intended to clarify the minimum application requirements under section 1719-A of the CSL (24 P.S. § 17-1719-A) and support authorizers with meeting their statutory obligations.

3. **Comment:** A commenter states that many of the details required to be included in the application under Subsection (c) are more expansive than what is required under Section 1719-A of the CSL. 24 P.S. § 17-1719-A. Several commenters assert that many of the details required to be included in the application may be difficult or impossible to estimate or know at the time of the application, and some items have little or no bearing on the potential for the applicant to meet the requirements of the CSL. We agree that certain of the Department's proposed requirements seem to go beyond the CSL requirements and may be challenging to provide at the time of application. For example, Section 1719-A(3) of the CSL requires "[t]he grade or age levels served by the school." 24 P.S. § 17-1719-A. The Department's parallel requirements for an application under Paragraph (c)(3) include:

For each grade or age level proposed to be served by the charter school or regional charter school:

- (i) Projected overall enrollment.
- (ii) Projected number of students receiving special education services by primary disability. Students may only be counted in one disability category.

- (iii) Projected number of English learners.
- (iv) Projected composition of the student population by race, ethnicity and students who are economically disadvantaged.

This example clearly demonstrates a significant expansion by the Department upon the "grade or age level served" as required by the CSL. How would a charter school or regional charter school applicant which draws from the entire Commonwealth and from the entirety of the K-12 continuum meet such a standard? We ask the Department to explain the reasonableness of requirements such as in Subparagraphs (c)(3)(ii), (iii), and (iv), and to explain how the regulation is to be implemented by the regulated community related to items unknown at the time of application.

Response: Sections 1732-A(c) and 1751-A of the CSL (CSL) (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A).

It is important to note that a cyber charter school, once authorized by the Department, is the only charter school type that may enroll students statewide. A brick-and-mortar charter school or regional charter school may only enroll students from the school district that authorizes them or in the region specified in the school's charter.

Section 1717-A(c) of the CSL (24 P.S. 17-1717-A(c)) requires an application to establish a charter school be submitted "to the local board of school directors of the school district where the charter school will be located by November 15 of the year preceding the school year in which the charter school will be established." The items required in section 713.2(c) are essential for an authorizer confidently to award a charter to a school opening nine months later.

Specifically related to the example cited by IRRC, the intent of section 713.2(c)(3) is to clarify the requirement of sections 1719-A(3) and 1717-A(e)(2)(ii) of the CSL (24 P.S. §§ 17-1719-A and 17-1717-A(e)(2)(ii)). Whereas section 1719-A(3) requires the applicant to identify "[t]he grade or age levels served by the school," section 1717-A(e)(2)(ii) requires authorizers to consider "[t]he capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter." A proposed charter school that plans to serve the general student population of a community would expect to have a student enrollment proportional to that of the school district which authorizes them. Or depending on the type of programs the school plans to offer, the proposed charter school may be more apt to attract a certain type of student such as English Learners or students with disabilities. Section 713.2(c)(3) is where the proposed school indicates to the authorizer the school's student capacity and signals the type of

students the proposed school expects to serve. This information is essential for an authorizer to know the applicant understands the needs of the anticipated student population at the proposed school and is prepared to serve when the next school year begins.

For section 713.2(c)(3), applicants could use national, state, and local data sources (e.g., data from the U.S. Census Bureau, National Center for Education Statistics, Pennsylvania Department of Education, etc.) to estimate the composition of the student body by age, race, ethnicity, income level, disability, and primary household language, as well as community outreach, survey results, and pre-enrollment forms. The composition of every school district and public school building in Pennsylvania is available publicly through the Future Ready PA dashboard.

4. Comment: Subparagraph (c)(4)(v) requires a charter school or regional charter school applicant to include standards for board of trustees' performance, including compliance with all applicable laws, regulations, and terms of the charter. What standards does the Department anticipate for performance compliance beyond simply complying with laws, regulations, and terms of the charter? We ask the Department to clarify what an applicant is required to include to satisfy this requirement.

Response: The Department appreciates the comment and removed subparagraph (c)(4)(v) from the final form regulation. The Annex and Preamble were updated to reflect this change.

5. Comment: Paragraph (c)(4)(vii) contemplates if a charter school or regional charter school has or intends to have any affiliated business entities. We ask the Department to clarify the type of entity that would be considered an affiliated business entity.

Response: The Department removed the first reference to "affiliated business entities" from § 713.2(c)(4)(vii), now renumbered to § 713.2(c)(4)(vi), and replaced the second reference to "affiliated business entities" with "charter school foundation," since this requirement relates only to charter school foundations that qualify as a support organization under section 509(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 509(a)(3)). The Annex and Preamble were updated to reflect this change.

6. Comment: Under Subparagraph (c)(5)(i), how would an applicant include "demonstrated, sustainable support" for the charter school or regional charter school? We ask the Department to clarify how this provision is to be implemented.

Response: As requested by IRRC, final-form rulemaking inserts "...(*For example, intent to enroll forms, letters of support, memoranda with community organizations and petitions*)" in section 713.2(c)(5)(i) to clarify the type of

evidence applicants may submit to show "demonstrated, sustainable support". In *Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Cmwlth. 2006), Commonwealth Court found petitions, letters of support, information about financial backing from the foundation community, and pre-applications served as evidence of demonstrated, sustainable support.

7. Comment: Paragraph (c)(12) requires the application to include: "A description and address of the physical facility in which the charter school or regional charter school will be located, the ownership of the physical facility and any lease arrangements, including:

- (i) Whether the facility will be leased or owned.
- (ii) Anticipated monthly mortgage or lease payments, and any estimated additional monthly payments (for example, utilities, property taxes and common space custodial services).
- (iii) How the facility is suitable for the proposed school.
- (iv) Square footage for each space where instruction of students will occur and a description of how the space will be used (for example, kindergarten classroom, gymnasium for physical education and music instruction).
- (v) Safety protocols for the facility.

The parallel provision in Section 1719-A(11) of the CSL states that an application shall include: "A description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." 24 P.S. § 17-1719-A. We agree with a commenter that the items required by the Department in Subparagraphs (c)(12)(ii)-(v) are not required by the CSL and seem to go significantly beyond the description, address, ownership, and lease arrangements required in the CSL. We ask the Department to explain the statutory authority and reasonableness of these requirements if they are retained in the final regulation.

Response: The Department contends the items listed in section 713.2(c)(12) are reasonable when applying to establish a charter school, regional charter school or cyber charter school, and necessary for a local authorizer to meet its statutory obligations under the CSL.

Section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)) directs the local board of school directors to evaluate a charter school application based on criteria, "including, but not limited to, the following:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students

pursuant to the adopted chapter.

- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools."

Section 1719-A(11) of the CSL (24 P.S. § 17-1719-A(11)) requires the application to establish a charter school include "[a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." In *Montour School Dist. v. Propel Charter School-Montour*, 889 A.2d 682 (Pa. Commw. Ct. 2006), the Commonwealth Court remanded the case to the CAB for purposes of a hearing to determine whether the proposed facility is suitable under the CSL; additionally in *Souderton Area School Dist. v. Souderton Charter School Collaborative*, 764 A.2d 688 (Pa. Commw. Ct. 2000), the Court noted a local board of school directors should be afforded an opportunity to consider whether a facility is appropriate under the CSL.

Section 1717-A(c) of the CSL (24 P.S. 17-1717-A(c)) requires an application to establish a charter school be submitted "to the local board of school directors of the school district where the charter school will be located by November 15 of the year preceding the school year in which the charter school will be established." The items required in section 713.2(c)(12) are essential for an authorizer confidently to award a charter to a school planning to open and serve school-age children and youth nine months later.

However, in response to comments requesting further clarification, final-form rulemaking revises section 713.2(c)(12)(i) as follows: "Whether the facility will be leased or owned, *as demonstrated by a copy of the deed to the facility showing ownership, a signed lease agreement, or, if contingent upon establishment of the charter school, a letter of intent to sell or lease from the property owner,*" removes section 713.2(c)(12)(ii) its entirety, since facility costs would be included in the applicant's financial plan; and revises section 713.2(c)(12)(iii), now renumbered to section 713.2(c)(12)(ii), to include a description of how the facility is suitable for the proposed school and to request the applicant consider the necessity for renovation to the facility and compliance with applicable building codes and accessibility for individuals with disabilities. No changes were made to section 713.2(c)(12)(iv), now renumbered to § 713.2(c)(12)(iii), or section 713.2(c)(12)(v), now renumbered to section 713.2(c)(12)(iv).

8. Comment: Finally, Subsection (c) is unclear as to how an applicant who has already submitted an application to the Department prior to the effective date of the

regulation will be handled. We ask the Department to clarify how this provision will be implemented for applications already in process.

Response: The Department agrees. Final-form rulemaking clarifies that the regulation will be phased-in to accommodate the regulated community. Since the CSL requires entities apply no later than November 15 of the year prior to opening a charter school, section 713.2(g) provides authorizers six months from the regulation effective date to ensure the authorizer's application to establish a charter school or regional charter school includes the items listed in section 713.2(c). Subsection (h) allows applicants that submit applications prior to November 15, 2022, to continue with the application process in effect at the time of application, without the need to submit additional information to meet the requirements of section 713.2(c), or to reapply using the revised application, if so desired. The same clarifications were added to section 713.3 (relating to contents of cyber school application). The new application will be used by entities seeking to establish a charter school, regional charter school, or cyber charter school for the 2024-25 school year.

9. Comment: As Section 713.3 (relating to contents of cyber charter school application) requires an applicant seeking to operate a cyber charter school to submit an application which includes the items identified in Section 713.2(c), the comments above addressing Subsection (c) also apply to cyber charter school applications.

Response: Please see previous responses.

5. Section 713.4. Random selection policies for a charter school or regional charter school. – Protection of the public health, safety, and welfare; Clarity; Need; Implementation procedures.

1. Comment: Commenters raise a variety of issues related to random selection policies. While a legislator advocates for further instruction on criteria for a random selection process to build greater trust in the process and to prevent abuse, another commenter states that a lottery enrollment process is already in place as part of a new charter application and the Department's standard application. Furthermore, one commenter states that the General Assembly has already codified that a charter school cannot discriminate in its admission practices (24 P.S. § 17-1723-A (b)(1)), while another states that the Department fails to address how enrollment limits will not have a disparate impact on minority and low-income families who seek these school choice opportunities for their children. We ask the Department to explain the need for random selection policies, and how the random selection policies in the final regulation protect the public welfare.

Response: The Department recognizes that some commenters urge greater

prescription on this count, while others object to this section in its entirety. We believe the regulation reflects an important middle ground – one that will require charter school applicants and existing charter schools to enact, publicize, and implement policies to effectuate the CSL requirements and to provide data using existing Federally-required parameters to understand whether these policies are fair, inclusive, and navigable for students and parents. The Department also believes the regulation makes a significant contribution to these goals by requiring charter schools to: 1) timely adopt an enrollment policy, 2) publicly post this policy and include it in renewal applications, 3) ensure public notice of the policy to include translation and accessibility provisions, 4) detail optional enrollment preferences, and 5) report on the impact of the enrollment policy relative to student demographics.

Regarding cyber charter schools, the rulemaking does not prevent cyber charter schools from instituting enrollment parameters or caps; rather, the rulemaking makes clear that such limits may not be unilaterally imposed. The distinction in the rulemaking between brick-and-mortar charter schools and cyber charter schools reflects the fact that enrollment limitations are common in the former.

2. Comment: Paragraph (c)(2) includes a requirement that the random selection policies be included in any “renewal application” of a charter school or regional charter school. As this is the only reference to the renewal process in the proposed regulation, we ask the Department to clarify how renewals are to be implemented in the final regulation.

Response: Section 713.2 applies to entities applying to a local school district to establish a charter school or regional charter school; section 713.3 applies to entities applying to the Department to establish a cyber charter school. Section 1728-A of the CSL (24 P.S. § 17-1728-A) charges the authorizer with assessing whether a charter school or regional charter school is meeting the goals of its charter and determining whether the charter should be renewed or terminated in accordance with the CSL. Section 1742-A of the CSL (24 P.S. § 17-1742-A) charges the Department with assessing cyber charter schools. Section 1729-A of the CSL (24 P.S. § 17-1729-A) outlines the causes for nonrenewal and revocation. The Department asserts changes to these provisions related to the renewal process should be addressed through amendments to the CSL.

3. Comment: Paragraph (c)(4) requires that the random selection process the charter school or regional charter school be posted on the school's website “in a language that students and parents can understand. . . .” We ask the Department to clarify whether a charter school entity must post the policy in all languages believed to be the first language of their community or in English but available for translation.

Response: A charter school, regional charter school or cyber charter school

would be considered to have met this requirement if its policy is posted in English and the second most common home language, after English, used in the community or in accordance with the school's language access policy. These requirements are to ensure that all students and parents, including parents with limited English proficiency or individuals with disabilities, are able to access and understand the information, consistent with Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000a—2000h-6) and existing obligations to parents with disabilities under the ADA (42 U.S.C.A. §§ 12101—12213). This standard is derived from review of PDE's prior submissions to the U.S. Department of Education (USDE); evaluation of assessment translation practices using the Office of Civil Rights' four-factors; and analysis of home language and other data sources at the state, grade span, and local levels. The Department updated the Preamble to include this reasoning.

4. Comment: These comments also pertain to Section 713.5 (relating to random selection policies for a cyber charter school).

Response: Please see previous responses.

6. Section 713.5. Random selection policies for a cyber charter school. – Feasibility; Reasonableness; Implementation procedures.

1. Comment: Commenters raise concerns regarding Subsection (a), which states, "A cyber charter school may not restrict enrollment based on availability of attendance slots unless the terms are agreed to by the Department and the cyber charter school as part of a written charter under [S]ections 1723- A(d) and 1745-A of the [CSL]." 24 P.S. §§ 17-1723-A and 17-1745-A. Commenters assert that this language prohibits a cyber charter school from recognizing its staffing and/or resource limitations and restricting the number of students it can serve. A legislator comments that cyber charter schools might not be limited by facilities, but there are other real factors limiting how many students they can optimally enroll and support, and the provisions of this section should reflect the need for enrollment limits for cyber charter schools. We ask the Department to explain the feasibility and reasonableness of unlimited enrollment for those cyber charter schools which did not include enrollment limitations in their charters.

Response: Cyber charter schools, like other public schools, must enroll eligible students in a timely manner. The final-form rulemaking does not prevent cyber charter schools from instituting enrollment parameters or caps; rather, the rulemaking makes clear that such limits may not be unilaterally imposed and that cyber charter schools may not unilaterally decline to serve eligible students. To be clear, staffing shortages, supply chain disruptions, and other challenges impact public schools of all types, including school districts.

The final-form rulemaking offers cyber charter schools fair, lawful, and transparent options to manage student growth.

We also ask the Department to explain how this provision is to be implemented in situations where a cyber charter school's enrollment exceeds its staffing and/or resource limitation.

Response: Cyber charter schools, like other public schools, must enroll eligible students in a timely manner and may not unilaterally decline to serve eligible students. When a student transfers from one school district to another, the new school district may not reject the student due to lack of staffing or resources; public schools are expected to enroll the student within five business days of receiving the required enrollment documentation. See 22 Pa. Code §11.11(b). To be clear, staffing shortages, supply chain disruptions, and other challenges impact public schools of all types, including school districts. The final-form rulemaking offers cyber charter schools fair, lawful, and transparent options to manage student growth.

7. Section 713.6. Requirements for Boards of Trustees. – Need.

1. Comment: Subsection (a) states, "Each member of a board of trustees of a charter school entity is a public official subject to 65 Pa.C.S. §§ 1101—1113 (relating to Public Official and Employee Ethics Act)." As the Department itself indicates, trustees of a charter school are considered already to be public officials under existing law. Additionally, we note that Section 1715-A(11) of the CSL states, "Trustees of a charter school shall be public officials." 24 P.S. § 17-1715-A. We ask the Department to explain the need for this provision if it is retained in the final regulation.

Response: Clarifying that statutory ethics and conflict of interest standards apply to charter school board of trustees is critical to ensuring individuals serving in those positions are aware of their responsibilities as public officials and do not use charter school tuition and taxpayer funding for personal financial gain. A September 2016 audit by the state Auditor General found that several trustees and administrators of the school were related to other individuals or organizations doing business with PA Cyber; the Auditor General reported these findings to the State Ethics Commission and the U.S. Department of Education Office of Inspector General. The former chief executive officer of a Pennsylvania Cyber Charter school was convicted later that year of stealing nearly \$8 million from the school. In 2018, the State Ethics Commission found the board president of Pennsylvania Leadership Charter School violated the State Ethics Act. The CSL establishes charter schools, regional charter schools and cyber charter schools as public schools in Pennsylvania. This is not the case in other states. As such, the regulation serves to reinforce the public

nature of charter schools and their boards for out-of-state entities that may be operating under different conditions in other states.

8. Section 713.7. Fiscal management and audit requirements. – Statutory authority; Protection of the public health, safety, and welfare; Clarity; Implementation procedures.

1. Comment: The Department states in the Preamble that this section “seeks to promulgate regulations related to [S]ection 1729-A of the CSL (24 P.S. § 17-1729-A) (and applied to cyber charter schools in [S]ection 1749-A of the CSL), which requires a charter school entity to meet generally accepted standards of fiscal management and audit requirements or face nonrenewal or termination of its charter.” Commenters raise objections to this section. A commenter states that like all public schools in the Commonwealth, charter schools are currently required to have an independent audit done after each fiscal year. The commenter explains that Certified Public Accountants (CPA) are provided rules and regulations from a number of organizations such as the Governmental Accounting Standard Board and the Financial Accounting Standard Board. The commenter asserts that the Department is not granted the authority to set audit standards.

Response: Section 1729-A of the CSL requires a charter school entity to meet generally accepted standards of fiscal management and audit requirements or face nonrenewal or termination of its charter. Section 713.7 serves only to clarify that charter schools are to adhere to those standards by using Generally Accepted Accounting Principles (GAAP), Government Accounting Standards Board (GASB) and Generally Accepted Government Auditing Standards (GAGAS), the same practices used by other public schools; and identifies the components of independent annual financial audits, which currently apply to all other public school entities.

2. Comment: Other commenters raise concerns related to the need for stricter standards for audits to assess fiscal management and additional clarity in this section. For example, a commenter states that Subsection (b) does not address what happens if the two requirements listed are satisfied but auditors find other areas of significant deficiencies or material violations of those standards. Another commenter states that the list of items to be addressed in all audits provided in Subsection (c) does not address many other concerns nor provide much guidance or standards. For example, a charter school’s failure to pay bills in a timely manner or failure to make Public School Employees Retirement System payments in a timely manner are examples of fiscal mismanagement that would not necessarily be uncovered by an auditor or included by an auditor in a public report.

