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Public Cyber Charter School Association

A Voice for Cyber Charter Schooling in Pennsylvania

March 11, 2022

The Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

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**Independent Regulatory  
Review Commission**

Dear Commissioners:

On behalf of the member schools of the Public Cyber Charter School Association (PCCSA), I am writing to oppose the Pennsylvania Department of Education's (Department) Final Rulemaking number 6-349 in which the Department is proposing to amend Title 22 of the Pennsylvania Code (Education), Part XX (Charter Schools), by adding Chapter 713 (Charter schools and Cyber Charter Schools).

PCCSA provides a statewide voice for the public cyber charter schools that educate roughly 15,000 public school students across the Commonwealth – almost 25% of the nearly 61,000 students enrolled in all of Pennsylvania's public cyber charter schools.

In our October 15, 2021, letter regarding the Department's proposed rulemaking, we noted that the Department did not seek input from all major stakeholders in drafting its first iteration of proposed regulations – the Commission also recognized this significant shortcoming in the Department's work. More specifically, in its November 17, 2021, letter to the Department, IRRC noted that major stakeholders were not consulted in drafting the proposed regulations as required by the Regulatory Review Act. IRRC encouraged the Department to organize additional stakeholder meetings, including with the regulated community. ***Despite the direction given by IRRC, the Department has not met with or included the regulated community in its rulemaking process.***

A second overall reason the PCCSA opposes the Department's final rulemaking is that in Question 10 of the Regulatory Analysis Form in explaining why the regulation is needed, the Department states, "Charter schools are expected to receive nearly \$3 billion in publicly paid tuition during the 2021-22 school year, plus additional federal funding through pandemic emergency and recovery relief. Accordingly, the Department is proposing regulations to ensure public awareness of the expenditure of these resources." The Department appears to be asserting that charter schools are currently not required to publicly disclose or report their expenditures. Like school districts, charter schools are required to file an annual financial report (AFR) with the Department; are required to have an independent audit completed annually; are subject to audits by the state Auditor General and the Department; are required to adhere to the Public Official and Employee Ethics Act; are required to adhere to federal and state special education laws and regulations; and administer the PSSAs and Keystone Exams.

In addition, charter schools are also required to file an annual charter school report with the Department; and annual file a 990 tax return with the IRS. The Department's regulations are

seeking a solution to a problem that does not exist because the Charter School Law already requires transparency and accountability of all charter schools.

Third, we dispute the Department's authority to create a new definition for cyber charter schools because these schools are already defined in the Charter School Law. More specifically, we question their ability to insert language that prohibits "a school-established requirement that students must be present at a supervised physical facility designated by the school, except on a very limited basis, such as for standardized assessments."

Furthermore, in our previous letter, we highlighted inconsistencies that continue between the key messages in the introductory text and the actual language of the Department's proposed regulations.

Finally, we continue to reject the flawed premise of the Department's assertion that public cyber charter schools are acting in a manner that requires excessive intervention to correct wrong practices.

Since the Department continues to ignore or seek input of key stakeholders, and because its Final Rulemaking does not incorporate or consider any of the concerns previously raised by stakeholders, PCCSA respectfully requests the Commission to deny the Department's Final Rulemaking number 6-349 for the following reasons:

### **713.2 Contents of Charter School or Regional Charter School Applications and 713.3 Contents of Cyber Charter School Application**

- The final regulatory language will result in different charter school authorizers (school districts, the Department, etc.) creating different applications for different types of charter schools. Furthermore, this section does not clearly require all applications to request the same information from applicants.
- PCCSA strongly believes that the Department should be required to create a single application for *all* charter schools – brick-and-mortar and cyber. Instead of pushing through Final Rulemaking number 6-349, the Department should work with stakeholders, including both statewide organizations that represent the Commonwealth's charter schools to determine a finite list of application criteria that is clear, well defined, and not onerous. The application process created by this final rulemaking will be complicated, unfair, and potentially implemented inequitably across the state.

### **713.4 Random Selection Policies for a Charter School or Regional Charter school and 713.5 Random Selection Policies for a Cyber Charter School**

- Similar to the charter school application process, the requirements in the final rulemaking related to random selection policies are onerous and unfair because they will create different processes for different types of charter schools.
- Furthermore, the final rulemaking incorrectly assumes that cyber charter schools can accommodate an unlimited number of students. Like school districts and brick-and-mortar charter schools, cyber charter schools focus on creating optimal teacher-to-student ratios. Cyber charter schools must have the flexibility to make enrollment decisions in the same manner as brick-and-mortar charter schools.

- In addition, the reporting requirements under this section remain ill-defined. The only relevant data points in the reporting requirements are the total number of applicants and the total number of students enrolled in a cyber charter school.

### **713.8 Redirection Process**

- The final rulemaking fails to provide the clarity needed to determine how the regulation will impact rolling enrollments. Just like traditional public schools, public cyber charter schools face new student enrollments throughout the school year, including the months of May and June.
- In addition, the specific requirement prohibiting the Secretary from including tuition for the month after the month the request was submitted is not practical. This will prevent the more pragmatic approach of completing end-of-year reconciliation to determine any overpayments or underpayments.
- This section also fails to require school districts to submit complete, accurate PDE-363 forms with only deductions authorized by law.
- The explanation for the final language in this section completely ignores any analysis about how the proper enforcement of the Charter School Law – as it relates to school districts making tuition payments to charter schools – would create important savings as a result of reduced redirection requests.

### **713.9 Health Care Benefits**

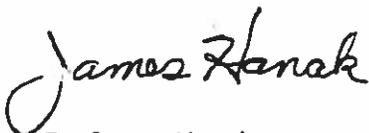
- While our schools already provide benefits comparable to those provided by a student's school district of residence, this section will significantly impact any collective bargaining efforts of individual schools.
- More specifically, three cyber charter schools have active collective bargaining agreements (CBA), with a fourth school in active negotiations to establish a CBA.
- 27% of teachers (3,274) within the cyber charter school community are currently covered by a CBA. That number is likely to grow to 30% in the coming weeks.

Before closing, I believe it is essential to note that there is absolutely no explanation of how the Department calculated the costs of implementing these regulations to the regulated community.

For all the foregoing reasons, we oppose the Department's Final Rulemaking number 6-349, and we ask the Commission to deny the Department's regulations.

Thank you for considering our request.

Sincerely,



Dr. James Hanak  
Executive Director