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STATE SENATOR  
**LINDSEY M. WILLIAMS**

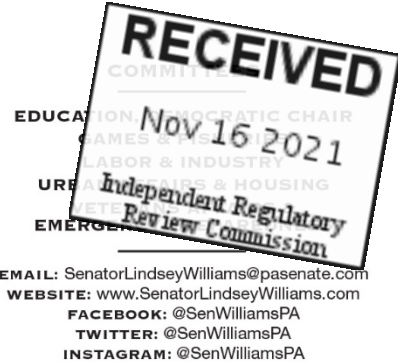
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## Senate of Pennsylvania



November 16, 2021

Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17101  
*Transmitted via email to [irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)*

### **Re: Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools**

Dear Commissioners:

Our Legislature has failed to take steps to hold charter schools accountable for how they spend taxpayer dollars or for the quality of education they provide to students. This inaction has allowed private institutions to spend millions of public funds selling a promise of a better education, when the truth is that their performance is often worse than the public schools that they siphon resources and students from year after year.

While not losing sight of the need for meaningful legislative reform, we welcome the promulgation of these rules as an appropriate exercise of the Administration's legal authority to provide guidance and clarity through regulation.

Our colleagues on the Senate Education Committee have sent a letter calling for the abandonment of the Proposed Regulation, arguing that the Administration is legislating through these proposed rules. We wholeheartedly disagree. Regulations are an essential and distinct part of our legal framework in Pennsylvania. Statutes reflect the will of the Legislature. We authorize agencies to promulgate regulations because they have expertise to lay down the details of how a law will operate – just as the General Assembly has done with the Charter School Law.

Pursuant to Public School Code Sections 1732-A(c)(1) and 1751-A, the Pennsylvania Department of Education (PDE) may “promulgate additional regulations related to charter schools,” and “issue regulations to implement this subdivision”. Furthermore, Section 1732-A(c)(2) states that PDE must ensure that charter schools comply with federal law and regulations governing students with disabilities and “*shall* promulgate regulations to implement this provision.” There is no question that PDE has the legal authority to promulgate regulations under the Charter School Law and, in places, is required to do so.

Pennsylvania charter schools collectively enroll nearly 170,000 students. As Pennsylvania Partnership for Children notes in its public comments, the COVID-19 pandemic increased the number of students attending charter schools – as families opted for cyber charters during a time when public schools were adapting to delivering their curriculum virtually for the first time. This has made the need for these lawfully proposed and appropriate rules aimed at providing clarity and guidance even more pressing.

Cumulatively, *the regulations take meaningful, important steps* to provide more transparency and accountability of charter schools and promote greater predictability and uniformity for charter school authorizers. They also clarify important ethics and conflict of interest standards that will reduce the risk of misuse of public funds.

After receiving the testimony provided at the Senate Education Committee hearing on October 20, 2021 and reviewing many of the public comments submitted, we write in support of the proposed regulations and offer the following comments for IRRC’s consideration:

**Charter Applications (713.2-3):**

- Districts that elect to create their own form with additional information should be permitted to require use of the local form. (See PSBA’s comments)
- The application should include plans for culturally responsive and sustaining education. (See PSEA’s comments)
- 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. (See PSBA’s comments)
- 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. (See PSEA’s comments)
- 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. (See PSEA’s comments)
- 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. (See Disability Rights Pennsylvania’s comments)

**Ensuring Equitable Enrollment (713.4-5):**

- The charter’s random selection policies must describe how their admission practices will comply with federal and state nondiscrimination law. (See Education Law Center’s comments)
- Public notice of the selection process should include the number of available slots and the number of applicants. (See Education Law Center’s comments)

- 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. (See PSEA’s comments)
- Further instruction should be provided on criteria for a random selection process to build greater trust in the process and to prevent abuse. (See Senator Kearney’s comments)

**Accountability and Ethics Requirements for Board of Trustees (713.6):**

- The board of trustees should include at least one parent of a student currently attending the school as a representative on the Board. (See School District of Philadelphia’s comments)

**Fiscal and Auditing Standards (7.13.7):**

- Requirements should align with generally accepted standards of fiscal management, which include but is limited to audits and preparation of financial statements.
  - The 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 pills or PSERS contributions, requiring internal financial policies, and others. (See PSBA’s and SDP’s comments)

**Redirection (713.8):**

- 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. (See PSBA, PASBO, and Pittsburgh Public’s comments)

**Health Care Parity (713.9):**

- 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 (See PSBA’s and PSEA’s comments)
- 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. (See PSBA’s comments)
- 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. (See AFT’s comments)

**New Provisions on Renewals:**

- 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. (See PSBA’s and ELC’s comments)

- The new renewal process should detail how the charter proposes to improve student outcomes if a charter is renewed, but its performance needs improvements. (See PA Partnerships for Children’s comments)

Please consider these comments as opportunities for improvement consistent with our general support for the lawfully proposed regulations.

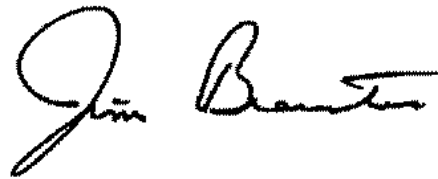
We will continue to work together to accompany these regulations with meaningful legislative reform, such as Senator Lindsey Williams’ and Senator Brewster’s charter school bill, SB 27. We also still need to address the long-standing inequities in how charter schools receive special education funding. These necessary changes, together with properly promulgated regulations, will finally put us on a path towards truly improving educational opportunities in Pennsylvania.

Our students and school communities cannot wait any longer.

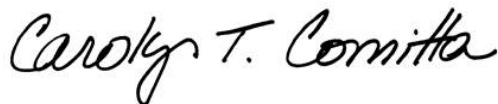
Respectfully,



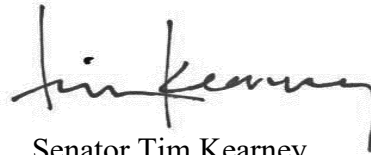
Senator Lindsey M. Williams  
Democratic Chair, Senate Education Committee  
38<sup>th</sup> Senatorial District



Senator Jim Brewster  
45<sup>th</sup> Senatorial District



Senator Carolyn T. Comitta  
19<sup>th</sup> Senatorial District



Senator Tim Kearney  
26<sup>th</sup> Senatorial District

cc: Governor Tom Wolf  
Pennsylvania Department of Education