Response: The regulations hold charter schools to the same practices used by

other public school entities. Imposing additional requirements on charter schools would be inconsistent with current law. That being said, the Department agrees that consistent standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity's operation and financial health, as required by the CSL, and that the school's financial viability and sustainability is critical to the success of the school, staff, and students.

Section 218(b) of the Public School Code (24 P.S. § 2-218(b)) requires LEAs (which includes charter schools, regional charter schools, and cyber charter schools) to submit an Audit Certification form in conjunction with the Annual Financial Report (AFR). The AFR must be completed using GASB standards. When a school administrator signs the AFR Audit Certification form, the administrator is certifying that the school's audited financial statements and AFR are materially consistent. Therefore, only by using GASB standards could a charter school administrator certify the audited financial statements.

The Department is aware of some schools changing from GASB to FASB to hide pension obligations and provide a false picture of overall financial health. FASB does not include the reporting of pension liability which can make a school appear to be operating in the black when in reality are operating at a loss.

3. Comment: Given the numerous comments on this section highlighted above, we ask the Department to explain its statutory authority and to ensure that provisions related to fiscal management and audit requirements in the final regulation are clear and protective of the public welfare.

Response: Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A).

As noted in the response to comment #2 above, the regulations hold charter schools to the same practices used by other public school entities. Imposing additional requirements on charter schools would be inconsistent with current law. That being said, the Department agrees that consistent standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity's operation and financial health, as required by the CSL.

The Department maintains that these standards protect the public welfare because a school's financial viability and sustainability is critical to the success of the school, staff and students. Every time a charter school closes, there are impacts to students, who must move to another school; to parents, whose lives

are upended as they search for another school; to teachers and staff, who must seek new employment; to traditional public schools, which must absorb these students back into their classrooms; and to the community at large, which must deal with the fact that a key partner in the development of its students has been lost.

Additionally, charter school closures significantly impact the finances of the Department and school districts in the form of increased compensatory education services for displaced students; increased special education costs for displaced students; legal costs that cover parent/student attorney fees; and staff costs to the Department. Between 2014-2019, 11 charter schools closed. The Department calculated the total financial impact on itself and the affected school districts at \$5.67 million.

It is imperative that every step is taken to ensure the financial viability of these schools. Section 1729-A of the CSL (24 P.S. § 17-1729-A) requires a charter school entity to meet generally accepted standards of fiscal management and audit requirements or face nonrenewal or termination of its charter. The regulation serves only to clarify that charter schools are to adhere to those standards by using GAAP, GASB and GAGAS, the same practices used by all other public schools.

The CSL also requires charter school entities to complete certain financial audits each year. The regulation identifies the components of those independent annual financial audits, which currently apply to all other public school entities. Precise accounting and auditing standards make it easier for charter schools to meet the auditing requirement and make it easier for charter school authorizers to annually assess a charter school entity's operation, as required by the CSL.

The Department currently advises charter schools to create audited financial statements in accordance with GASB. This guidance is based on section 218(b) of the Public School Code (24 P.S. § 2-218(b)) which states that LEAs (which includes charter schools, regional charter schools, and cyber charter schools) must submit an Audit Certification form in conjunction with the Annual Financial Report (AFR). The AFR must be completed using GASB standards. The signature on the AFR Audit Certification form certifies that a school's audited financial statements and AFR are materially consistent, which would not be possible if the audited financial statements were prepared using accounting standards other than GASB.

4. Comment: Subsection (c) provides a list of items that shall be addressed in all audits completed under this section. Among these items, Paragraph (c)(2) requires a "review of the fees charged" by any educational management service provider. What is the nature and extent of the "review" required in order for a charter school to comply

with this section? We ask the Department to address this question in the Preamble to the final regulation and to clarify how this provision is to be implemented in the final regulation.

Response: While many charter schools are independently operated, it is not uncommon for a school to be managed by an external organization such as an educational management service provider (EMSP). The extent to which the EMSP is involved in the administration, governance, daily operations, and education varies widely and depends on the contract terms. Schools that work with these organizations often have the same mission, education models, and curriculum, but may have different names. It's important to note an EMSP may be a nonprofit organization or a for-profit business entity. This creates a unique challenge in Pennsylvania where state statute designates all charter schools to be public schools and are eligible to receive federal and state funding. As a fiduciary of the school, the charter school is responsible for reviewing the costs charged by the EMSP and ensure the costs are necessary and reasonable. By reviewing the cost of services provided by an EMSP, the Department is ensuring providers benefiting from public funds are transparent about the expenditure of public funds and adhere to generally accepted standards of fiscal management and audit requirements. This clarification was added to the Preamble.

9. Section 713.8. Redirection process. – Clarity; Reasonableness; Implementation procedures.

1. Comment: Subsection (a) states, "Under [S]ection 1725-A(a)(5) of the [CSL], a charter school entity shall submit its payment request to the school district no later than 10 days before the 5th of each month to permit a school district time to make payment." A commenter asserts that ten days is not long enough for larger school districts. Another commenter states that this does not allow for proper accounting of enrollment changes that may happen at the end of each month and recommends that this timeline be adjusted to enable proper accounting of enrollments. We note that the proposed language fails to address the situation where the fifth day of the month falls on a weekend or holiday. We ask the Department to explain the reasonableness of this provision and to clarify in the final regulation that the days are to be counted as business days.

Response: The Department agrees that a longer timeframe for charter schools to submit and for school districts to review invoices would be optimal. However, section 1725-A(a) of the CSL (24 P.S. § 17-1725-A(a)) obligates school districts to pay for students enrolled in charter schools by the fifth day of each month. Due to the everchanging nature of charter enrollments throughout the school year, a school district does not know how much a charter school is owed without

an invoice from the charter school. A school district is incapable of making a payment to a charter school without monthly enrollment information from the charter school. The timely submission of charter enrollment information by charter schools is essential for school districts to meet the statutory deadline to make payment to charter schools by the fifth of each month. The Department believes a change to the date by which a payment must be made by school districts requires an amendment to the CSL and beyond the Department's regulatory authority.

In response to this comment, the Department revised section 713.8 of the regulation by inserting the word "business" to clarify that charter school entities are to submit a payment request to a school district no later than 10 business days prior to the fifth of the month. Any adjustments to enrollments throughout the school year would be applied in the following month's invoice process and, ultimately, during the end-of-year reconciliation process following the end of the school year. The Annex and Preamble were amended to clarify the days are to be counted as business days.

2. Comment: Paragraph (d)(2) requires the charter school entity to include "the source of the tuition rate" used by the charter school entity in its withholding request to the Department; however, the Department does not explain how the source is to be identified or whether documentation is required in addition to identifying the source. We ask the Department to clarify how this provision is to be implemented in the final regulation.

Response: As part of the redirection process, the charter school must indicate to the Department the source of the tuition rates used for each school district in its redirection request. There are three sources for tuition rates: 1) tuition rates posted on the PDE website, which is updated annually; 2) the tuition rate calculated by a school district using the PDE-363 Form; or 3) the tuition rate calculated by a charter school using the PDE-363 Form, with notes on the source of the financial and Average Daily Membership (ADM) data used in the calculation. The PDE Form 363 is used by school districts to calculate their nonspecial education and special education school funding rates under section 1725-A of the CLS (24 P.S. § 17-1725-A). Section 713.8 clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL (P.S. 24 § 17-1725-A); the regulation does not change the formula for rates set forth in the CSL or the PDE Form 363. This clarification was added to the Preamble.

3. Comment: Subsection (e) states, "For the months from July through May, requests under this section must be submitted to the Department between the 15th and 25th of each month." We ask the Department to clarify in the Preamble why the month of June is not included so that implementation of the final regulation is clear for the

regulated community. A commenter questions if this provision could cause significant cash flow problems for charter schools and how charter schools can pay bills in a timely manner if they are not paid by school districts in a timely manner. The commenter notes that failure to pay bills in a timely manner could be a material violation of the generally accepted standards of fiscal management, which is grounds for termination or nonrenewal of a charter according to Sections 1729-A(3) and 1741-A(3) of the CSL. 24 P.S. §§ 17-1729-A and 17-1741-A.

Response: Section 1725-A(a)(5) of the CSL requires *school districts* to make 12 monthly payments, by the fifth day of each month, within the operating school year, to the charter school in which a district student is enrolled. 24 P.S. § 17-1725-A(a)(5). The proposed regulation does not change that requirement.

Section 713.8(e) of the regulation only applies if a school district fails to make a payment to a charter schools and refers to the timeline for charter school entities to request the Department withhold a district's state subsidy payment and for the Department to redirect those funds to the charter school. Due to the schedule for payment of school district subsidies and the corresponding deadlines for submission of information from the Department to the Office of Comptroller Operations and Office of Comptroller Operations to the Department of Treasury, a charter school redirection for June enrollment is not possible before the end of the school year, June 30. However, section 1725-A(a)(5) of the CSL provides a reconciliation process whereby a charter school may seek funds from a current school year for a prior year's underfunding thereby satisfying any remaining balances. 24 P.S. § 17-1725-A(a)(5). While section 1725-A of the CSL references "equal monthly payments," payments are rarely equal given that students are constantly enrolling in and withdrawing from a charter school throughout the school year. The final-form rulemaking provides the regulated community with a structured process that allows for compliance with the CSL and the state and schools' administrative environment.

10. Section 713.9. Health care benefits. – Economic or fiscal impacts; Clarity, feasibility, and reasonableness of the regulation; Clarity and lack of ambiguity; Need; Implementation procedures; Compliance with the RRA.

1. Comment: The Department states in the Preamble that this section "seeks to promulgate regulations related to [S]ection 1724-A of the CSL (24 P.S. § 17-1724-A) (as applied to cyber charter schools in [S]ection 1749-A of the CSL), which requires that every employee of a charter school be provided the same health care benefits the employee would receive if they worked for the chartering school district." We reiterate what the Department has indicated that every charter school, regional charter school, and cyber charter school has been required by the CSL to provide health care benefits since the CSL was enacted in 1997. We also note that the Department does not provide any basis for the need for this section in the RAF. Because the provisions

within this section have raised such significant concerns among the regulated community which we address below, we ask the Department to explain the need for regulating health care benefits in the final regulation.

Comments on this section include many questions and significant concerns such as the following:

- Under the proposed regulations, coverage would be out of compliance in the example where a charter school entity employee pays more for a specific treatment than a school district employee; however, different health treatments will align with different plan design facets, such as deductibles, coinsurance, and copayments. Within just one benefit plan, it is not uncommon for specific services and procedures to have completely unique employee cost requirements.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- When the term “benefits” is properly construed according to its appropriate meaning, a charter school’s compliance with the “same health care benefits” requirement is dependent upon the nature of the items and services covered and not the costs associated with obtaining coverage for those items and services. The Department’s cost-sharing requirement is thus statutorily improper, as well as unnecessary and overly burdensome.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- The proposal that the charter school entity health plan would have to be designed to account for every single service and procedure is onerous and unreasonable. Conceptually, a charter school entity’s health plan could clearly be more valuable than a local school district plan when considered on the whole, but still require a higher payment for a specific service or procedure.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- The Department's proposed requirement limiting charter schools to offering the same "plan type" as the school district's most-selected plan is inconsistent with the statute and unnecessary.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- Beyond plan design elements like deductible, coinsurance, and copayments, benefits can vary significantly through different utilization management programs, such as a prescription drug plan with a more restrictive formulary or additional prior authorization protocols. It is unclear how the Department would consider these issues.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- If a charter school and school district are engaged in open enrollment at or around the same time, a school district's most-selected plan would not be identifiable until at or near the end of the enrollment period, leaving no time for the charter school to negotiate and contract for a health plan that corresponds to the school district's most-selected plan, and then complete enrollment for its own employees before the end of the enrollment period.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of

the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- If school districts competing for teacher candidates are not required to provide a comparison of benefits between the two districts, why should a charter school be required to do so. This is excessive and unnecessary, especially since the regulation already requires charter schools to provide comparable benefits.

Response: Section 1724-A(d) of the CSL (24 P.S. 17-1724-A(d)) requires every employee of a charter school to be provided "the same health care benefits as the employee would be provided if he or she were an employee of the local district." The Department is unable to change statutory requirements through the rulemaking process. The intent of final-form rulemaking is to provide a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL.

- School districts may offer different benefit plans for different collective bargaining groups (e.g., educational staff, support staff, etc.). The Department fails to explain how this would be addressed under the regulations.

Response: Section 1724-A(d) of the CSL (24 P.S. 17-1724-A(d)) requires every employee of a charter school to be provided "the same health care benefits as the employee would be provided if he or she were an employee of the local district." The intent of final-form 713.9 is to provide a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The regulation does not relieve a charter school of its duties as a public school.

- The regulations fail to consider that charter school entities are not at the bargaining table when a school district and its collective bargaining units negotiate health care benefits, plan design, and costs.

Response: Under section 1724-A(d) of the CSL (24 P.S. 17-1724-A(d)) the local board of school directors may require the charter school to provide the same terms and conditions with regard to health insurance as the collective bargaining agreement of the school district to include employee contributions to the district's health benefits plan. The law also requires the charter school to make any required employer's contribution to the district's health plan to an insurer, a local board of school directors or a contractual representative of school employees, whichever is appropriate to provide the required coverage. The Department is unable to change this requirement through rulemaking. The

intent of final-form 713.9 is to provide a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL.

- The type or categories of benefits under a charter school entity health care plan should not be tied to the benefit categories identified under the Patient Protection and Affordable Care Act, but rather the benefit categories offered by the applicable school district for comparison purposes as required by Section 1724-A(d) of the CSL. 24 P.S. § 17-1724-A.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex and Preamble reflect these changes.

- The Department seeks to substantially alter the manner in which charter schools procure, offer, and contribute financially to health insurance coverage for employees without analyzing or even acknowledging in the RAF the financial and other potential impacts of its proposed regulation on charter schools and their employees.

Response: Section 713.9 is intended to ensure that charters meet the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)), related to health benefits. Based on feedback, final-form rulemaking deletes much of the proposed regulation; reiterates the requirements of section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)); and proposes a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance to the CSL. The final-form Annex, Preamble and RAF reflect these changes.

- The CSL does not contemplate charter schools contributing to tax-advantaged accounts for the purchase of health care coverage.

Response: Section 1724-A(d) of the CSL (24 P.S. 17-1724-A(d)) requires every employee of a charter school to be provided "the same health care benefits as the employee would be provided if he or she were an employee of the local district." The charter school must make any required employer's contribution to the district's health plan to an insurer, a local board of school directors or a contractual representative of school employees, whichever is appropriate to provide the required coverage.

If the Department retains this section in the final regulation, in light of the comments above, we ask the Department to address in the RAF and Preamble the economic

impacts, feasibility, and reasonableness of requirements related to health care benefits as required by the RRA.

Response: The Department received a significant volume of comments concerning § 713.9 (Health Care Benefits). Many commenters – including Pennsylvania's two largest school districts, statewide education associations, and a coalition of school district superintendents – expressed support for this aspect of the rulemaking, arguing it would ensure that charter schools comply with an important provision of the CSL that did not envision the advent of regional or cyber charter schools and promote comparability in health care benefits across two sectors of public education.

Meanwhile, many other commenters expressed concern with the Department's proposal, and raised a series of legal, practical, and other considerations; the backdrop to all these concerns was an argument that, in seeking to provide charter schools with flexibility for implementing this provision of the CSL, the Department created a framework that might prove onerous and unworkable.

The Department takes these concerns, both for and against the proposed provision, seriously. We believe the level of opposition underscores that there is likely a difference in the scope and quality of health care benefits between school districts and charters, and that there is a compelling public interest - especially during an unrelenting global pandemic - to correct any such inequities.

Given this feedback, the Department has: 1) deleted much of the proposed regulation related to health care benefits; 2) reiterated the requirements of Section 1724-A.(d) of the CSL; and 3) proposed a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance.

In the final-form rulemaking, § 713.9 (a)(1) reiterates that, pursuant to section 1724-A of the CSL (24 P.S. § 17-1724-A), a charter school shall align employee health care benefits to health care benefits provided to employees of the authorizing school district; § 713.9 (a)(2) directs a regional charter to align employee health benefits to health care benefits provided to employees of the school district within which the regional charter school's administrative office is located; and § 713.9 (a)(3) directs a cyber charter school to align employee health care benefits to health care benefits provided to employees of the school district within which the cyber charter school's administrative office is located. Section (b) is inserted to permit authorizers to consider evidence provided by charter schools, regional charter schools, and cyber charter schools when making charter renewal determinations.

As proposed, this section would necessitate an authorizing school district to disclose information to the charter school, regional charter school, or cyber charter school entity

about:

- The most-selected health care plan available to school district employees;
- The contribution provided by the school district for the most-selected health care plan; and
- Health care benefit plan enrollment options and comparison information.

The regulations do not indicate how school districts would provide complex health benefits information to charter schools, regional charter schools, or cyber charter schools, nor does the regulation address the timing or frequency of when such information must be provided. We ask the Department to clarify implementation of this provision. Specifically, we ask the Department to explain how and at what intervals this information is to be provided to charter schools, regional charter schools, and cyber charter schools.

Response: The requirement that charter school employees be provided the same health care benefits as the employee would be provided in the local district is set forth in section 1724-A of the CSL (24 P.S. § 17-1724-A(d)). The Department deleted much of the proposed section 713.9 and the current processes used by charter schools to compare benefits will not be affected. Charter schools may at any time contact their authorizer to review this information.

Subsections (a) and (b) both use the phrases “meaningfully similar” and “substantially equivalent.” Who evaluates the meanings of these terms and makes the final determination as to what is meaningfully similar or substantially equivalent? A commenter states that it is unclear whether a “substantially equivalent cost-sharing structure” is referring to percentages or dollar amounts, and notes that there are several factors that come into play when analyzing a cost-sharing structure such as copays, deductibles, and premiums. We ask the Department to clarify the meanings of these phrases in the final regulation.

Response: The Department deleted much of the proposed section 713.9, including the requirement that charter schools demonstrate health care benefits are “meaningfully similar” and “substantially equivalent” to those offered by the local school district. Sections 713.9(a)-(b) were amended in the Annex. The Preamble also reflects this change.

Subsection (b) identifies the location of the “administrative office” of the regional charter school or cyber charter school as the distinguishing identifier as to which school district an entity looks to regarding health care benefits. If a regional charter school or cyber charter school has several administrative offices, this provision becomes unclear and ambiguous. As such, we ask the Department to clarify the definitions of “regional charter school” and “cyber charter school” to indicate that

each is administered from a single identified central office.

Response: Final-form rulemaking aligns the definitions of “regional charter school” and “cyber charter school” to those contained in the CSL; the definitions were not changed to indicate that each is administered from a single-identified central office, since the location of the charter school administration office is written into its charter. Each charter school, regional charter school and cyber charter school only has one central administrative location for its articles of incorporation and its charter. A school may operate from more than one physical location, but there is only one administrative office. This is akin to a school district operating several school buildings but having only one address of record for administration. Per *Discovery Charter Sch. v. Sch. Dist. Philadelphia*, 166 A.3d 304 (Pa. 2017), the court ruled that for a charter school to change a location, the charter must be amended and agreed upon by the school and the authorizer. Therefore, a regional charter school or cyber charter school could not change its location for any reason without approval of its authorizer.

