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The Pennsylvania Department of Education Division of Charter Schools
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Comments Regarding Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools

The Leaders for Educational Accountability and Reform Network (LEARN), on behalf of over 100 superintendent members from across the Commonwealth, submit the following comments on Final Regulation #6-349: Charter Schools and Cyber Charter Schools.

Overall, LEARN supports the proposed regulations in providing greater clarity to align charter schools to the same standards as our traditional public schools regarding transparency and accountability. LEARN strives for high academic standards and ensuring equity with regard to the delivery of instruction for all students and this should include all public schools, including charters. As such, we support regulations requiring charter schools to develop a non-discriminatory enrollment policy and that admission policies be publicly posted. We believe all charter school trustees should be held to the same ethical standards as the boards of school directors and they must disclose and abstain from any conflicts of interest. Fiscal transparency is critical when it pertains to public funds. As such, we commend the Pennsylvania Department of Education (PDE) for regulations requiring that charter schools follow common auditing practices.

We recognize that the regulations cannot address all concerns that LEARN has with the current Charter School Law (CSL), and we will continue to seek support from the General Assembly to make the legislative reform necessary to address those concerns. For those matters that can be addressed specifically by the PDE, the final regulations do make many of the necessary changes to align all public schools, traditional and charter, to the same standards. However, LEARN concurs with the technical analysis shared by PSBA as to some recommended revisions to the regulations as follows.

§ 713.2. Contents of Charter School or Regional Charter School Application

LEARN members have consistently been concerned regarding the charter school application process. The final regulations would require an applicant seeking to open a charter school to submit either the application form created by PDE or the application created by the local school district. LEARN supports the regulations allowing local authorizing school districts to develop their own charter school application, but the regulations contain no requirement that the charter school applicant use the locally created application, if one has been developed pursuant to the express authority to do so granted under the regulations. Under the current form of regulations, those applications could differ in format and content depending on which application the applicant chooses to use, regardless of whether the authorizer has invested time and resources in creating a form application that addresses unique factors associated with educating students within that school district. This can be highly problematic if a local authorizing school district receives multiple charter applications in the same school year.

In the Department's description of the changes made to section 713.2, the following paragraph appears:

"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))."¹ The emphasized language seems to imply that a charter school applicant would be required to use a locally developed application if the authorizing school board determined that the local application was needed to evaluate the application. Yet, language to this effect does not appear in the final regulations. We would recommend that the regulations make this clear so as to alleviate confusion and conflict among charter school applicants and authorizing school districts.

One of the new provisions added as section 713.2(f) lacks clarity and is of significant concern. The language suggests that the regulations do not prohibit a charter school or regional charter school, as those terms are defined in the regulations, from providing additional information to the authorizer as part of the process to establish or renew a charter. Because this provision is added to the section dealing with charter applications, it is unclear as to whether this provision is intended to apply to an applicant for a charter school or regional charter school or the application process itself such that an applicant would be able to submit supplemental information at any time during the application process, even after the school district has evaluated the application. Given the timelines in the Charter School Law, 24 P.S. § 17-1717-A(d)-(e), allowing an applicant to supplement the record under review at any time or in a serial

fashion could undermine the statutorily-required review process by the board of school directors, who are accountable to the taxpayers, and not permit proper and timely evaluation of the additional materials. Further, if an applicant is permitted to submit additional information at any time, the regulation effectively nullifies the process in the CSL that authorizes a denied applicant the ability to revise and resubmit the application to address the issues identified by the board of school directors in the denial. The regulations should provide guidance on what the renewal process should entail, including the development of a renewal application.

§ 713.7 Fiscal Management and Audit Requirements

Fiscal transparency and accountability is of utmost importance with regard to public funds. Subsection (b) is too limited in its description of how a charter school entity may satisfy the requirement to adhere to generally accepted standards of fiscal management and audit requirements. The final regulations continue to require only two things:

- Preparing financial statements in accordance with GAAP; and
- Obtaining an independent annual financial audit that follows governmental accounting standards and auditing standards.

However, subsection (b) does not address what should happen if those two standards are satisfied, but the auditors find other areas of significant deficiencies or material violations of those standards. We would recommend that this language be clarified to indicate that material problems noted in audits would also be evidence of violations of generally accepted standards of fiscal management.

Further, auditors do not address all of the areas that have been found by the State Charter School Appeal Board (CAB) to violate generally accepted standards of fiscal management, so having audits conducted and maintaining financial statements in accordance with GAAP are not the only things that should be required to determine compliance with subsection (a). For example, a charter school's failure to pay bills in a timely manner and failure to make PSERS 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.

With respect to subsection (c), the list of what should be included in audits is helpful and not currently addressed by many auditors; however, the list does not address many other concerns or provide much guidance or standards. For example:

- 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.
- Auditors could also check to make sure Statements of Financial Interest are properly and timely filed by all charter school trustees and public employees.

§ 713.8 Redirection Process

Although the redirection process provided in the final regulations largely mirrors the current procedures used by PDE, we have several concerns with the final regulations on subsidy redirection. We would ask for clarification on the reference to the "tuition rate used by the charter school" in subparagraph (d)(2). We were unable to find any reference addressing this concern in the final regulations. Would this require a charter school to show how it calculated the rates used, e.g. thru a 363 form?

We would also recommend that subsection (g) include 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. In addition, the regulations should require charter schools to notify school districts when a subsidy redirection request is submitted to PDE to avoid duplicate payments being made once a redirection request is submitted. Duplicate payments may have serious financial implications for a district's cash flow. It is possible that the new Charter School Redirection system being implemented by the Department will address some of these concerns, however the description of the system included in the final regulations was not detailed. We would also object to requiring school districts to continually monitor the financial reporting systems to see if redirection requests have been submitted. We would recommend that the Department's system be designed to allow automatic notifications to school districts when a redirection request is filed.

LEARN appreciates the time and effort given to addressing concerns expressed over the years by the local school districts and overall supports the regulations apart from the matters noted herein.