Under Subsection (d), employees of a charter school who believe that the health care benefits being offered by the charter school are not comparable to those of the authorizing school district may file a complaint with the authorizing school district. However, it is unclear what an authorizing school district could do about the situation as there are no process nor remedy procedures provided for in the regulations. Commenters note that this requirement places an administrative burden on authorizing school districts that could be significant. Another commenter notes that this statement is not required by the CSL, and that it is not the duty of the authorizer to handle complaints made by employees of a charter school. We ask the Department to amend and clarify this provision in the final regulation.

Response: The Department removed section 713.9(d) pertaining to the complaint process from final-form rulemaking to address commenters’ concerns. The Department notes, however, that, the CSL does not provide for a complaint process for school employees. Without clear direction in the CSL, a complaint would be submitted to the authorizer for review and a determination of finding. Any action taken by the authorizer to resolve the complaint (e.g., revoking the charter) would be appealable to the Charter Appeals Board. The CSL does not provide the Department with authority to mitigate complaints and believes this must be addressed by comprehensive CSL reform. This clarification was added to the Preamble.

Subsection (e) states, “The authorizer of the charter school, regional charter school or cyber charter school may review the health care benefits policies of the charter school, regional charter school or cyber charter school.” Is there a need for this subsection since Section 1728-A of the CSL grants authorizing school districts ongoing access to charter school records? 24 P.S. § 17-1728-A.

Response: The Department removed 713.9(e) from final-form rulemaking.

Finally, the language in this section regarding health care benefits is unclear regarding multiple charter school organizations. Are each of the charters in a multiple charter school organization treated as separate charters for purposes of this provision, or are they to be treated as one charter with the location of a designated central administrative office being used for purposes of this health care comparison? We ask the Department to clarify how this section applies to multiple charter school organizations, and to clarify the definition of "multiple charter school organization" regarding a single identified central office if necessary.

Response: In an MCSO, each charter school has its own charter and would be treated separately for the purposes of this provision. The location of the MCSO administrative office does not have bearing on the provision.

An MCSO is formed when two or more charter schools or regional charter schools consolidate as a public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator, in accordance with section 1729.1-A of the CSL (24 P.S. § 17-1729.1-A). An MCSO is considered the holder of a charter for each individual charter school in the organization. 24 P.S. § 17-1729.1-A(e). To provide further clarification, the Preamble includes a statement explaining that the MCSO holds the charters for the individual charter schools but is not a charter school itself. Each charter school and regional charter school in the MCSO is required to comply with section 1724-A(d) of the CSL (24 P.S. § 17-1724-A(d)) and subject to the regulation. Therefore, a charter school in the MCSO would use the school district that authorized the charter school for the purposes of health care comparison; a regional charter school would use the school district in which the regional charter school's administrative office for the purposes of health care comparison.

GENERAL PROVISIONS - DEFINITIONS (SECTION 713.1)

1. Comment: Commonwealth Charter Academy maintains that the definition for educational management service provider is "legally and practically incorrect." (130)

"In practice, charter school entities contract with educational management service providers for services that allow for several of the day-to-day functions for management and operation of the charter school – curriculum, business services, personnel services, facilities management, etc. Under PDE's proposed definition, an entity may be considered an "educational management service provider" if any one of these functions is contracted to an outside entity or individual, irrespective of the scope of the work or cost of services in comparison to the school's total operations or budget and that an entity could be considered a provider if it provides."

Response: In final-form rulemaking the definition of “educational management service provider” is revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency.

2. Comment: Commenter CSMI Consulting (131) states the definition of “educational management service provider” is overbroad and inconsistent with the School Code and states that the Department failed to address the definition in the RAF. Commenter asks about the meaning of the language for several terms/phrases under the proposed audit requirements, including charter management organization, school design provider, business manager, and several other phrases.

Response: In final-form rulemaking the definition of “educational management service provider” is revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency.

3. Comment: Spectrum Charter School (178) and Chester Community Charter School (181) state that the definition of “charter school” is not consistent with the definition in the CSL; that the definition of “educational management service provider” is too expansive and could capture charter school employees like business managers and therefore should be more clearly defined.

Response: The definition of “charter school” in the regulation is consistent with the definition of “charter school” in the CSL (24 P.S. § 17-1703-A). In final-form rulemaking the definition of “educational management service provider” is revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency.

4. Comment: PA State Education Association (PSEA) (182) suggests adding a definition for “charter school foundation”; rewrite the definition for “English Learner” to mirror the ESEA definition; and clarify the definitions of “multiple charter school organization” and “regional charter school” to indicate that each is administered in a single central office.

Response: Final-form rulemaking revises the definition of English Learner to align with federal law and includes the term and definition for “charter school foundation”. The definitions of “multiple charter school organization” (24 P.S. § 5-501(b)(3)) and “regional charter school” (24 P.S. § 17-1703-A) are consistent with the CSL.

5. Comment: Education Law Center (189) recommends modifying the definition of “authorizer” to restate the responsibilities of authorizers that are outlined in the CSL.

Response: The Department acknowledges the comment and believes the definition of “authorizer” is consistent with the CSL and understood within the context of the regulation.

6. Comment: Commenter (190) identifies 13 terms that they say are either not defined in the CSL, are slightly different than what is defined in the CSL, or are not needed. These include authorizer; charter school; charter school entity; charter school law; cyber charter school; department; educational management service provider; English learner; multiple charter school organization; PA secure ID; regional charter school; school code and secretary.

Response: The Department appreciates the commentor recognizing that the regulation includes phrasing and terms used in the CSL. While that may appear duplicative, the Department believes such repetition provides context to the regulated community and, in some instances, is included for emphasis. In final-form rulemaking the definition of “educational management service provider” is revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency; and English Learner is revised to align to federal law. The other definitions are consistent with those of the CSL and School Code.

7. Comment: Philadelphia Charter for Excellence (192) maintains that the “authorizer” definition should also include “local boards of school directors in the case of a regional charter school”; “charter school” definition should include “local boards of school directors in the case of a regional charter school”; and that the definition of “educational management service provider” is broadly written and vague.

Response: Related to the definitions of “authorizer” and “charter school”, the definitions in the regulation are consistent with the CSL. In final-form rulemaking the definition of “educational management service provider” was revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency.

8. Comment: Commenters Propel Schools, Mastery Schools, and KIPP (196) state that the terms “charter school”, “cyber charter school”, and “regional charter schools” contain additional language beyond the definitions in the Charter School Law; that “English Learner” should mirror the federal definition contained in ESEA and ESSA; that the definitions of “authorizer” and “Department” are ambiguous; and that “Educational management service provider” is overly broad.

Response: Related to the definitions of “authorizer”, “charter school”, “cyber charter school”, “regional charter school”, and “Department”, the definitions contained in the proposed regulation are consistent with the CSL. In final-form rulemaking the definition of “educational management service provider” was revised to align with the definition contained in 24 P.S. § 5-501(b)(3) for consistency, and the definition of “English Learner” was revised to align with federal law.

APPLICATION REQUIREMENTS (SECTIONS 713.2, 713.3)

1. Comment: Commenters support proposed regulations to ensure charters are equitably and inclusively educating all students; to create transparency and clarity; to hold prospective charter schools to high academic, ethical, fiscal and administrative standards. (48, 52, 61, 83, 90, 92, 109, 129, 142, 144, 146, 147, 150, 156, 157, 160, 171, 172, 175, 177, 185, 186, 197, 202, 208, 210, 211, 212, 213, 216)

Response: The Department agrees with the comments.

2. Comment: The Pennsylvania State Education Association (PSEA) (182) supports the proposed regulations and offers several recommendations: modify enrollment requirements to reflect number of students a school is prepared to support rather than proposed enrollment; suggests including information about foundations; add section to include plans for culturally responsive and sustaining education; add subsection to request plans for facility cost repayment and specifying use of state money from reimbursement and grant programs; include caseload limits for staff serving students with disabilities; and add subsection for induction.

Response: The Department appreciates the comments and made the following changes to the final-form regulation:

- Modified section 713.2(c)(3) to limit the data request to the proposed term of the charter and allow for proposed overall enrollment capacity by grade level, and the projected share of student enrollment that the applicant anticipates will be comprised of students with disabilities, English Learners, and the other student groups;
- Revised language subsection (c)(4) to clarify applicability of including a charter school foundation in the application;
- Revised language in subsection (c)(13) to require the applicant to explain the special education programming and services that will be provide to students with disabilities; and
- Added language to subsection (c)(13) to require a plan and process for induction programming, as required by Chapter 49 (relating to certification of professional personnel).

Subsection (c)(13) requires the applicant include a faculty and professional development plan that complies with Chapters 4 and 49, which include culturally responsive and sustaining education. The Department did not include a subsection related to facility cost repayment and use of state money from reimbursement and grant programs, as the information would be included in the applicant's financial plan submitted under subsection (c)(9).

3. Comment: Disability Rights Pennsylvania (184) questions how a random admissions lottery could provide an accurate projection of students receiving special education services by primary disability, and suggests making a projection based on different

types of disabilities in the surrounding community; suggests that the application contain more specifics of how applicant will meet the needs of students with disabilities, including plans for assessing retention rate of these students. Commentator recommends charter operators indicate how they will: (1) comply with their Child Find obligations; (2) assess students' growth and progress and need for new or changed services; and (3) handle student discipline when a child's behavior is a manifestation of his/her disability."

Response: The Department agrees that an entity applying to establish a charter school must be prepared to meet federal and state obligations related to special education needs of students who enroll in the charter school and to adjust staffing and resources accordingly. Please see response to Comment #2. The commenters other suggestions would be included as part of other application requirements under subsection (c).

4. **Comment:** Education Law Center (189) recommends that the application include specific language referencing an applicant's responsibility to meet state and federal laws, including Chapter 14; additional information under the Parent Complaint Process; additional information on an applicant's retention policies; and additional information about projected student enrollment. Commenter recommends inserting the following subsection: "(v) If the applicant currently operates a charter school or intends to contract with an educational management organization, provide information on the composition of the student population by race, ethnicity, share of students who are economically disadvantaged, and number and share of students with disabilities by disability type in currently operating charter school or charter schools."

Response: The Department appreciates the comments. Final-form rulemaking revises section 713.2(c)(3) as described in Comment #2 and includes additional regulatory references where applicable. The Department agrees student retention policies are equally as important as enrollment policies for ensuring equity and success of all students but believes such a requirement is beyond the scope of regulation under the current CSL.

5. **Comment:** The PA School Boards Association (PSBA) (125) believes local authorizing school districts should be permitted to seek additional information from charter applicants and that the list of items on any application be non-exhaustive. PSBA believes that under "mission and educational goals" there should be a reference to curriculum and academic standards in current Chapter 4 regulations; that information on proposed physical facilities should include additional information on costs such as rent, utilities, taxes; that caseload requirements for charter school special education programming should be included; and that a renewal application should be developed.

Response: In response to the commenter's recommendations, a reference to the Chapter 4 (relating to academic standards and assessments) was inserted under section 713.2(c)(5), and section 713.2(12) was revised to specify the type of documentation the applicant should provide to demonstrate an ownership or lease agreement and to require a description of how the facilities are suitable for the school.

The Department removed caseload requirements in section 713.2(c)(13)(ii) since the requirement is not required by Chapter 711. Costs such as rent, utilities and taxes will be captured in the applicant's financial plan.

Section 713.2 applies to entities applying to local school districts to establish a charter school or regional charter school; section 713.3 applies to entities applying to the Department to establish a cyber charter school. The application may inform the charter school renewal process, but ultimately the authorizer is responsible for assessing whether a charter school is meeting the goals of its charter and determining whether the charter should be renewed or terminated in accordance with the CSL.

6. Comment: School District of Philadelphia (205) supports the proposed regulations and suggests several amendments, including requiring the words "charter school" in the charter's name; clarity around a charter's governance structure related to educational management service providers and fees associated with these providers; clarity around student services; and clarify around information on school facilities.

Response: The Department appreciates the feedback of Pennsylvania's most experienced charter school authorizer.

The Department agrees that regulations should acknowledge that in accordance with the CSL (24 P.S. § 17-1714-A(1)), a charter school needs to have the words "charter school" in the entity's name and inserted language into subsection (c)(2).

The Department acknowledges the commenter's interest in additional clarity concerning the relationship between an applicant's proposed governance structure and any proposed educational management service provider (EMSP); however, the Department believes the regulation, in its current form, will support comprehensive evaluation of charter school applicants that envision a role for EMSPs.

Similarly, the Department notes the commenter's interest in additional detail on how EMSP fees are derived (i.e., based on all school expenditures or only non-federal receipts); however, we decline to require a specific methodology in the common application. The Department notes the commenter's interest in the means by which the applicant may evidence demonstrated, sustainable support

for its charter school but believes the CSL and existing case law affords sufficient guidance in this area.

The Department revised subsection (c)(5)(i) to include examples of evidence of demonstrated, sustainable support and inserted a reference to the Chapter 4 standards in subsection (c)(5)(ii); and revised subsection (c)(7) to include a reference to Chapter 12 (relating to Student Support and Services).

The Department acknowledges the commenter's interest in requiring far more information from charter school applicants on proposed school facilities but believes this level of granularity is beyond the scope of what the Department and may be infeasible at the initial application stage.

The Department notes the commenter's request that the rulemaking include a provision that incomplete applications need not be reviewed by the authorizer; however, we believe such a provision would outstrip requirements of 1717-A of the CSL and create practical and procedural challenges for charter school applicants and authorizers alike.

7. Comment: Commenters Public Cyber Charter Association (128) and Philadelphia Charters for Excellence (192) believe the Department should develop a statewide, standard application that all charter schools and authorizers must use.

Response: Final-form regulation allows an authorizer to use the application developed by PDE or to create and adopt its own application form provided, at minimum, it includes the information identified in subsection 713.2(3)(c). This PDE-developed application will be posted publicly and available to any authorizer that wants to use it.

8. Comment: The Propel Schools/Mastery Schools/KIPP Philadelphia Schools (196), believe that the information required in the application exceeds what is required in the Charter School Law. Commenter argues that the amount of information required would make the renewal process difficult, and states that state law does not authorize the creation of such a form.

Response: The Department acknowledges the comment and addresses it above in Comment #5.

9. Comment: Commenters believe that the information required in the application are subjective standards that are "obstructive, time-consuming-punitive and pointless" (37, 60, 64, 68); "over the top" and burdensome (50, 63, 65, 162, 206); "move the operational goalposts" making it harder to renew applications (74); exceed what is required in law and will become a burden on charter operators (112, 138); provide power and control over charters (154).

Response: The Department acknowledges the comment and addresses it, in part, above in Comment #5. Section 713.2 provides clarity and consistency for authorizers and applicants as well as reflects application requirements currently required by the CSL and local authorizers.

10. Comment: Commenters believe that the application lacks objective standard and a consistent process and argues that there is no application requirement for district schools to open, renew or expand campuses. (69, 71, 89, 93, 105, 107, 139, 161)

Response: Section 713.2 (relating to the contents of charter school and regional charter school application) provides clarity and consistency for authorizers and applicants, as well as reflects application requirements currently required by the CSL and local authorizers.

11. Comment: Commenters believe the proposal creates minimum standards for charters but does not impose minimum standards on authorizers (141); allows school districts to create their own justifications for approval or rejection (165).

Response: Section 1717-A of the CSL (24 P.S. § 17-1717-A) requires an application to establish a charter school be submitted to the local board of school directors of the district in which the charter school will be established. Section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)) directs the local board of school directors to evaluate a charter school application. The Department does not have authority to impose evaluation criteria upon authorizers.

12. Comment: Commenters believe district applications should be under oversight of PDE because authorizers can impose requirements that can lead to “delay, damage and possible extinction” of charters. (151, 163)

Response: The Department acknowledges the comments but is unable to accept the recommendation due to section 1717-A of the CSL (24 P.S. § 17-1717-A) requiring an application to establish a charter school or regional charter school be submitted to the local board of school directors of the district in which the charter school will be established.

13. Comment: Commonwealth Charter Academy (130) believes requirements extend beyond what is required in CSL and that many of the details required in the application may be difficult or impossible to estimate at the time of application and may have no bearing on the ability of applicant to meet requirements of CSL or provide comprehensive learning experiences for students.

Response: Section 713.2(c) clarifies the minimum application requirements under section 1719-A of the CSL (24 P.S. § 17-1719-A) as well as supports authorizers in meeting their statutory obligations under section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)), Section 1717-A(c) of the CSL (24 P.S. 17-

1717-A(c)) requires an application to establish a charter school be submitted “to the local board of school directors of the school district where the charter school will be located by November 15 of the year preceding the school year in which the charter school will be established.” The items required in section 713.2(c) are essential for an authorizer confidently to award a charter to a school opening nine months later.

14. Comment: CSMI, LLC (131) believes that the Department does not have statutory authority to impose charter school application requirements.

Response: Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A). The Department is not adding any additional requirements beyond what is already required by law under 24 P.S. § 17-1719-A.

15. Comment: PA Coalition of Public Charters (173) believe the application requirements create a minimum standard but doesn't impose maximum requirements on authorizers or restrict ability of authorizing party to create burdensome requirements during the application process. The commenter thinks “subjective” requirements can be used to discourage charter applicants or to deny an application.

Response: The CSL does not permit the Department to limit the requirements that an authorizer may include in a charter school or regional charter school application and contends section 713.2(c) clarifies the minimum application requirements under section 1719-A of the CSL (24 P.S. § 17-1719-A). The regulation also supports authorizers in meeting their statutory obligations under section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)), which states the local board of school directors is to evaluate a charter school application based on criteria, “including, but not limited to, the following:

- (i) The demonstrated, sustainable support for the charter school plan by teachers, parents, other community members and students, including comments received at the public hearing held under section (d).
- (ii) The capability of the charter school applicant, in terms of support and planning, to provide comprehensive learning experiences to students pursuant to the adopted chapter.
- (iii) The extent to which the application considers the information requested in section 1719-A and conforms to the legislative intent outlined in section 1702-A.
- (iv) The extent to which the charter school may serve as a model for other public schools.”

16. Comment: Spectrum Charter School (178) believes regulations should restrict the district's ability to use the process to discourage/deny an application by the imposition of burdensome requirements that are not necessary; overall enrollment projections should be limited to the proposed charter term; is impossible to project number of students receiving special education services; impossible to project race and ethnicity of applicants; description of additional admin staff is overly broad and should be limited principal and direct reports; cannot name foundation if does not yet exist; description of organizational chart needs clarity.

Response: The Department acknowledges the comments and made the following changes in final-form rulemaking:

- Inserted section 713.2(f) to permit a charter school applicant to supplement the application with additional information it believes the authorizer may find beneficial as part of its review.
- Revised section 713.2(c)(3) to clarify that proposed enrollment is for the proposed term of the charter and to include the projected enrollment capacity by grade level.
- Removed the caseload requirement in section 713.2(c)(13), since neither statute nor Chapter 711 include or require case load requirements for staff of charter school students receiving special education services.

17. Comment: Chester Community Charter states that the Department is trying to change state law through regulation because language is identical to language in SB 27 and HB 272. Believes that application requirements for Educational Management Service Provider have no direct statutory basis. (181)

Response: The Department acknowledges the comments and asserts sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department to promulgate regulations relating to charter school entities and to implement the CSL (24 P.S. §§ 17-1701-A – 17-1751-A). The final-form regulation lists the minimum components for an application to establish a charter school or regional charter school; the application requirements do not change based on the type of entity submitting the application.

18. Comment: Commenter (183) states that the requirement to project the number of students receiving special education services is an unrealistic standard; questions the need for an organizational chart; says the requirement to demonstrate standards for board of trustees' performance imposes an additional burden; and states that the requirements for contracting with an educational management service provider has been determined by the Charter Appeal Board and the Commonwealth Court.

Response: The Department appreciates the comments and removed section 713.2(c)(4)(v) which would have required a charter school or regional charter

school applicant to includes standards for board of trustees' performance, as recommended.

The Department also changed the requirement in section 713.2(c)(3)(ii) and (iii) of the final form regulation to allow the applicant to submit the proposed overall enrollment for the proposed charter term and for projected share of student enrollment by students with a disability, English Learner, and other student groups. Applicants could use national, state, and local data sources (e.g., data from the U.S. Census Bureau, National Center for Education Statistics, Pennsylvania Department of Education, etc.) to estimate the composition of the student body by age, race, ethnicity, income level, disability, and primary household language, as well as pre-enrollment forms and other means to meet this requirement.

19. Comment: Commenter (190) says that certain information, such as name of proposed charter school is already required by Charter School Law and therefore unnecessary; allowing local authorizers to request additional information puts an additional burden on charter school applicants; requirement to project number of special education students, English learners, race, etc., is prohibited by law; requirement to provide information on entities applicant intends to contract with is not possible since school hasn't been approved yet; requirements for additional information on facilities that will leased or owned contradict case law.

Response: The Department appreciates the commentor recognizing that regulations include phrasing and terms used in the Charter School Law. While that may appear duplicative, the Department believes such repetition provides context to the regulated community and, in some instances, is repeated in the regulation for emphasis. In addition, the Department made the following changes:

- Aligned the definition of "English Learner" with federal law;
- Clarified the provisions of section 713.2 apply to applications to *establish* a charter school or regional charter school;
- Clarified the enrollment data requirements in section 713.2(c)(3)(ii)-(iii); and
- Revised section 713.2(c)(12) to permit letters of intent.

20. Comment: Commenter Philadelphia Charters for Excellence (192) states that Department does not have the authority to require information in applications, and that allowing local authorizers to request additional information will "severely curtail, if not eliminate" the ability to establish a charter school. The commenter supports creation and required use of a standard application but has "serious concerns" about the amount

of information required, saying the regulation expands what is required in the Charter School Law. The commenter asserts it is impossible to provide proposed plans for professional development when they do not yet know "which students will walk through their doors."

Response: The Charter School Law does not permit the Department to limit the requirements that an authorizer may include in a charter school or regional charter school application. Section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)) indicates the local board of school directors are to evaluate a charter school application based on criteria "including, but not limited to" what is outlined in Section 1717-A(e)(2). Section 713.2 is intended to clarify the application requirements in the CSL and provide consistency for applicants and authorizers.

The Department acknowledges that professional development plans will and should change based on the needs of the students and educators. Chapters 4 (relating to academic standards and assessment) and Chapter 49 (relating to certification of professional personnel) of Title 22 of the Pennsylvania Code require all public schools, including charter schools, regional charter schools, and cyber charter schools, to provide planned instruction; design educational programming to meet the state academic standards; provide an induction experience for first-year teachers and educational specialists; and provide continuing education to faculty. References to these regulations were inserted into the final-form regulation for emphasis.

21. **Comment:** Pennsylvania Partnerships for Children (120) supports a standardized application form described in sections 713.2 and 713.3 that creates uniform process and increases public transparency, and the need to show curriculum that meets the needs of at-risk students, including those with learning disabilities and English Learners. Commenter also supports requirements related to suspension and expulsion protocols. Additionally, commenter expresses disappointment that proposed regulations do not specifically address performance standards and accountability measures for underperforming schools.

Response: The Department appreciates the comments. With regards to performance standards and accountability measures, charter schools – like all public school entities – are required to develop and submit a comprehensive plan to PDE that addresses performance standards and accountability measures. Underperforming charter schools, regional charter school, and cyber charter school also are subject to annual meaningful differentiation and may be designated for school improvement, under the federal Every Student Succeeds Act.

22. **Comment:** PA Charter Performance Center (126) supports the provisions in section 713.2(c)(4)(vi) that require charter school applicants that contract with or intend to

contract with an educational management service provider to submit additional information about the relationship. Commenter believes the regulation will provide more transparency about the business relationships between cyber charters and educational management service providers, which will in turn benefit students and the taxpayers who fund charter schools.

Response: The Department agrees and appreciates the comments.

ENROLLMENT (SECTIONS 713.4, 713.5)

1. Comment: Commenters support the proposed regulation as a way to ensure that charter schools are “equitably and inclusively” educating all students; not discriminating against students based on intellectual and physical ability; and ensuring all students have equal access. (43, 48, 49, 52, 54, 61, 67, 109, 133, 142, 146, 147, 156, 157, 160, 171, 172, 177, 182, 184, 189, 197, 202, 208, 210, 211, 212, 213)

Response: The Department appreciates the comments.

2. Comment: Pennsylvania Partnerships for Children (120) supports the inclusion of an annual reporting process that outlines the number of overall and qualified applicants and the number of students who were offered enrollment and who accepted. Commenter says the regulation will ensure fairness in access to charter school enrollment.

Response: The Department appreciates the comment.

3. Comment: The Pottstown School District (175) supports the requirement that admission policies be publicly posted to avoid discriminatory enrollment practices.

Response: The Department appreciates the comment.

4. Comment: The Pennsylvania State Education Association (182) recommends adding the disaggregation of data in annual reports in a way that is consistent with what is required under the Department’s ESSA Consolidated State Plan.

Response: The Department agrees with the recommendation and revised section 713.4 and section 713.5 to require charter schools to include enrollment data disaggregated by student group, in accordance with federal requirements, in the annual report and to post the data on their websites.

5. Comment: Children First (185) supports the proposed regulations, stating that a “lack of transparency around the enrollment process has raised questions about who charter

schools ultimately enroll and how students especially students with disabilities, low-income students, English Language learners and students of color are being served."

Response: The Department appreciates the comment.

6. **Comment:** Arc of Pennsylvania (186) supports the proposed regulations, stating that it "continue[s] to see a disproportionate lower level of enrollment of students with [intellectual and developmental disabilities] especially those with more complex needs, in charter schools in comparison to traditional public school settings."

Response: The Department appreciates the comment.

7. **Comment:** The Education Law Center (189) supports the regulation, indicating the problem of equitable enrollment in charter schools has been recognized nationally. The commenter offers the following recommendations related to enrollment: amend the section to require charters to adopt retention policies in addition to selection policies; include nondiscrimination language on the student application to the charter school; amend subsection (d) to require student demographic data; and insert the following as new subsection under section (c): "State that public notice of the selection process should include the number of available slots and number of applicants, that this information should be included on the website, and the lottery results should be available for public inspection at the charter school."

Response: The Department appreciates the comments. The Department revised section 713.4 and section 713.5 of the regulation to require charter schools to include enrollment data disaggregated by student group, in accordance with federal requirements, in the annual report and to post the data on their websites. The Department agrees student retention policies are equally as important as enrollment policies but believes such a requirement requires an amendment to the CSL. The Department revised section 713.4 of the regulation to require charter schools and regional charter schools to include in the public notice the number of available slots and number of applicants.

8. **Comment:** The School District of Philadelphia (205) suggests that the regulations provide the definition or description of the term "random basis" in relation to the term "lottery"; and that the regulations should address waitlists and procedures related to waitlists.

Response: The Department recognizes that some commenters urge greater prescription on this count, while others object to this section in its entirety. We believe the proposed language reflects an important middle ground – one that will require charter school applicants and existing charter schools to enact, publicize, and implement policies to effectuate CSL requirements and to provide

data using existing Federally-required parameters to understand whether these policies are fair, inclusive, and navigable for students and parents.

9. Comment: The School District of Pittsburgh (216) supports the regulations and suggests that information posted on the school's website be accessible to families with limited English proficiency and disabilities; and that charter schools be required to publish special education specific information and resources, including enrollment by disability and "how funding is used."

Response: The Department appreciates the district's commitment to transparency and language access and believes the final-form rulemaking offers important clarity on both counts. See response to Comment #4.

10. Comment: Commenters believe that the Charter School Law requires charter schools to use random selection procedures for enrollment and therefore the proposed regulations are redundant and unnecessary. (130, 173, 183, 190)

Response: The Department believes that the rulemaking is crucial to ensuring that random selection procedures function that way – i.e., by providing all students and families with clear, understandable information and requiring charter schools to make basic reports on resulting admissions.

11. Comment: PA School Boards Association (PSBA) states that more guidance or standards are needed for what a random selection process should look like. Without that, it has concerns about equity and accessibility. Commenter also is concerned that the provision preventing cyber charters from capping enrollment prevents cyber charter schools from recognizing staffing or resource limitations. (125)

Response: The Department appreciates the commenter's attention to equity and access, and believes the regulation makes a significant contribution to these goals by requiring charter schools to: 1) timely adopt an enrollment policy, 2) publicly post this policy and include it in renewal applications, 3) ensure public notice of the policy to include translation and accessibility provisions, 4) detail optional enrollment preferences, and 5) report on the impact of the enrollment policy relative to student demographics. The rulemaking does not prevent cyber charter schools from instituting enrollment parameters or caps; rather, the rulemaking makes clear that such limits may not be unilaterally imposed. The distinction in the rulemaking between brick-and-mortar charter schools and cyber charter schools reflects the fact that enrollment limitations are common in the former.

12. Comment: Public Cyber Charter School Association (PCCSA) states that random selection policies should apply to all charters. Cyber charter schools should have flexibility to make enrollment decisions just like brick-and-mortar charters, and the

reporting requirements should include only the total number applicants and the total number students enrolled. (128)

Response: The distinction in the rulemaking between brick-and-mortar charter schools and cyber charter schools reflects the fact that enrollment limitations are common in the former.

13. **Comment:** Propel Schools/Mastery Schools/KIPP Philadelphia Schools states renewal applications are not required by law and therefore regulations can't require it. (196)

Response: The Department disagrees, as the CSL clearly describes renewal provisions, procedures, and the process for appealing a nonrenewal of a charter.

14. **Comment:** Commenter states that enrollment caps take away funding from charter schools that helps provide education to students in the schools. (101)

Response: The Department disagrees as enrollment parameters would not effectuate a cut in enrollment but provide clarity around a school's growth and how that growth supports equitable, predictable access.

15. **Comment:** Commonwealth Charter Academy states CSL already prescribes process for random selection; states paragraph (b) uses undefined term "applicant"; regulations fail to address how enrollment caps will not have disparate impact on minority and low-income families. (130)

Response: The regulation clarifies the random selection process in the CSL. The Department believes the term "applicant" is understandable within the context of the subsection and does not require further definition. The Department asserts enrollment parameters would not effectuate a cut in or disparate enrollment but rather provides clarity around a school's growth and how that growth supports equitable, predictable access.

16. **Comment:** PA Coalition of Public Charter Schools (173) states that the proposed regulation would have the opposite effect of creating a fairness among student applications and instead would make the process more cumbersome and restrictive to families.

Response: The Department disagrees in that the rulemaking outlines basic expectations for charter schools, ensures transparency for the regulated community including prospective students and families of charter schools, and prescribes a process for understanding the relationship between enrollment policies and the demographics of the admitted student body.

17. Comment: Spectrum Charter School (178) states that Section 713.4(b) appears to be in conflict with section 713.4(a) which requires a charter to enact a random enrollment policy within three months of a charter being granted. However, subsection (b) appears to require this policy in the charter application. Also, commenter states that CSL does not impose requirements on charter renewal applications so the regulation should not require it; and that requiring the annual report to contain application and enrollment numbers serves no purpose and will impose additional administrative work.

Response: Section 713(a) outlines requirements for existing charter schools and Section 713(b) outlines requirements for charter school applicants. The Department disagrees with the second portion of the comment, as the CSL clearly describes renewal provisions, procedures, and appeals. With regards to annual reporting, the CSL requires charter school authorizers to annually assess whether a charter school is meeting the goals of its charter, which includes the school's enrollment policy.

18. Comment: Barton Gilman Law (183) says the requirement to enact a random selection policy is unnecessary and notes that the School District of Philadelphia already requires such a policy to be uploaded into its system annually. Commenter also asks if the Department conducted an analysis of the effect it will have on the ApplyPhillyCharter consolidated enrollment and lottery system for the City of Philadelphia.

Response: The Department appreciates the comment. The phase-in of the rulemaking will allow individual authorizers to adjust a common application system to meet the regulatory requirements.

19. Comment: Philadelphia Charters for Excellence (192) says the requirement may cause an existing charter's policy to be in conflict with the "new policy" which could give authorizers the ability to non-renew charters or force them to file an amendment which could be expensive and lengthy process.

Response: The phase-in of the rulemaking will allow individual authorizers to adjust a common application system and individual charter schools to modify any existing policy to meet the regulatory requirements.

BOARD OF TRUSTEES (SECTION 713.6)

1. Comment: Commenters, including the Pennsylvania School Boards Association (PSBA), the American Federation of Teachers (AFT), Pennsylvania State Education Association (PSEA), Education Law Center, Public Cyber Charter School Association (PCCSA), PA Charter Performance Center, Leaders for Educational Accountability and Reform Network (LEARN), and Pennsylvania League of Urban Schools (PLUS) support

holding charter schools to the same standards that traditional public schools must follow. Commenters believe the proposed regulations are necessary to avoid potential conflicts of interest. (14, 43, 45, 46, 48, 49, 52, 61, 67, 109, 120, 125, 126, 128, 129, 143, 146, 147, 150, 156, 157, 160, 171, 172, 174, 175, 177, 182, 189, 193, 202, 208, 210, 211, 212, 213, 214)

Response: The Department agrees with the comments.

2. **Comment:** The Pennsylvania State Education Association (182) recommends that the proposed regulations also should apply to charter school administrators.

Response: The Department appreciates the comment and will consider the recommendation as part of future rulemaking.

3. **Comment:** Education Law Center (189) supports the proposed regulations and notes that the independence of charter boards of trustees from educational management organizations has been identified as an issue nationally. Commenter suggests amending 713.4(iv)(a) with: "(e) in the event that charter will contract with a for-profit educational management organization, evidence that the charter school's board of trustees will retain real and substantial authority over the operation of the school, educational decisions, and staff."

Response: The Department appreciates the comments and revised section 713.2(c)(4) pertaining to the governance structure of the charter school or regional charter school to include a new subsection that addresses the suggestion.

4. **Comment:** School District of Philadelphia (205) supports the proposed regulations with the following suggested amendments: regulations should require that at least one parent representative to serve on each charter school board of trustees; and the regulations should require that boards of trustees meet at least 8 times in a calendar year and provide on the publicly available website: A list of board members and contact information; all meeting dates and committee meeting dates; publicly accessible meeting locations; minutes from all meetings inclusive of all votes taken at a meeting, within 30 days after adoption at a public meeting.

Response: The Department acknowledges that having a current charter school parent serve on the school's governing board can be beneficial and supports actions that improve transparency of school governance. Section 1716-A(c) of the CSL (24 P.S. § 17-1716-A(c)) requires the board of trustees of a charter school to comply with the state's Sunshine Act.

5. **Comment:** School District of Pittsburgh (216) supports the proposed regulations and suggests that a time constraint be imposed on the submission of the statement of financial interest to each authorizer.

Response: Section 713.6 of the regulation requires each member of the board of trustees of a charter school entity to submit a statement of financial interest for the preceding calendar year with the board of trustees of the charter school entity, the State Ethics Commission, and each authorizer of the charter school entity by May 1 of each year that the member holds the position and no later than May 1 of the year after the member leaves the board.

6. Comment: Propel Schools, Mastery Schools and KIPP Philadelphia Public Schools state that charter school trustees are subject to the state Ethics Act under the Charter School Law but do not object to the proposed regulation. (196)

Response: The Department agrees and acknowledges the comments.

7. Comment: Commenters state that charter school trustees are subject to the state Ethics Act under the Charter School Law so the regulation is redundant and unnecessary. (130, 173, 178, 183, 190, 192)

Response: The regulations clarify what is meant under the CSL when Trustees and administrators are referred to as “public officials” and when the CSL references Title 65, Pennsylvania Consolidated Statutes.

8. Comment: Commenter states that Statements of Financial Interests are not under the jurisdiction of PDE but are under the jurisdiction of the Ethics Commission. (192)

Response: Section 1715-A(11) states trustees of a charter school are public officials. As such, they are subject to Section 1104 of the State Ethics Act which requires each public official to file with the State Ethics Commission a statement of financial interests for the preceding calendar year no later than May 1 of each year that the individual holds the position and of the year after he leaves such a position. In the regulation, the Department exercises its regulatory authority under Sections 1732-A(c) and 1751-A of the CSL (24 P.S. §§ 17-1732-A(c) and 17-1751-A) to clarify the ethics provisions of the CSL and ensure charter school entities and authorizers receive the filings to comply with the duties imposed on them by the law.

9. Comment: Commenters state that it is past time for the clarification of penalties for individuals who violate the public trust and use their positions as a public-school trustee for personal financial gains. (51, 75, 76, 95, 142)

Response: The Department agrees that members of school governing boards are public officials and should not be permitted to use their positions for personal financial gains.

FISCAL AND AUDITING STANDARDS (SECTION 713.7)

1. Comment: Commentors, including the Pennsylvania Partnership for Children, Leaders for Educational Accountability and Reform Network (LEARN), Pennsylvania Association of School Administrators (PASA), Pennsylvania League of Urban Schools (PLUS), Pennsylvania State Education Association (PSEA), Disability Rights Pennsylvania (DRP) support the proposed regulations to help ensure accountability, equity and transparency in the charter sector. (9, 43, 48, 49, 52, 67, 82, 83, 84, 90, 95, 109, 114, 120, 129, 142, 143, 144, 145, 146, 147, 150, 156, 157, 160, 171, 172, 175, 177, 182, 197, 202, 208, 210, 211, 212, 213, 214, 217)

Response: The Department agrees with the comments.

2. Comment: The Pennsylvania School Boards Association (PSBA) (125) and School District of Philadelphia (205) support preparing financial statements in accordance with GAAP and obtaining an independent annual financial audit that follows governmental account standards and auditing standards. Commenters recommend additional requirements in regard to material problems noted in audits, as well as violation of generally accepted standards of fiscal management.

- Clarify regulations to indicate that material problems noted in audits would also be evidence of violations of generally accepted standards of fiscal management, such as failure to pay bills in timely manner or failure to make PSERS payment.
- There are no requirements that the charter school have any particular financial policies in place for auditors to then ascertain if the charter school is in compliance with its own standards. The charter school's financial policies might be woefully inadequate or may not exist at all but there is no standard for what should exist in every charter school for the auditor to then evaluate.
- Item (c)(1) requires a review of the charter school's enrollment records but there is nothing to indicate what types of enrollment records are required to be maintained. What is the auditor supposed to review to determine if there is support for the charter school's invoices? What if the records only reflect supportive information and not the full gamut of information available such as residency information?
- There are no requirements for audits to address non-payment or delayed payments of bills and why this occurred.
- Audits could also check to make sure Statements of Financial Interest are properly and timely filed by all charter school trustees and public employees.
- The regulations fail to include an analysis of short-term and long-term financial health metrics such as total margin, current margin, average days cash on hand, net position, non-restricted fund balance, debt ratio, and debt service coverage ratio.
- The regulations should include a requirement that charter schools adopt financial policies, such as internal control policies.

Response: The Department acknowledges the comments. The information suggested by the commenter is included in a Single Audit, which the Department receives when an LEA is awarded more than \$750,000 in federal funding. Due to the large amount of federal relief assistance allocated to public schools during the pandemic, most LEAs meet the Single Audit requirement. Charter schools are considered LEAs in Pennsylvania. For consistency, the same auditing requirements should apply to all public schools.

3. Comment: The School District of Pittsburgh (216) supports the proposed regulations and recommends that this fiscal management includes specific spending of special education funds and publishing the annual budget and final audit on the charter school's website.

Response: State law does not require public schools to use state special education funding only on special education supports and services nor does it prevent unspent special education funds from being used for general expenses. Imposing additional requirements on charter schools would be inconsistent with current law.

4. Comment: Commenters, including the Public Cyber Charter School Association (PCCSA) (128), American Federation of Teachers (AFT) (174), Propel Schools, Mastery Schools Network, KIPP Philadelphia (196) support the proposed regulations related to fiscal and audit standards.

Response: The Department appreciates the comments.

5. Comment: Disability Rights Pennsylvania (184) supports the proposed regulations and recommends adding specific language that requires charter schools to use all special education funds they receive on special education supports and services and stipulates that unspent special education funds should not be used for general expenses.

Response: State law does not require public schools to use state special education funding only on special education supports and services nor does it prevent unspent special education funds from being used for general expenses. Imposing additional requirements on charter schools would be inconsistent with current law.

6. Comment: Commenters state that charter schools should not be subjected to more fiscal and auditing standards than traditional public schools. (44, 69, 71, 99, 101, 155, 164, 190, 194)

Response: The Department agrees and includes fiscal management and auditing standards in the regulations to provide consistency among public schools. Charter schools are public schools in Pennsylvania. School districts adhere to generally accepted accounting principles. The CSL also requires a charter school application to include the provisions which will be made for auditing the school under section 437 of the Public School Code (24 P.S. § 4-

437). Consistent, standards of fiscal management and audit requirements will make it easier for charter school authorizers to annually assess a charter school entity's operation and financial health, as required by the CSL.

7. Comment: Commenters, including Commonwealth Charter Academy (CCA) (130), Pennsylvania Coalition of Public Charter Schools (173), Philadelphia Charters for Excellence (192), and Barton Gilman (183) state that the proposed regulations are already in practice and required under the Public School Code and are therefore unnecessary.

Response: The regulation will assist charter schools and charter school authorizers with meeting the requirements of the CSL by providing clarification and consistency. Precise accounting and auditing standards will make it easier for charter schools to meet the auditing requirement and for charter school authorizers to annually assess a charter school entity's operation, as required by the Public School Code.

8. Comment: Spectrum Charter School (178) is opposed to the proposed regulations and states that the following must be addressed under sections 713.7(c)(3) and(4):

"(3) A review of whether the charter school entity has the required number of certified staff." Commenter states that an independent financial auditor is not qualified to make this determination.

"(4) A review of the percentage of payroll the charter school entity contributed to employee retirement programs." Commenter states this is irrelevant and needlessly increases the cost of an audit.

Response: The regulation will assist charter schools and charter school authorizers with meeting the requirements of the CSL by providing clarification and consistency. The CSL requires charter schools to maintain certain staffing levels and to make payments to employee retirement programs.

9. Comment: Arc of Pennsylvania (186), support charter schools being required under fiscal accountability to only spend special education dollars on the supports and services needed by their students with intellectual and developmental disabilities (IDD).

Response: State law does not require public schools to use state special education funding only on special education supports and services nor does it prevent unspent special education funds from being used for general expenses. Imposing additional requirements on charter schools would be inconsistent with current law.

REDIRECTION PROCESS (SECTION 713.8)

1. Comment: Commenters support the proposed regulations and believe the proposed regulations will bring clarity to the law and help to make charters more transparent and ethical. (9, 129, 142, 146, 147, 160, 208, 210, 211, 212, 213)

Response: The Department agrees and appreciates the comments.

2. Comment: Commenters believe the redirection regulations are “backhanded approach to siphoning off funds to reduce charter schools to begging and waiting for funds” (37, 60, 64, 68); won’t fix the transfer of funding between school districts and charters (66)

Response: The Department acknowledges the comments but is unable to address the funding concern, which relates to the current provisions of the CSL. Instead, section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL (24 P.S. § 17-1725-A).

3. Comment: Commenters believe regulations will minimally reduce the number of funding redirection requests, and that the system is broken and should be corrected rather than placing additional reporting burdens on charter schools. (74)

Response: The Department agrees that the CSL should be amended to address school funding issues. Until that occurs, section 713.8 of the regulation clarifies and builds upon the payment process for charter schools as set forth in section 1725-A of the CSL (24 P.S. § 17-1725-A) to provide predictability and order for charter schools and school districts.

4. Comment: Commenter says redirection causes financial issues for charter schools because they are not granted state funds each year. (101)

Response: The Department acknowledges the comment but is unable to address the concern due to charter school funding being a provision of the CSL and beyond the scope of regulation.

5. Comment: The Public Cyber Charter School Association (PCCSA) (128) recommends clarifying how the redirection process will impact rolling enrollments and that school districts must submit accurate PDE-363 Forms. Commenter states the requirement that requests to the Secretary of Education not include tuition for the month after the month request is submitted is not practical.

Response: Any student not included with a current-year invoice may be included on an end-of-year reconciliation. The regulations do not impact the current PDE subsidy redirection process. A charter school must first submit a request to the resident school district. Then, any unpaid request may be sent to PDE in a window that begins 10 days after payment was statutorily due from the school district and may include enrollments up to the month in which the request is submitted to PDE. In addition, the stipulation in the regulations only refer to the

subsidy redirection process and does not impact the requests that charter schools must first send directly to school districts.

The PDE Form 363 is used by school districts to calculate their nonspecial education and special education school funding rates under section 1725-A of the CLS (24 P.S. § 17-1725-A). Section 713.8 clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL (24 P.S. § 17-1725-A); the regulation does not change the formula for rates set forth in the CSL or the PDE Form 363

6. Comment: The Pennsylvania School Boards Association (PSBA) (125) believes that a 10-calendar day window to receive an invoice from a charter school, review it, and make payment does not provide districts with sufficient time to review and verify enrollment and residency data on invoices for charter schools. Requirement for charter school to submit a payment request for a month before the month ends does not allow for proper accounting of enrollment changes that may happen at the end of each month. PSBA recommends adding a requirement in the regulations to ensure school districts receive enrollment notification forms for all brick-and-mortar charter schools. They also recommend adding a requirement for the charter school to include proof that the payment request was provided to the school district and when. Charter schools should also be prohibited from changing the amount being sought thru the redirection from what had originally been submitted to the district for payment. Regulations should require charter schools to notify school districts when a subsidy redirection request is submitted to PDE to avoid duplicate payments. PSBA believes that districts should have the right to challenge payment requests and/or documentation received from a charter school as part of the request when it has reason to believe the amount and/or information is incorrect. Regulations should include a requirement for PDE to verify the accuracy of a redirection request.

Response: Final-form section 713.8 clarifies charter school entities are to submit a payment request to a school district no later than 10 business days prior to the fifth of the month. Any adjustments to enrollments throughout the school year would be applied in the following month's invoice process and, ultimately, during the end-of-year reconciliation process following the end of the school year.

The Department agrees that a longer timeframe for charter schools to submit and for school districts to review invoices would be optimal. However, section 1725-A(a) of the CSL (24 P.S. § 17-1725-A(a)) obligates school districts to pay for students enrolled in charter schools by the fifth day of each month. Due to the everchanging nature of charter enrollments throughout the school year, a school district does not know how much a charter school is owed without an invoice from the charter school. A school district is incapable of making a payment to a charter school without monthly enrollment information from the charter school. The timely submission of charter enrollment information by charter schools is essential for school districts to meet the statutory deadline to make payment to charter schools by the fifth of each month. The Department believes a change to the date by which a payment must be made by school

districts requires an amendment to the CSL and is beyond the Department's regulatory authority.

Beginning February 2022, charter schools can submit a web-based form to the Department to request a subsidy redirection. Charter schools complete the form using the Charter School Redirection (CSR) tool in the Department's Consolidated Financial Reporting System (CFRS). The information required for the form is available in a charter school's student information system and is information that they report to the Department annually for the purposes of federal reporting. The process is completely web-based with no documentation being submitted outside of CFRS. The CSR tool is expected to result in fewer requests being returned to charter schools due to errors and a more efficient process for charter schools, school districts, and the Department. School districts also can use the system to see in real-time which charter schools submitted redirection requests and the status of those requests.

With regards to a district being able to challenge a payment, section 1725-A(6) of the CSL (24 P.S. § 17-1725-A(6)) provides school districts with an opportunity to challenge whether the charter school documented that its students were enrolled in the charter school, the period during which each student was enrolled, the school district of residence of each student, and whether the amounts deducted from the district were accurate. The CSL would need to be amended to change this process for the school district.

The Department is unable to address the commentor's other recommendations since they relate the charter school funding provisions of the CSL and are beyond the scope of the Department's regulatory authority.

7. Comment: Pennsylvania State Education Association (PSEA) supports the promotion of "transparency, equity, quality, and accountability," throughout the proposed rulemaking. Commenter recommends that the Department have the flexibility to allow larger school districts to have longer than 10 days to make payment but no longer than 15; and that charter schools and school districts each be required to identify a designated person to be notified of redirection requests. (182)

Response: The Department appreciates the commenter's support to create a regulatory timeline to provide order and standardization to the redirection process. The Department agrees that a longer timeframe for charter schools to submit and for school districts to review invoices would be optimal. The response to #6 addresses each of the commenter's concerns. **8. Comment:** Propel Schools, Mastery Schools and KIPP Philadelphia Public Schools (196) believe requirements are inconsistent with those currently required under the CSL. The proposed regulation requires that a request must be: on a form created by PDE; contain 11 mandatory pieces of information about the student; submitted only between the 15th and 25th of each month; and limited to requests only for the months submitted.

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Please see response to #6.

9. Comment: Commonwealth Charter Academy (CCA) (130) believes that PDE creates extensive paperwork requirements for charter school entities to seek redirection but fails to address the issue that many school districts do not provide a public calculation of their rates under section 1725-A(a)(2). The timelines put forward by PDE are difficult to determine and adhere to as well as impose an undue burden on charter schools.

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the Charter School Law. School district calculation of tuition rates under section 1725-A(a)(2) is not part of the redirection process. Please see responses to #6.

10. Comment: PA Cyber (148) believes that more clarity is needed from PDE on how the proposed process will be implemented to expedite payments and minimize adverse impacts to charter school cash flow. An overhaul of the existing redirection process could have an adverse impact on cash flow, and thereby potentially negatively influence the delivery of services to students. PA Cyber suggests that PDE add a provision in the final regulation that would require redirection payment directly to the charter school, and if it subsequently determined that such payment should not have been made, the charter school would be obligated to return such payment.

Response: Section 713.8 of the regulation only clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL; it does not overhaul the process. Charter schools will use existing data from their student information systems to complete a web-based form in the Department's CFRS, which all public schools, including charter schools, currently access. Please see Comment #6 for additional information.

Under Section 1725-A(5) of the CSL, the Department must pay any charter school that submits a redirection request, which it does. A school district that believes the amount deducted from its subsidy was inaccurate may appeal in accordance with Section 1725(A)(6) of the CSL. If the redirection payment is found to be inaccurate, the charter school must return the money to the school district.

11. Comment: Commenter states that the redirection of charter payments is projected to save the PDE \$52,500 per year. The Commonwealth of PA saves money, while districts are permitted to further delay payments to charter schools; thereby giving districts even more power over charters. (151)

Response: Under Section 1725-A(5) of the CSL, the Department must pay any charter school that submits a redirection request, which it does. A school district that believes the amount deducted from its subsidy was inaccurate may appeal in accordance with Section 1725(A)(6) of the CSL. If the redirection payment is

found to be inaccurate, the charter school must return the money to the school district.

12. Comment: Commenters state that the redirection process allows public school districts to have more power over charter schools (154); and oversteps the powers of unelected officials that are meant to circumvent the legislative process (155).

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Please see responses to #6 and #11.

13. Comment: The Pennsylvania Coalition of Public Charter Schools (PCPCS) (173) believes that the proposed regulations work to make educational options less accessible through making the financial resources less accessible.

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Please see response to Comment #6.

14. Comment: Spectrum Charter School (178) stated, in regard to the form created by the Department to be used for redirection requests, that the following required information is irrelevant: First and last day educated by the charter school because the district has an obligation to pay until the last day of enrollment and not the last day education is provided, and date of current and prior IEP because this does not impact the district's obligation to pay the special education rate for a student identified as a special education student. They also stated that imposing limitations as to when a charter school may submit a request to PDE contradicts language in Section 1725(a)(5) of the Charter School Law. Commenter believes that requiring a certifying signature from the charter CEO on redirection requests is inappropriate unless this same requirement is imposed upon district superintendents when payment or non-payment of tuition is made.

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Charter schools currently provide a certifying signature when they submit a redirection request to the Department. All public schools, including charter schools, must provide a certifying signature anytime they provide data to the Department. Please see response to Comment #6 for more details about the web-based redirection process.

Section 713.8(e) of the regulation refers to the timeline for charter school entities to request the Department withhold a district's state subsidy payment and for the Department to redirect those funds to the charter school. Due to the schedule for payment of school district subsidies and the corresponding deadlines for submission of information from the Department to the Office of Comptroller Operations and Office of Comptroller Operations to the Department of Treasury, a charter school redirection for June enrollment is not possible before the end of

the school year, June 30. However, section 1725-A(a)(5) of the CSL provides a reconciliation process whereby a charter school may seek funds from a current school year for a prior year's underfunding thereby satisfying any remaining balances. 24 P.S. § 17-1725-A(a)(5). Section 713.8(e) of the regulation is reasonable, appropriate, and necessary to carry-out the requirements of the CSL.

15. Comment: Commenter noted that this section explains the requirements for charter schools; yet there are no requirements on school districts or penalties for not promptly dispersing payments to charter schools. Commenter asks if the Department reviewed the regulations in relation to ESSER mandates related to minimum funding requirements for Fiscal Years 2022 and 2023. (183)

Response: The commenter is correct that the CSL does not include enforcement provisions for school districts that fail to make timely payments to charter schools. Regarding federal mandates, the proposed regulation does not affect the Department's maintenance of effort calculation and no changes were made.

16. Comment: Commenter believes that the proposed process limits when charters can file a request and adds to the paperwork requirement as requests must continually be submitted. (190)

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Charter schools will use existing data from their student information systems to complete a web-based form in the Department's CFRS, which all public schools, including charter schools, currently access. The process is completely web-based with no documentation being submitted outside of CFRS. A stipulated timeframe allows school districts to verify the data and to pay charter schools quicker instead of charter schools having to wait for their funding through the redirection process, which can take up to a month longer. Please see response to Comment #6.

17. Comment: Philadelphia Charters for Excellence (PCE) believe that the proposed regulations impose a new process that is outside of the Pennsylvania Department of Education's jurisdiction. They stated that the proposed regulations will delay payments to public charter schools by requiring charters to wait 10 days after a school district fails to make their legally required tuition reimbursement payments. (192)

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Please see responses to #6 and #16.

18. Comment: The Commonwealth Foundation (CF) stated that the proposed regulations would add requirements to charter schools and place the burden of proof on charters when their home district doesn't pay. CF believes this is especially punitive and pernicious considering that charter schools already receive less funding than their district counterparts. (194)

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Under Section 1725-A(5) of the CSL, the Department must pay any charter school that submits a redirection request, which it does. A school district that believes the amount deducted from its subsidy was inaccurate may appeal in accordance with Section 1725(A)(6) of the CSL. If the redirection payment is found to be inaccurate, the charter school must return the money to the school district. The regulation does not change this process, meaning the burden of proof remains on school districts.

19. Comment: Commenter believes the proposed regulations place the burden of receiving payments on the charter schools and will be used as a tool by districts to withhold funding. (198)

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Please see responses to #6 and #16.

20. Comment: Commenter understands there is a valid interest in reducing duplicate payments and verifying residency, especially in areas with larger transient populations, but notes there are a number of school districts whose standard practice is not to make the 12 monthly payments as required in section 1725-A(5) of the CSL. (218)

Response: The Department recognizes that while section 1725-A of CSL references "equal monthly payments," payments are rarely equal given that students are constantly enrolling and disenrolling in a charter school throughout the school year. For this reason, the timely submission of charter enrollment information by charter schools is essential for school districts to meet the statutory deadline to make payment to charter schools by the fifth of each month.

21. Comment: Commenter believes there needs to be stricter policies enforced to ensure that charter schools are receiving payments from local schools in a timely manner. (72)

Response: The CSL does not include provisions to enforce timely payment by school districts.

22. Comment: Commenter believes the regulations outline the process to reconcile disputes over school district payments to charter schools for student tuition. (109)

Response: The Department appreciates the comment.

23. Comment: Educational Accountability and Reform Network (LEARN) believes proposed regulations offers a clear process that will aid the charter school and authorizing district. (156)

Response: The Department appreciates the comment.

24. Comment: Commenter states that proposed regulations outline the process to reconcile disputes over school district payments to charter schools for student tuition. (171, 172, 177, 202)

Response: The Department appreciates the comment.

25. Comment: Commenter believes that action on HB 1892 would alleviate funding being redirected unnecessarily and provides for a timely dispute resolution process. (204)

Response: The Department acknowledges the comment.

26. Comment: The School District of Philadelphia supports regulations to clarify the redirection process; however, it also states the following: A school district with many charter schools would need more than 10 days to review enrollment records and residency requirements for thousands of students; the Department's request form should include the name of the student; the date of the prior IEP is not necessary; clarification is needed on the term "tuition rate used by the charter school" and whether this would be based on a filed PDE Form 363; and that the charter school should certify as to the date the request was originally submitted to the district of residence. (205)

Response: The Department agrees that a longer timeframe for school districts to review invoices submitted by charter schools would be optimal. Please see response to Comment #6.

Regarding the requirements of the redirection form, PAsecureID makes a student's name unnecessary and prevents the transmission of irrelevant personally identifiable information. PAsecureID is a unique, permanent, anonymous statewide student identification assigned to all students upon their first entry into the Commonwealth's public school system and used by public schools to submit required student-level data to the Department. The PDE Form 363 is used by school districts to calculate their nonspecial education and special education school funding rates under section 1725-A of the CLS (24 P.S. § 17-1725-A). Section 713.8 clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL (P.S. 24 § 17-1725-A); the regulation does not change the formula for rates set forth in the CSL or the PDE Form 363.

27. Comment: The School District of Pittsburgh does not support the timeline between submitting a request for payment and the due date of the payment to the charter school. They believe that having only 10 days before a payment is required could result in more charter schools submitting the redirection request. (216)

Response: Section 713.8 of the regulation clarifies and builds upon the payment process for charter schools set forth in section 1725-A of the CSL. Please see response to Comment #6.

SCHOOL STAFF – HEALTH CARE BENEFITS (SECTION 713.9)

1. Comment: The Pennsylvania School Board Association (125), supports the requirements for providing “same health care benefits” as authorizing school districts, but should also include the requirement that charter schools need to certify that their health care benefit offerings are within a given dollar or percent range as the average cost of health plans for the authorizing school district(s) as well as the concerns of charter school employees to organize and collectively bargain for health care benefits.

Response: The Department appreciates the comments and notes that it has received a significant volume of comments concerning section 713.9 (Health Care Benefits). Many commenters – including Pennsylvania’s two largest school districts, statewide education associations, and a coalition of school district superintendents – expressed support for this aspect of the rulemaking, arguing it would ensure that charter schools comply with an important provision of the CSL that did not envision the advent of regional or cyber charter schools and promote comparability in health care benefits across two sectors of public education.

Other commenters expressed concern with the Department’s proposal, and raised a series of legal, practical, and other considerations; the backdrop to all these concerns was an argument that, in seeking to provide charter schools with flexibility for implementing this provision of the CSL, the Department created a framework that might prove onerous and unworkable.

The Department takes these concerns, both for and against the proposed provision, seriously. We believe the level of opposition underscores that there is likely a difference in the scope and quality of health care benefits between school districts and charters, and that there is a compelling public interest – especially during an unrelenting global pandemic – to correct any such inequities.

Given this feedback, the Department has: 1) deleted much of the proposed regulation related to health care benefits; 2) reiterated the requirements of section 1724-A(d) of the Charter School Law; and 3) proposed a consistent, common-sense method for regional and cyber charter schools to demonstrate compliance.

2. Comment: The Pennsylvania State Education Association (182) supports the proposed regulations and suggests several amendments related to benefit categories, the terms “substantially equivalent”, “tax advantage account”, “administrative office” and clarity related to multiple charter school organizations.

Response: The Department appreciates the comments but determined significant changes to this section of the regulations were necessary to address feedback received through the rulemaking process. Please see response in Comment #1.

3. Comment: The Public Cyber Charter School Association (PCCSA) (128) supports the requirement in Section 713.9 but encourages further discussion regarding how this

regulation would impact charter schools that engage in collective bargaining agreements.

Response: The Department appreciates the comments and made significant changes to this section of the regulation in response to feedback received through the rulemaking process. Please see response in Comment #1.

4. Comment: Commentors, including Propel Schools, Mastery Schools, KIPP Philadelphia, oppose Section 713.9 of the proposed Charter Regulations, because the Department is without authority to amend a statutory requirement by regulation and the proposed regulation invades the legislative prerogative. (196, 190)

Response: The Department disagrees with this analysis and believes the rulemaking provides a lawful and transparent means for charter schools to demonstrate compliance with the CSL. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see response in Comment #1.

5. Comment: Commentors, including American Federation of Teachers (AFT), Commonwealth Connections Academy (CCA), Philadelphia Charters for Excellence (PCE) opposes this rule as it significantly alters the current Charter School law. (174, 183, 192)

Response: The Department disagrees with this analysis and believes the rulemaking provides a lawful and transparent means for charter schools to demonstrate compliance with the CSL. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see the response in Comment #1.

6. Comment: Commentors, including the Pennsylvania Coalition of Public Charter Schools (173), Spectrum Charter School (178), Chester Community Charter School (181) oppose the regulations as presented as "an attempt to leverage funds out of charter schools." (37, 41, 60, 64, 65, 68, 119, 132, 151, 163, 198, 206)

Response: The Department does not believe that the rulemaking presents an economic burden for charter schools or any other member of the regulated community as the state statute is clear that employees have a longstanding claim to receipt of "identical" benefits. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see the response in Comment #1.

7. Comment: PA Cyber Charter School opposes Section 713.9 of the proposed Charter Regulation as an unreasonable requirement as a public charter school that operates statewide the proposed regulations do not clearly define the "meaningfully similar" comparison with the benefits of the local school district. (148)

Response: The rulemaking provides a system for regional charter schools and cyber charter schools to identify a benchmark for comparison via the school district in which the regional or cyber charter school is headquartered. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see the response in Comment #1.

8. Comment: Commentors, including Leaders for Educational Accountability and Reform Network (LEARN), Pennsylvania Association of School Administrators (PASA), School District of Haverford Township, support the proposed regulations (109, 142, 146, 147, 156, 157, 160, 171, 172, 177, 193, 202, 208, 210, 211, 212, 213)

Response: We appreciate the endorsement and agree that it is important to ensure comparability and transparency in benefits afforded to charter school employees. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see the response in Comment #1.

9. Comment: Commentors, including The School District of Philadelphia Board of Education, support the regulations with the following concerns: the provisions in the regulations related to specific minimum benefits may not be applicable to entities employing less than 50 employees, does not contemplate charter schools contributing to tax-advantaged accounts for the purchase of health care coverage, does not indicate how school districts would provide very complex health benefits information to charter schools nor the frequency such information would need to be updated, and the complaint filing process. (205)

Response: The Department appreciates the comments. In response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see response in Comment #1.

10. Comment: The School District of Pittsburgh (216) supports the identification of the school district where the regional charter school's or cyber charter school's administrative office is located as the comparison district; and the specification of notice requirements to charter school staff on their rights to health care parity and avenues to file a complaint. Commenter also supports the right of the charter school entity's authorizer to audit the health care benefits provided by the charter school entity.

Response: The Department appreciates the comments. In response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see response in Comment #1.

11. Comment: School Lane Charter School (169) opposes the proposed regulations, stating that they "go beyond accountability and more closely regulate conditions of employment that are beyond the scope of regulation by the state."

Response: The Department disagrees with this analysis and believes the rulemaking provides a lawful and transparent means for charter schools to demonstrate compliance with the CSL. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see response in Comment #1.

12. **Comment:** Commonwealth Charter Academy (130) opposes the proposed regulations, stating that a charter school entity health plan would have to be designed to account for every single service and procedure, which is onerous and unreasonable.

Response: The Department disagrees with this analysis and believes the rulemaking provides a lawful and transparent means for charter schools to demonstrate compliance with the CSL. However, in response to feedback received through the rulemaking process, the Department made significant changes to this section of the regulation. Please see response in Comment #1.

GENERAL COMMENTS

1. **Comment:** The Department received 527 form letters (identified by prefix C) that generally oppose the proposed regulations, stating they are punitive and would harm charter school students, parents and educators.

Response: The Department acknowledges the comments and asserts the regulations will improve educational choice for Pennsylvania students and families.

2. **Comment:** The Department received 201 form letters (identified by prefix D) that generally oppose the proposed regulations, stating that it is another proposal to disadvantage charter schools, hinder charter schools and reduce choice in the public school system.

Response: The Department acknowledges the comments and asserts the regulations will improve educational choice for Pennsylvania students and families.

3. **Comment:** The Department received three form letters (identified by prefix E) that generally oppose the proposed regulations, stating that they are designed to take choice away from parents and are an overreach by the Governor.

Response: The Department acknowledges the comments and asserts the regulations will improve educational choice for Pennsylvania students and families.

4. **Comment:** The Department received 12 form letters (identified by prefix F) that generally oppose the proposed regulations, stating that the regulations do not create a

fair playing field between authorizers and charter school operators trying to give parents another education choice.

Response: The Department acknowledges the comments and asserts the regulations will improve educational choice for Pennsylvania students and families.

5. Comment: The Department received nine form letters (identified by prefix G) that generally oppose the proposed regulations, stating that the proposed regulations won't fix the problems between charter schools and district schools and is about picking winners and losers within public education.

Response: The Department acknowledges the comments and asserts the regulations will improve educational choice for Pennsylvania students and families. The Department also agrees that comprehensive CSL reform is necessary in addition to regulations.

6. Comment: The Department received six form letters (identified by prefix H) that generally oppose the proposed regulations, stating that they enjoy working at their charter school, trust their administrators to do what is best for them, and that balanced legislation and not regulations are the answer.

Response: The Department acknowledges the comments and asserts the regulations will improve educational choice for Pennsylvania students and families. The Department agrees that comprehensive CSL reform is necessary in addition to regulations.

7. Comment: The Department received 686 form letters (identified by prefix I) that generally support the proposed regulations, stating that the regulations will bring clarity to the law and make charters more transparent and ethical.

Response: The Department acknowledges the comments.

8. Comment: The Department received eight form letters (identified by prefix J) that generally oppose the proposed regulations, stating that the proposed regulations are not balanced and seem designed to help authorizers and not charter schools.

Response: The Department acknowledges the comments and agrees that comprehensive CSL reform is necessary in addition to regulations.

9. Comment: The Department received 105 form letters (identified by prefix K) that generally oppose the proposed regulations, stating that the proposed regulations pick winners and losers in the public education system.

Response: The Department acknowledges the comments and agrees that comprehensive CSL reform is necessary in addition to regulations.

10. Comment: The Department received several comments stating that the state should look at all public schools, should focus on inefficiencies in traditional public schools, should designate charters as state cost-plus-award-fee contractors, and should focus solely on cyber charters. (19, 20, 29, 115,188)

Response: The Department acknowledges the comments.

11. Comment: The Department received 94 comments in general opposition to the proposed regulations. (2, 3, 4, 8, 11, 12, 13, 15, 16, 17, 18, 21, 22, 23, 26, 27, 28, 30, 31, 32, 34, 35, 36, 39, 40, 41, 42, 44, 50, 59, 62, 63, 66, 69, 70, 71, 74, 77, 78, 79, 80, 81, 85, 86, 87, 88, 89, 91, 93, 94, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 116, 117, 134, 135, 136, 139, 118, 121, 137, 138, 140, 141, 149, 154, 155, 159, 161, 162, 164, 165, 166, 170, 198, 199, 200, 201, 203, 215)

Response: The Department acknowledges the comments.

12. Comment: The Department received 44 comments in general support of the proposed regulations. (B-0001 written letter) (1, 6, 7, 10, 14, 24, 25, 33, 38, 43, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 67, 73, 75, 82, 123, 124, 127, 133, 152, 158, 167, 168, 176, 179, 180, 191, 195, 207, 209, 217, 220)

Response: The Department acknowledges the comments.

Annex A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

**CHAPTER 713. CHARTER SCHOOLS AND
CYBER CHARTER SCHOOLS**

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APPLICATION REQUIREMENTS

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713.2. Contents of charter school or regional charter school application.

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713.4. Random selection policies for a charter school or regional charter school.

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REDIRECTION PROCESS

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SCHOOL STAFF

Sec.

713.9. Health care benefits.

GENERAL PROVISIONS

§ 713.1. Definitions.

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

Authorizer—any of the following:

- (1) A board of school directors.
- (2) A board of public education of a school district.
- (3) The Department, for a cyber charter school.

Charter school—An independent public school established and operated under a charter from the local board of school directors or board of public education of a school district in which students are enrolled or attend. A charter school must be organized as a public, nonprofit corporation.

Charter school entity—A charter school, regional charter school, cyber charter school or multiple charter school organization.

CHARTER SCHOOL FOUNDATION — A NONPROFIT ORGANIZATION THAT MAY QUALIFY AS FEDERALLY TAX EXEMPT UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99- 514, 26 U.S.C. § 501(C)(3)), AND PROVIDES FUNDING OR RESOURCES OR OTHERWISE SERVES TO SUPPORT A CHARTER SCHOOL ENTITY.

Charter School Law—Article XVII-A of the Public School Code of 1949 (24 P.S. §§ 17-1701-A—17-1751-A).

Cyber charter school—An independent public school established and operated under a charter from the Department in which the school uses technology 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 must be organized as a public, nonprofit corporation.

Department—The Department of Education of the Commonwealth.

Educational management service provider—A ~~nonprofit or for-profit charter management organization~~, education management organization, **NONPROFIT CHARTER MANAGEMENT ORGANIZATION**, school design provider, business manager or any other **PARTNER** entity **WITH WHICH A SCHOOL CONTRACTS** ~~or individual that enters into a contract or agreement with a charter school entity~~ to provide educational design, business services, **COMPREHENSIVE** management or personnel functions ~~or to implement the charter~~. The term may not include a charter school foundation.

English learner—A student with limited English language proficiency who:

~~—(1) meets any of the following conditions:~~

~~—(i) was not born in the United States or whose native language is other than English and comes from an environment where a language other than English is dominant;~~

~~—(ii) is a Native American or an Alaska Native who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or~~

~~—(iii) is migratory and whose native language is other than English and comes from an environment where a language other than English is dominant; and~~

~~—(2) has sufficient difficulty speaking, reading, writing or understanding the English language and whose difficulties may deny the individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in an English-speaking society.~~

AN INDIVIDUAL WHO IS (1) AGED 3 THROUGH 21; (2) WHO IS ENROLLED OR PREPARING TO ENROLL IN AN ELEMENTARY SCHOOL OR SECONDARY SCHOOL; (3)(A) WHO WAS NOT BORN IN THE UNITED STATES OR WHOSE NATIVE LANGUAGE IS A LANGUAGE OTHER THAN ENGLISH; (B)(I) WHO IS A NATIVE AMERICAN OR ALASKA NATIVE, OR A NATIVE RESIDENT OF THE OUTLYING AREAS; AND (II) WHO COMES FROM AN ENVIRONMENT WHERE A LANGUAGE OTHER THAN ENGLISH HAS HAD A SIGNIFICANT IMPACT ON THE INDIVIDUAL'S LEVEL OF ENGLISH LANGUAGE PROFICIENCY; OR (C) WHO IS MIGRATORY, WHOSE NATIVE LANGUAGE IS A LANGUAGE OTHER THAN ENGLISH AND WHO COMES FROM AN ENVIRONMENT WHERE A LANGUAGE OTHER THAN ENGLISH IS DOMINANT; AND (4) WHOSE DIFFICULTIES IN SPEAKING, READING, WRITING, OR UNDERSTANDING THE ENGLISH LANGUAGE MAY BE SUFFICIENT TO DENY THE INDIVIDUAL THE ABILITY TO MEET THE CHALLENGING STATE ACADEMIC STANDARDS; THE ABILITY TO SUCCESSFULLY ACHIEVE IN CLASSROOMS WHERE THE LANGUAGE OF INSTRUCTION IS ENGLISH; OR THE OPPORTUNITY TO PARTICIPATE FULLY IN SOCIETY.

Multiple charter school organization—A public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator that operates two or more charter schools or regional charter schools under section 1729.1-A of the Charter School Law.

PAsecureID—A unique, permanent, anonymous Statewide student identification assigned to students upon their first entry into the Commonwealth's public school system.

Regional charter school—An independent public school:

(1) established and operated under a charter from more than one local board of school directors or board of public education in which students are enrolled or attend; and

(2) organized as a public, nonprofit corporation.

School Code—The Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

Secretary—The Secretary of Education of the Commonwealth.

APPLICATION REQUIREMENTS

§ 713.2. Contents of charter school or regional charter school application.

(a) An applicant seeking to ~~operate~~ **ESTABLISH** a charter school or regional charter school shall submit an application on one of the following forms:

(1) The application form created by the Department, which includes the items identified in subsection (c).

(2) The application form created and adopted by an authorizer of a charter school or regional charter school, which at a minimum, includes the information identified in subsection (c).

(b) An authorizer may require an applicant to submit additional information for the local board of directors to evaluate the application in accordance with section 1717-A(c)(2) of the Charter School Law.

(c) The application forms in subsection (a) shall, at a minimum, include the following:

(1) Name, address, phone number and e-mail address of the charter school or regional charter school applicant.

(2) Name of the proposed charter school or regional charter school, **WHICH MUST INCLUDE THE WORDS "CHARTER SCHOOL" IN THE ENTITY'S NAME TO INDICATE A FREE AND PUBLIC NATURE OF THE PROPOSED SCHOOL, AS REQUIRED BY SECTION 1714-A(1) OF THE CHARTER SCHOOL LAW.**

(3) For each grade or age level proposed to be served by the charter school or regional charter school **FOR THE PROPOSED TERM OF THE CHARTER:**

(i) ~~Projected~~ **PROPOSED** overall enrollment **CAPACITY BY GRADE LEVEL.**

(ii) ~~Projected number of students~~ **PROJECTED SHARE OF STUDENT ENROLLMENT** receiving special education services by primary disability. Students may only be counted in one disability category.

(iii) ~~Projected number of~~ **PROJECTED SHARE OF STUDENT ENROLLMENT WHO ARE** English learners.

(iv) Projected composition of the student population by race, ethnicity and students who are economically disadvantaged.

(4) Proposed governance structure of the charter school or regional charter school, including:

(i) Articles of incorporation filed with the Department of State.

(ii) Bylaws and operating agreement or equivalent document adopted by the applicant for the general governance of the charter school or regional charter school.

(iii) An organizational chart showing the proposed governance structure of the charter school or regional charter school, including lines of authority and reporting among the board of trustees, administrators, staff and any educational management service provider with which the charter school or regional charter school has contracted or intends to contract.

(iv) A description of the roles and responsibilities of the board of trustees, administrators, a charter school foundation, if applicable, and any other entities shown in the organizational chart, including any educational management service provider. This includes:

(A) A description of the process for appointing or electing of members of the charter school's or regional charter school's board of trustees.

(B) A description of the roles and responsibilities of the chief executive officer.

(C) A description of any additional administrative staff who may be employed by the charter school or regional charter school and their roles and responsibilities.

(D) The name of any foundation or other entity with which the school ~~will be associated~~ **ANTICIPATES ASSOCIATING, SUCH AS A CHARTER SCHOOL FOUNDATION**, and its financial status (for example, an organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3))).

~~(v) Standards for board of trustees' performance, including compliance with all applicable laws, regulations and terms of the charter.~~

~~(vi)~~**(v)** If the charter school or regional charter school has contracted with or intends to contract with an educational management service provider, the following shall be provided:

(A) Evidence of the educational management service provider's record in serving student populations, including demonstrated academic achievement and growth.

(B) Demonstrated management of nonacademic school functions, including proficiency with public school-based accounting, if applicable.

(C) The final or proposed contract between the charter school or regional charter school and the educational management service provider.

(D) Names and contact information for the officers, chief administrator and administrators of the educational management service provider.

(E) Proposed duration of the service contract, for a term not to exceed the length of the charter term.

(F) Roles and responsibilities of the board of trustees, the charter school's or regional charter school's staff and the educational management service provider. **IF THE CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL PLANS TO CONTRACT WITH AN EDUCATIONAL MANAGEMENT SERVICE PROVIDER, THE SCHOOL SHALL PROVIDE EVIDENCE THAT THE CHARTER SCHOOL'S BOARD OF TRUSTEES WILL RETAIN REAL AND SUBSTANTIAL AUTHORITY OVER THE OPERATION OF THE SCHOOL, EDUCATIONAL DECISIONS, AND STAFF OF THE CHARTER SCHOOL ENTITY.**

(G) The scope of services, personnel and resources to be provided by the educational management service provider.

(H) Methods of contract oversight and enforcement.

(I) Conditions for renewal and termination of the contract.

(J) The compensation structure, including clear identification of all fees to be paid to the educational management service provider, to include a total of fees expressed as a percentage of all school expenditures.

(K) Performance evaluation measures and timelines.

(L) Disclosure of any investment or planned investment or advance of moneys or planned advance of moneys by the educational management service provider on behalf of the charter school or regional charter school.

(M) Disclosure and explanation of any existing or potential conflicts of interest between the members of the board of trustees and the proposed educational management service provider.

~~—(vii)—(vi)~~ If the charter school or regional charter school has or intends to have ~~any affiliated business entities, including~~ a charter school foundation qualified as a support organization under section 509(a)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 509(a)(3)), the charter school or regional charter school must provide a disclosure and explanation of any existing or potential conflicts of interest between the members of the board of trustees and the proposed ~~affiliated business entities~~ **CHARTER SCHOOL FOUNDATION**.

(5) Mission and education goals of the charter school or regional charter school, including:

(i) Mission, vision and program overview, including education purpose and demonstrated, sustainable support for the charter school or regional charter school **(FOR EXAMPLE, INTENT TO ENROLL FORMS, LETTERS OF SUPPORT, MEMORANDA WITH COMMUNITY ORGANIZATIONS AND PETITIONS)**.

(ii) Curriculum to be offered **THAT COMPLIES WITH CHAPTER 4 (RELATING TO ACADEMIC STANDARDS AND ASSESSMENT)**, including:

(A) Overview of instructional delivery model for all planned subjects.

(B) Pedagogical learning approach (for example, independent study, multi-age or grade level groupings, flexible student groupings, competency-based learning, multi-tiered support system).

(C) Plans for meeting the needs of at-risk students, including English learners and students with disabilities.

(iii) Methods of assessing whether students, including at-risk students such as English learners and students with disabilities, are meeting educational goals, including:

(A) Accountability, student assessment and evaluation.

(B) Student performance standards.

(C) High school graduation requirements, if applicable.

(6) Admission policy, including:

(i) Criteria for evaluating the admission of students in accordance with section 1723-A of the Charter School Law and this chapter.

(ii) Enrollment capacity by grade level.

(iii) A description of how the charter school or regional charter school will make all prospective students aware of the school's program.

(7) Procedures regarding suspension or expulsion of students, **CONSISTENT WITH CHAPTER 12 (RELATING TO STUDENTS AND STUDENT SERVICES)** including:

(i) An explanation of the proposed philosophy on student discipline.

(ii) A copy of the charter school's or regional charter school's Student Code of Conduct, **OR IF NOT YET DEVELOPED, A DESCRIPTION OF THE RULES AND POLICIES THAT WILL GUIDE THE STUDENT CODE OF CONDUCT (FOR EXAMPLE, MANDATORY STUDENT ATTENDANCE)**.

(iii) An explanation of due process procedures that will be followed prior to administering any exclusionary discipline, including specifics for students with disabilities.

(iv) A description of how parents or guardians will be advised of students struggling in academic, social, emotional or behavioral performance.

(v) A description of how the charter school or regional charter school will assess and systematically address disparities in implementation of discipline practices among student groups.

(8) Information on how community groups will be involved in the charter school or regional charter school planning process.

(9) The financial plan for the charter school or regional charter school and the provisions for auditing the school under section 437 of the School Code and this chapter. This includes, but is not limited to:

(i) A proposed 5-year general fund budget by account code, in accordance with the Department's Chart of Accounts for PA Local Educational Agencies, that includes revenues and expenditures.

(ii) The anticipated sum of revenues and expenditures not accounted for in the account codes.

(iii) The budgeted fund balance for the proposed first year of operation and unrestricted fund balances for each year of the charter term.

(10) Procedures ~~for reviewing and addressing~~ **WHICH SHALL BE ESTABLISHED TO REVIEW** complaints from parents, guardians and families regarding the operation of the charter school or regional charter school.

(11) The proposed school calendar for the charter school or regional charter school, including the length of the school day and school year consistent with the provisions of section 1502 of the School Code.

(12) A description and address of the physical facility in which the charter school or regional charter school will be located, the ownership of the physical facility and any lease arrangements, including:

(i) Whether the facility will be leased or owned, **AS DEMONSTRATED BY A COPY OF THE DEED TO THE FACILITY SHOWING OWNERSHIP, A SIGNED LEASE**

AGREEMENT, OR, IF CONTINGENT UPON ESTABLISHMENT OF THE CHARTER SCHOOL, A LETTER OF INTENT TO SELL OR LEASE FROM THE PROPERTY OWNER.

~~—(ii) Anticipated monthly mortgage or lease payments, and any estimated additional monthly payments (for example, utilities, property taxes and common space custodial services).~~

(iii)–(ii) How DESCRIBE HOW the facility is suitable for the proposed school. THE APPLICANT SHALL CONSIDER THE NECESSITY OF RENOVATION TO THE FACILITY AND COMPLIANCE WITH APPLICABLE BUILDING CODES AND ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.

~~—(iv)–(iii)~~ Square footage for each space where instruction of students will occur and a description of how the space will be used (for example, kindergarten classroom, gymnasium for physical education and music instruction).

~~—(v)–(iv)~~ Safety protocols for the facility.

(13) The proposed faculty and a professional development plan for the proposed faculty of the charter school or regional charter school that complies with Chapters 4 and 49 (relating to academic standards and assessment; and certification of professional personnel), including:

(i) The number of projected full-time equivalent employees in each of the following categories:

- (A) Pupil personnel.
- (B) Instructional personnel.
- (C) Administration.
- (D) Business office.
- (E) Transportation.
- (F) Public health.
- (G) Operations.
- (H) Management.

(ii) ~~Caseloads of staff for students receiving special education~~ **DESCRIBE HOW THE PROPOSED SCHOOL WILL PROVIDE SPECIAL EDUCATION PROGRAMS AND** services at appropriate levels to ensure a free appropriate public education as required under Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities).

(iii) The charter school's or regional charter school's plan and process for providing ongoing professional development for all instructional staff members, **INCLUDING AN INDUCTION PROGRAM AS REQUIRED UNDER CHAPTER 49 (RELATING TO CERTIFICATION OF PROFESSIONAL PERSONNEL).**

(iv) A LIST OF GENERAL QUALIFICATIONS NEEDED TO STAFF ANY NON-CERTIFIED POSITIONS, AS REQUIRED BY SECTION 1724-A(b) OF THE CHARTER SCHOOL LAW.

(14) A description and copies of agreements or plans with the charter school's or regional charter school's authorizer to allow the school's students to participate in extracurricular activities within the authorizing school district.

(15) The criminal history record, under section 111 of the School Code, for all individuals who will have direct contact with students.

(16) An official clearance statement regarding child injury or abuse from the Department of Human Services, as required under 23 Pa.C.S. § 6344 (relating to employees having contact with children; adoptive and foster parents), for all individuals who will have direct contact with students.

(17) A description of how the charter school or regional charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school or regional charter school as required by section 1719-A of the Charter School Law, including a description of the type and level of insurance coverage the school will obtain (for example, general commercial liability, property, automobile, directors and operators, technology, workers compensation, liability under the Individuals with Disabilities Education Act and its implementing regulations, retirement liability and employee health insurance).

(d) UPON APPROVAL OF A CHARTER APPLICATION UNDER SECTION 1717-A OF THE CHARTER SCHOOL LAW, A WRITTEN CHARTER SHALL BE DEVELOPED WHICH SHALL CONTAIN THE PROVISIONS OF THE CHARTER APPLICATION.

(e) PURSUANT TO SECTION 1728-A OF THE CHARTER SCHOOL LAW, THE AUTHORIZER SHALL ANNUALLY ASSESS WHETHER A CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL IS MEETING THE GOALS OF ITS CHARTER.

(f) NOTHING IN THIS SECTION SHALL PROHIBIT A CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL FROM PROVIDING ADDITIONAL INFORMATION TO THE AUTHORIZER AS PART OF THE PROCESS TO ESTABLISH OR RENEW A CHARTER.

(g) WITHIN SIX (6) MONTHS OF THE EFFECTIVE DATE OF THIS CHAPTER, AUTHORIZERS SHALL ENSURE THEIR APPLICATION TO ESTABLISH A CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL INCLUDES THE ITEMS LISTED IN SUBSECTION (c).

(h) AUTHORIZERS MAY NOT REQUIRE A CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL APPLICANT THAT SUBMITS AN APPLICATION PRIOR TO NOVEMBER 15, 2022, TO REAPPLY USING THE APPLICATION FORM THAT MEETS THE REQUIREMENTS OF SUBSECTION (c) OR TO SUBMIT SUPPLEMENTAL MATERIALS TO MEET THE REQUIREMENTS OF SUBSECTION (c), UNLESS SUCH REQUIREMENTS WERE REQUIRED BY THE AUTHORIZER

PRIOR TO NOVEMBER 15, 2022, OR THE APPLICANT REQUESTS TO REAPPLY USING THE APPLICATION ALIGNED TO SUBSECTION (c).

§ 713.3. Contents of cyber charter school application.

(a) An applicant seeking to ~~operate~~-ESTABLISH a cyber charter school shall submit an application on the application form created by the Department, which includes the items identified in § 713.2(c) (relating to contents of charter school or regional charter school application) and all provisions of section 17-1747-A of the Charter School Law.

(b) UPON APPROVAL OF A CHARTER APPLICATION UNDER SECTION 1741-A OF THE CHARTER SCHOOL LAW, A WRITTEN CHARTER SHALL BE DEVELOPED WHICH SHALL CONTAIN THE PROVISIONS OF THE CHARTER APPLICATION.

(c) PURSUANT TO SECTION 1742-A(1) OF THE CHARTER SCHOOL LAW, THE AUTHORIZER SHALL ANNUALLY ASSESS WHETHER A CYBER CHARTER SCHOOL IS MEETING THE GOALS OF ITS CHARTER.

(d) NOTHING IN THIS SECTION SHALL PROHIBIT A CYBER CHARTER SCHOOL FROM PROVIDING ADDITIONAL INFORMATION TO THE DEPARTMENT AS PART OF THE PROCESS TO ESTABLISH OR RENEW A CHARTER.

(e) WITHIN SIX (6) MONTHS OF THE EFFECTIVE DATE OF THIS CHAPTER, THE DEPARTMENT SHALL ENSURE THE APPLICATION TO ESTABLISH A CYBER CHARTER SCHOOL INCLUDES THE ITEMS LISTED IN SUBSECTION (c).

(f) THE DEPARTMENT MAY NOT REQUIRE A CYBER CHARTER SCHOOL APPLICANT THAT SUBMITTED AN APPLICATION PRIOR TO NOVEMBER 15, 2022, TO REAPPLY USING THE APPLICATION FORM THAT MEETS THE REQUIREMENTS OF § 713.2(c) (RELATING TO CONTENTS OF CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL APPLICATION) OR TO SUBMIT SUPPLEMENTAL MATERIALS TO MEET THE REQUIREMENTS OF § 713.2(c) (RELATING TO CONTENTS OF CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL APPLICATION), UNLESS SUCH REQUIREMENTS WERE REQUIRED BY THE DEPARTMENT PRIOR TO NOVEMBER 15, 2022 OR THE APPLICANT REQUESTS TO REAPPLY USING THE APPLICATION ALIGNED TO § 713.2(c) (RELATING TO CONTENTS OF CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL APPLICATION).

ENROLLMENT

§ 713.4. Random selection policies for a charter school or regional charter school.

(a) Within 3 months of the effective date of this chapter or upon the granting of a charter, a charter school or regional charter school shall enact a policy, approved by its board of trustees, to

ensure random selection of students for enrollment should more students apply to the charter school or regional charter school than the number of attendance slots available.

(b) In the case of a charter school or regional charter school applicant, the proposed policy ensuring random selection of students for enrollment shall be included in the contents of the application under section 1719-A(6) of the Charter School Law **AND MUST COMPLY WITH ALL APPLICABLE STATE AND FEDERAL NON-DISCRIMINATION LAWS AND REGULATIONS.**

(c) The policy identified in subsection (a) shall:

(1) Be posted on the charter school's or regional charter school's publicly accessible web site.

(2) Be included in any renewal application of a charter school or regional charter school.

(3) Describe the method to be utilized by the charter school or regional charter school to effectuate selection of students for enrollment on a random basis.

(4) Describe how the charter school or regional charter school will ensure public notice of the selection process. This notice shall **INCLUDE THE NUMBER OF AVAILABLE SLOTS AND NUMBER OF APPLICANTS AND** be posted on the charter school's or regional charter school's publicly accessible web site in a language that students and parents can understand or, if not practicable, can be orally translated and upon request provided in an alternative format that is accessible to an individual with a disability.

(5) Detail any optional enrollment preferences for a child of a parent or guardian who has actively participated in the development of the charter school or regional charter school and to siblings of students presently enrolled in the charter school or regional charter school. Details must describe:

(i) The order in which preferences are implemented.

(ii) Any weighting associated with the preferences.

(6) Outline any admission limitations including for a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science or the arts.

(d) A charter school or regional charter school shall include in the annual report submitted under section 1728-A of the Charter School Law and shall, at least annually, publish on its publicly accessible web site all of the following information, **DISAGGREGATED BY STUDENT GROUP, IN ACCORDANCE WITH THE ELEMENTARY AND SECONDARY EDUCATION ACT (20 U.S.C. § 7801(20))**:

(1) Number of total applicants to the charter school or regional charter school for the most recent school year.

(2) Number of qualified applicants as determined by the charter school or regional charter school for the most recent school year.

(3) Number of students offered enrollment by the charter school or regional charter school for the most recent school year.

(4) Number of students enrolled by the charter school or regional charter school for the most recent school year.

§ 713.5. Random selection policies for a cyber charter school.

(a) A cyber charter school may not restrict enrollment based on availability of attendance slots unless the terms are agreed to by the Department and the cyber charter school as part of a written charter under sections 1723-A(d) and 1745-A of the Charter School Law.

(b) For cyber charter schools with enrollment terms agreed to by the Department and the cyber charter school as part of a written charter under section 1745-A of the Charter School Law a cyber charter school shall, within 3 months of the effective date of this chapter or upon the granting of a charter, enact a policy, approved by its boards of trustees and the Department, to ensure random selection of students for enrollment should more students apply to the cyber charter school than the number of attendance slots available.

(c) The policy identified in subsection (b) shall:

(1) Be posted on the cyber charter school's publicly accessible web site.

(2) Be included in any renewal application of a cyber charter school.

(3) Describe the method to be utilized by the cyber charter school to effectuate selection of students for enrollment on a random basis.

(4) Describe how the cyber charter school will ensure public notice of the selection process. The notice shall **INCLUDE THE NUMBER OF AVAILABLE SLOTS AND NUMBER OF APPLICANTS AND** be posted on the cyber charter school's publicly accessible web site in a language that students and parents can understand or, if not practicable, can be orally translated and upon request provided in an alternative format that is accessible to an individual with a disability.

(5) Detail any optional enrollment preferences under section 1723-A of the Charter School Law for a child of a parent or guardian who has actively participated in the development of the cyber charter school and to siblings of students presently enrolled in the cyber charter school. The details shall describe all of the following:

(i) The order in which preferences are implemented.

(ii) Any weighting associated with the preferences.

(6) Outline any admission limitations under section 1723-A of the Charter School Law including for a particular grade level, a targeted population group composed of at-risk students, or areas of concentration of the school such as mathematics, science, or the arts.

(d) A cyber charter school shall include in the annual report submitted under section ~~17-1743-~~ A(f) of the Charter School Law and shall, at least annually, publish on its publicly accessible web site the following data elements, **DISAGGREGATED BY STUDENT GROUP, IN ACCORDANCE WITH THE ELEMENTARY AND SECONDARY EDUCATION ACT (20 U.S.C. § 7801(20))**:

(1) Number of total applicants to the cyber charter school for the most recent school year.

(2) Number of qualified applicants as determined by the cyber charter school for the most recent school year.

(3) Number of students offered enrollment by the cyber charter school for the most recent school year.

(4) Number of students enrolled by the cyber charter school for the most recent school year.

(E) THE POLICY MUST COMPLY WITH ALL APPLICABLE STATE AND FEDERAL NON-DISCRIMINATION LAWS AND REGULATIONS.

BOARDS OF TRUSTEES

§ 713.6. Requirements for Boards of Trustees.

(a) Each member of a board of trustees of a charter school entity is a public official subject to 65 Pa.C.S. §§ 1101—1113 (relating to Public Official and Employee Ethics Act).

(b) In accordance with 65 Pa.C.S. § 1104 (relating to statement of financial interests required to be filed), each member of a board of trustees of a charter school entity shall file a statement of financial interest for the preceding calendar year with the board of trustees of the charter school entity, the State Ethics Commission, and each authorizer of the charter school entity. The member shall file the statement of financial interest no later than May 1 of each year the member holds the position and no later than May 1 of the year after a member leaves the position. If the member was appointed or selected after May 1, the member shall file a statement of financial interest in accordance with this section within 30 days of appointment or selection.

(c) No member of a board of trustees of a charter school entity may participate in the selection, award, or administration of any contract in violation of 65 Pa.C.S. § 1103 (relating to restricted activities) or if the member has a conflict of interest as that term is defined in 65 Pa.C.S. § 1102 (relating to definitions).

(d) A member of a board of trustees of a charter school entity who in the discharge of the member's official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and follow the procedures required under 65 Pa.C.S. § 1103(j).

(e) A member of a board of trustees of a charter school entity or family member of a member of a board of trustees of a charter school entity shall not, directly or through any other individual, entity, partnership or corporation in which the member holds stock or has a financial interest or other organization, provide a loan, forbearance or forgiveness of a loan or other debt, service or product or lease property to the charter school entity if such action is a conflict of interest as defined in 65 Pa.C.S. § 1102.

(f) A member of a board of trustees of a charter school entity who violates any provision of 65 Pa.C.S. §§ 1101—1113 shall be subject to the penalties imposed under the jurisdiction of the State Ethics Commission.

FISCAL AND AUDITING STANDARDS

§ 713.7. Fiscal management and audit requirements.

(a) Under section 1729-A of the Charter School Law, a charter school entity shall adhere to generally accepted standards of fiscal management and audit requirements.

(b) A charter school entity may satisfy the requirement in subsection (a) by meeting the following requirements:

(1) The financial statements of a charter school entity shall be prepared in accordance with Generally Accepted Accounting Principles as applied to governmental units and as established by the Governmental Accounting Standards Board.

(2) A charter school entity shall obtain an independent annual financial audit that follows Generally Accepted Government Auditing Standards, as issued by the Comptroller General of the United States, and Generally Accepted Auditing Standards, as issued by the American Institute of Certified Public Accountants.

(c) The following items shall be addressed in all audits completed under this section:

(1) A review of the charter school entity's enrollment records to demonstrate support for the invoices submitted to students' school districts of residence.

(2) A review of the fees charged by any educational management service provider with which the charter school entity has a contract, if applicable.

(3) A review of whether the charter school entity has the required number of certified staff.

(4) A review of the percentage of payroll the charter school entity contributed to employee retirement programs.

(5) A review of the charter school entity's financial expenditures to ensure compliance with the charter school entity's own financial policies.

REDIRECTION PROCESS

§ 713.8. Redirection process.

(a) Under section 1725-A(a)(5) of the Charter School Law, a charter school entity shall submit its payment request to the school district no later than 10 **BUSINESS** days before the 5th of each month to permit a school district time to make payment.

(b) A school district fails to make a payment under section 1725-A(a)(5) of the Charter School Law when the school district does not make payment to the charter school entity by the 5th of the month.

(c) If a school district fails to make a payment under subsection (b), a charter school entity may submit a request to the Secretary seeking to have the estimated amount withheld from State payments that will be made to the school district.

(d) A charter school entity that submits a request under subsection (c) shall submit the request on a form created by the Department. The form shall include all of the following information:

(1) For each student for which the charter school entity is seeking payment:

(i) PAscoreID.

- (ii) Home address.
 - (iii) School district of residence.
 - (iv) Date of birth.
 - (v) Grade in which the student is enrolled at the charter school entity.
 - (vi) Date enrollment notification form was sent to school district of residence.
 - (vii) First day educated by the charter school.
 - (viii) Last day educated by the charter school, if applicable.
 - (ix) Special education status, if applicable.
 - (x) Date of current Individualized Education Plan (IEP), if applicable.
 - (xi) Date of prior IEP, if applicable.
- (2) The source of the tuition rate used by the charter school entity in its withholding request to the Department.
- (e) For the months from July through May, requests under this section must be submitted to the Department between the 15th and 25th of each month.
- (f) Requests to the Secretary under this section may not include tuition for the month after the month in which the request was submitted.
- (g) Requests under this section must be signed by the chief executive officer or other authorized individual of the charter school entity certifying that the estimated amounts requested are true and correct, and that a request was first made to the school district of residence, subject to penalties of unsworn falsifications to authorities under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

SCHOOL STAFF

§ 713.9. Health care benefits.

(a) ~~Under~~ **PURSUANT TO** section 1724-A of the Charter School Law, a charter school shall meet the statutory requirement to provide its employees with the same health care benefits as they would be provided if they were an employee of the local school district. To implement this requirement ~~and demonstrate that health care benefits provided by the charter school are meaningfully similar to those offered by the local school district, the charter school shall do one of the following:~~

(1) ~~Provide health care coverage that:~~ FOR A CHARTER SCHOOL, EMPLOYEE HEALTH CARE BENEFITS SHALL BE THE SAME HEALTH CARE BENEFITS PROVIDED TO EMPLOYEES OF THE AUTHORIZING SCHOOL DISTRICT.

(2) FOR A REGIONAL CHARTER SCHOOL, EMPLOYEE HEALTH CARE BENEFITS SHALL BE THE SAME HEALTH CARE BENEFITS PROVIDED TO EMPLOYEES OF THE SCHOOL DISTRICT WITHIN WHICH THE REGIONAL CHARTER SCHOOL'S ADMINISTRATIVE OFFICE IS LOCATED.

(3) FOR A CYBER CHARTER SCHOOL, EMPLOYEE HEALTH CARE BENEFITS SHALL BE THE SAME HEALTH CARE BENEFITS PROVIDED TO EMPLOYEES OF THE SCHOOL DISTRICT WITHIN WHICH THE CYBER CHARTER SCHOOL'S ADMINISTRATIVE OFFICE IS LOCATED.

(b) AUTHORIZERS MAY CONSIDER THE EVIDENCE PROVIDED BY CHARTER SCHOOLS, REGIONAL CHARTER SCHOOLS, AND CYBER CHARTER SCHOOLS AS REQUIRED IN SUBSECTION (A) WHEN MAKING CHARTER RENEWAL DETERMINATIONS.

~~(i) Provides benefits in each of the categories of benefits as described in section 1302(b) of the Patient Protection and Affordable Care Act (42 U.S.C.A. § 18022(b)) with substantially equivalent cost sharing structure and plan type (such as preferred provider organization, exclusive provider organization or health maintenance organization) as the most selected health care plan available to the employees of the charter school's authorizer.~~

~~—(ii) Is funded by the charter school in an amount not less than the contribution provided by the charter school's authorizer for the most selected health care plan available to the employees of the charter school's authorizer.~~

~~—(2) Contribute to a tax advantaged account which the employee may use to pay for the purchase of health care coverage, as permitted by Federal law, in an amount not less than the contribution provided by the charter school's authorizer for the (or, if more than one, the most selected) health care plan available to the employees of the charter school's authorizer.~~

~~—(b) Under section 1724 A of the Charter School Law (24 P.S. § 17-1724 A), a regional charter school or a cyber charter school shall provide its employees with the same health care benefits as they would be provided if they were employees of the local school district. To implement this requirement, and demonstrate that health care benefits provided by the regional charter school or cyber charter school are meaningfully similar to those offered by the local school district, the regional charter school or cyber charter school shall do one of the following:~~

~~—(1) Provide health care coverage that:~~

~~—(i) Provides benefits in each of the categories of benefits as described in section 1302(b) of the Patient Protection and Affordable Care Act, with substantially equivalent cost sharing structure and plan type (such as preferred provider organization, exclusive provider organization, or health maintenance organization) as the most selected health care plan available to employees of the school district within which the regional charter school's or cyber charter school's administrative office is located.~~

~~—(ii) Is funded by the regional charter school or cyber charter school in an amount not less than the contribution provided by the school district within which the regional charter school's or cyber charter school's administrative office is located for the most selected health care plan available to that school district's employees.~~

~~—(2) Contributes to a tax advantaged account which the employee may use to pay for the purchase of health care coverage, as permitted by Federal law, in an amount not less than~~

~~the contribution provided by the school district in which the regional charter school's or cyber charter school's administrative office is located for the most selected health care plan available to that school district's employees.~~

~~—(c) Charter schools, regional charter schools or cyber charter schools shall present health care benefit plan enrollment options to employees, including a comparison of what they would have been offered if they were employees of the local school district, at each enrollment period.~~

~~—(d) The comparison required by subsection (c) shall include the following statement:~~

~~"UNDER PENNSYLVANIA LAW, CHARTER SCHOOLS, REGIONAL CHARTER SCHOOLS, AND CYBER CHARTER SCHOOLS ARE REQUIRED TO PROVIDE THE SAME HEALTH CARE BENEFITS TO THEIR EMPLOYEES AS THEY WOULD BE PROVIDED IF THEY WERE EMPLOYEES OF THE LOCAL DISTRICT. IF YOU BELIEVE THE PLAN OPTIONS MADE AVAILABLE TO YOU ARE NOT COMPARABLE TO THOSE OFFERED BY YOUR LOCAL DISTRICT, YOU MAY FILE A COMPLAINT WITH THE AUTHORIZER OR AUTHORIZERS OF THE CHARTER SCHOOL, REGIONAL CHARTER SCHOOL, OR CYBER CHARTER SCHOOL."~~

~~—(e) The authorizer of the charter school, regional charter school or cyber charter school may review the health care benefits policies of the charter school, regional charter school or cyber charter school.~~



pennsylvania
DEPARTMENT OF EDUCATION

February 10, 2022

VIA E-MAIL

Senator Scott Martin
Majority Chair, Senate Education Committee
Pennsylvania State Senate
Senate Box 203013
Harrisburg, PA 17120-3013

Dear Senator Martin,

Attached, please find final rulemaking number 6-349. The Department of Education is amending Title 22 of the Pennsylvania Code (relating to education), Part XX (relating to charter schools) by adding Chapter 713 (relating to charter schools and cyber charter schools).

Sincerely,

/s/ Eric Levis

Eric Levis
Deputy Policy Director



February 10, 2022

VIA E-MAIL

Senator Lindsey M. Williams
Minority Chair, Senate Education Committee
Pennsylvania State Senate
Senate Box 203038
Harrisburg, PA 17120-3038

Dear Senator Williams,

Attached, please find final rulemaking number 6-349. The Department of Education is amending Title 22 of the Pennsylvania Code (relating to education), Part XX (relating to charter schools) by adding Chapter 713 (relating to charter schools and cyber charter schools).

Sincerely,

/s/ Eric Levis

Eric Levis
Deputy Policy Director



pennsylvania
DEPARTMENT OF EDUCATION

February 10, 2022

VIA E-MAIL

The Honorable Curtis G. Sonney
Majority Chair, House Education Committee
Pennsylvania House of Representatives
214 Ryan Office Building
P.O. Box 202004
Harrisburg, PA 17120-2004

Dear Representative Sonney,

Attached, please find final rulemaking number 6-349. The Department of Education is amending Title 22 of the Pennsylvania Code (relating to education), Part XX (relating to charter schools) by adding Chapter 713 (relating to charter schools and cyber charter schools).

Sincerely,

/s/ Eric Levis

Eric Levis
Deputy Policy Director



pennsylvania
DEPARTMENT OF EDUCATION

February 10, 2022

VIA E-MAIL

The Honorable Mark Longietti
Minority Chair, House Education Committee
Pennsylvania House of Representatives
202 Irvis Office Building
P.O. Box 202007
Harrisburg, PA 17120-2007

Dear Representative Longietti,

Attached, please find final rulemaking number 6-349. The Department of Education is amending Title 22 of the Pennsylvania Code (relating to education), Part XX (relating to charter schools) by adding Chapter 713 (relating to charter schools and cyber charter schools).

Sincerely,

/s/ Eric Levis

Eric Levis
Deputy Policy Director

Stephen Hoffman

From: Pugliese, Marc <mpugliese@pasen.gov>
Sent: Thursday, February 10, 2022 1:52 PM
To: Levis, Eric; Martin, Senator Scott; Urban, Cynthia; Trego, Terrance
Cc: Kane, Julie; Seely, Randall; Latanishen, Steve; Rejrat, Wallace
Subject: RE: Delivery of Final-Form Rulemaking #6-349

Good afternoon,

To confirm, Senator Martin has received the attached Final-Form Rulemaking #6-349.

Thank you

Marc Pugliese | *Legislative Director*
Office of Senator Scott Martin
13th Senatorial District | Lancaster County
Room 351 Main Capitol | 717-787-6535
www.senatorscottmartinpa.com

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FEB 10 2022

**Independent Regulatory
Review Commission**

From: Levis, Eric <ELEVIS@pa.gov>
Sent: Thursday, February 10, 2022 11:48 AM
To: Martin, Senator Scott <smartin@pasen.gov>; Urban, Cynthia <curban@pasen.gov>; Pugliese, Marc <mpugliese@pasen.gov>; Trego, Terrance <ttrego@pasen.gov>
Cc: Kane, Julie <jukane@pa.gov>; Seely, Randall <rseely@pa.gov>; Latanishen, Steve <slatanishe@pa.gov>; Rejrat, Wallace <wrejrat@pa.gov>
Subject: Delivery of Final-Form Rulemaking #6-349

⦿ CAUTION : External Email ⦿

Dear Senator Martin:

Please see the attached rulemaking documents for the Department of Education's final-form rulemaking number #6-349, relating to Charter Schools and Cyber Charter Schools. The Department of Education appreciates your acceptance of this regulation through electronic delivery.

Please provide written (email) confirmation that this rulemaking was received.

Thank you.

Rick

Eric Levis | Deputy Policy Director
Pennsylvania Department of Education
333 Market Street | Harrisburg, PA 17126
717.783.6989 (O) | 717.439.2265 (Cell) | elevis@pa.gov
www.education.pa.gov

Stephen Hoffman

From: Kleiman, Cheryl <Cheryl.Kleiman@pasenate.com>
Sent: Thursday, February 10, 2022 12:01 PM
To: Levis, Eric; Lindsey.Williams; Winters, Megan
Cc: Kane, Julie; Seely, Randall; Latanishen, Steve; Rejrat, Wallace
Subject: RE: Delivery of Final-Form Rulemaking #6-349

On behalf of Senator Lindsey Williams, Minority Chair of Senate Education Committee, I confirm receipt of final-form rulemaking number #6-349.

Cheryl Kleiman (she/her)
Legislative Director
Executive Director | Senate Education Committee
Senator Lindsey M. Williams
412-392-7239
cheryl.kleiman@pasenate.com

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Independent Regulatory
Review Commission

From: Levis, Eric <ELEVIS@pa.gov>
Sent: Thursday, February 10, 2022 11:52 AM
To: Williams, Senator Lindsey <lindsey.williams@pasenate.com>; Kleiman, Cheryl <cheryl.kleiman@pasenate.com>; Winters, Megan <megan.winters@pasenate.com>
Cc: Kane, Julie <jukane@pa.gov>; Seely, Randall <rseely@pa.gov>; Latanishen, Steve <slatanishe@pa.gov>; Rejrat, Wallace <wrejrat@pa.gov>
Subject: Delivery of Final-Form Rulemaking #6-349

■ EXTERNAL EMAIL ■

Dear Senator Williams:

Please see the attached rulemaking documents for the Department of Education's final-form rulemaking number #6-349, relating to Charter Schools and Cyber Charter Schools. The Department of Education appreciates your acceptance of this regulation through electronic delivery.

Please provide written (email) confirmation that this rulemaking was received.

Thank you.

Rick

Eric Levis | Deputy Policy Director
Pennsylvania Department of Education
333 Market Street | Harrisburg, PA 17126
717.783.6989 (O) | 717.439.2265 (Cell) | elevis@pa.gov
www.education.pa.gov

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11/12/2014 10:10 AM
11/12/2014 10:10 AM

Stephen Hoffman

From: Christine Crone <Ccrone@pahousegop.com>
Sent: Thursday, February 10, 2022 1:56 PM
To: Levis, Eric; Sonney Curt; Christine Seitz
Cc: Kane, Julie; Seely, Randall; Latanishen, Steve; Rejrat, Wallace
Subject: RE: Delivery of Final-Form Rulemaking #6-349

The office of the Majority Chairman of the House Education, is in receipt of the final form rulemaking regulation 6-349.

Thank you.

Christine M. Crone
Administrative Assistant II
Representative Curt Sonney
Education Committee Chairman
214 Ryan Office Building
PO Box 202004
Harrisburg PA 17120-2004
(717) 783-9087 ph.
ccrone@pahousegop.com

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FEB 10 2022

Independent Regulatory
Policy Commission

From: Levis, Eric <ELEVIS@pa.gov>
Sent: Thursday, February 10, 2022 11:34 AM
To: Curt Sonney <Csonney@pahousegop.com>; Christine Seitz <Cseitz@pahousegop.com>; Christine Crone <Ccrone@pahousegop.com>
Cc: Kane, Julie <jukane@pa.gov>; Seely, Randall <rseely@pa.gov>; Latanishen, Steve <slatanishe@pa.gov>; Rejrat, Wallace <wrejrat@pa.gov>
Subject: Delivery of Final-Form Rulemaking #6-349

Dear Representative Sonney:

Please see the attached rulemaking documents for the Department of Education's final-form rulemaking number #6-349, relating to Charter Schools and Cyber Charter Schools. The Department of Education appreciates your acceptance of this regulation through electronic delivery.

Please provide written (email) confirmation that this rulemaking was received.

Thank you.

Rick

Eric Levis | Deputy Policy Director
Pennsylvania Department of Education
333 Market Street | Harrisburg, PA 17126
717.783.6989 (O) | 717.439.2265 (Cell) | elevis@pa.gov

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Stephen Hoffman

From: Miller, Marlena M. <MMiller@pahouse.net>
Sent: Thursday, February 10, 2022 12:15 PM
To: Levis, Eric; Longietti, Mark; Dixon, Erin; Brownawell Robert
Cc: Kane, Julie; Seely, Randall; Latanishen, Steve; Rejrat, Wallace
Subject: RE: Delivery of Final-Form Rulemaking #6-349

Good Afternoon Eric,

Your email has been received by our office.

Thank you,

Marlena Miller
Legislative Assistant
Representative Mark Longietti
Democratic Chairman
House Education Committee
202 Irvis Office Building
Harrisburg, PA 17120
(717) 787-7044
mmiller@pahouse.net

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FEB 10 2022

**Independent Regulatory
Review Commission**

From: Levis, Eric <ELEVIS@pa.gov>
Sent: Thursday, February 10, 2022 11:39 AM
To: Longietti, Mark <MLongiet@pahouse.net>; Dixon, Erin <EDixon@pahouse.net>; Miller, Marlena M. <MMiller@pahouse.net>; Brownawell, Robert <RBrownaw@pahouse.net>
Cc: Kane, Julie <jukane@pa.gov>; Seely, Randall <rseely@pa.gov>; Latanishen, Steve <slatanishe@pa.gov>; Rejrat, Wallace <wrejrat@pa.gov>
Subject: Delivery of Final-Form Rulemaking #6-349

Dear Representative Longietti:

Please see the attached rulemaking documents for the Department of Education's final-form rulemaking number #6-349, relating to Charter Schools and Cyber Charter Schools. The Department of Education appreciates your acceptance of this regulation through electronic delivery.

Please provide written (email) confirmation that this rulemaking was received.

Thank you.

Rick

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www.education.pa.gov

