

**ED, CharterRegs**

From: Thompson, Kelli [PA] <KThompson@psea.org>
Sent: Monday, October 18, 2021 3:52 PM
To: ED, CharterRegs
Cc: csonney@pahousegop.com; smartin@pasen.gov; Mark Longietti (mlongiet@pahouse.net); Williams, Senator Lindsey; Gullo, Gina [PA]; Vaughan, James [PA]; Wiedemer, Daniel [PA]; Brunelle, Erika [PA]; Zampogna, Elizabeth [PA]; Thompson, Kelli [PA]; Claycomb, Carla [PA]; Levis, Eric; Broderic, David [PA]; Statler, Jennifer [PA]; Seely, Randall; Biegen, Veronica [PA]; Seivard, Karen [PA]; Wilson, Lynne [PA]
Subject: [External] PSEA submission of comments re: regulation #6-349 (charter schools)
Attachments: PSEA comments - Charter Regulations - letter.pdf; Regulation 6-349 (Charter Schools) - PSEA Comments and Recommendations.pdf

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Good afternoon –

On behalf of PSEA, I'm submitting the attached comments to the Chapter 713 proposed regulation #6-349.

Thank you in advance for your consideration.

Best,
Kelli

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October 18, 2021

The Honorable Noe Ortega
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Aaron F. Chapin, *Vice President*
Jeffrey D. Ney, *Treasurer*
James G. Vaughan, *Executive Director*

RE: CHAPTER 713 PROPOSED RULEMAKING (6-349)

Dear Secretary Ortega:

On behalf of the Pennsylvania State Education Association (PSEA), please find enclosed our comments on the Chapter 713 rulemaking proposed by the Pennsylvania Department of Education (PDE) relating to charter schools and cyber charter schools.

PSEA represents the collective interests of 178,000 members who make up the majority of the current Pennsylvania educator workforce—including about a thousand charter and cyber charter educators. These educators share a passion for public education that allows students to succeed and communities to thrive while supporting their educators. Across the Commonwealth, charter schools continue to grow with limited statutory accountability requirements. Charter schools can and should meet expectations similar to those of traditional public schools, while continuing their role as “laboratories of innovation.” **PSEA sees this proposed rulemaking as a first step on the path to meaningful charter reform.**

PDE often promotes the importance of holding high expectations for all learners; PSEA extends this principle to educators and their employers. Charter and cyber charter schools can only be held to high expectations with systems that allow authorizers to monitor their operations. This is why **PSEA supports the promotion of “transparency, equity, quality, and accountability,” throughout the proposed rulemaking.** Schools that share academic, fiscal, and equity-related data create an environment that is open for the development of students—an environment that promotes high-quality education for ALL learners – regardless of what types of schools they attend.

Educators can only provide high-quality education when they are well enough to deliver services to students; the proposed rulemaking includes a focus on educator healthcare that addresses this vital element of educator support. While PSEA has concerns about the language around healthcare reforms for charter and cyber charter schools, **we commend PDE’s recognition of the critical need for quality educator healthcare.**

The PSEA Mission

We are members who promote, protect, and advocate for our schools, students, and professions.

Affiliated with the National Education Association



The Honorable Noe Ortega
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At PSEA, we hold high expectations for our members and the schools where they work so that they can collaborate towards a brighter future for all students. Charter and cyber charter schools present a unique subset of public schools where collaborative efforts could empower all educators to work together to build a better system for all Pennsylvania students. This begins with addressing opaque interactions, deficient communications, and undisclosed data – all of which impact PSEA’s charter and cyber charter members in bargaining. Charter reform can and must open this door to create partnerships between charter operators and their employees for student excellence.

Thank you for your careful consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "R. W. Askey", with a stylized flourish at the end.

Richard W. Askey
President

cc w/enclosure: The Honorable Mark Longietti
The Honorable Scott Martin
The Honorable Curt Sonney
The Honorable Lindsey Williams

PSEA COMMENTS ON CHAPTER 713 PROPOSED RULEMAKING

SUBCHAPTER A. GENERAL PROVISIONS *Section 713.1*

§ 713.1 Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

- (a) *Authorizer* – (1) a board of school directors, (2) a board of public education of a school district, or (3) the Department, for a cyber charter school.
- (b) *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.
- (c) *Charter school entity* – a charter school, regional charter school, cyber charter school or multiple charter school organization.
- (d) *Charter School Law* – Article XVII-A of the School Code (24 P.S. §§ 17-1701-A – 17-1751-A).
- (e) *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.
- (f) *Department* – the Department of Education of the Commonwealth.
- (g) *Educational management service provider* – 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.
- (h) *English Learner* – A student with limited English language proficiency who: 1) 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; or is a Native American or 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 such an individual's level of English language proficiency; or 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 such individual the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in an English speaking society.
- (i) *Multiple charter school organization* – a public, nonprofit corporation under the oversight of a single board of trustees and a chief administrator that operates two (2) or more charter

schools or regional charter schools under section 1729.1-A of the Charter School Law (24 P.S. § 17-1729.1-A).

- (j) *PAsecureID* – A unique, permanent, anonymous state-wide student identification assigned to all students upon their first entry into the Commonwealth’s public school system.
- (k) *Regional charter school* – an independent public school 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. A regional charter school must be organized as a public, nonprofit corporation.
- (l) *School Code* – the Public School Code of 1949 (24 P.S. §§ 1-101 – 27-2702).
- (m) *Secretary* – the Secretary of Education of the commonwealth.

Comments and Recommendations:

1. Overall, the definitions are a positive addition. PSEA particularly commends the focus on clearly defining an educational management service provider.
2. Add a definition for “charter school foundation” to the list to clearly differentiate a charter school foundation from an educational management service provider.
3. Rewrite the definition for “English Learner” for parity with the ESEA definition.
4. Clarify the definitions of “multiple charter school organization” and “regional charter school” to indicate that each is administered in a single central office.

Rationale:

1. The added clarity to the definition of an educational management service provider stands out as particularly important for two main reasons: (1) due to the growth of such organizations in the Commonwealth and (2) due to the need for a collective understanding around this term throughout regulatory language directing the functions of charter and cyber charter schools. This clarification is important to PSEA as it specifically assists in creating a common understanding when engaging in collective bargaining on behalf of our members who are employees of charter and cyber charter schools.
2. PSEA recommends that clarity like that exhibited in the definition of educational management service provider be extended into the development and adoption of a definition for “charter school foundation” due to the express exclusion of the term from the “educational management service provider” definition. Charter school foundations have several parallels with educational management service providers including some relating to the non-transparency of financial information stemming from private sector allowances. As such, this proposed rulemaking should treat charter school foundations in parity with educational management service providers at a minimum in these definitions. This is, again, of particular importance to PSEA due the need for a collaborative understanding of such terms when engaging in collective bargaining.
3. The definition of English Learner presented in the proposed rulemaking is not fully consistent with the definition of the term used in federal legislation, namely ESEA § 8102(20). Charter schools and cyber charter schools must comply with the mandates under this legislation for ESSA reporting as part of Pennsylvania’s ESSA Consolidated State Plan,

creating a potential conflict. It is possible that some students categorized and receiving services as English Learners under ESSA would not fall into the same category under the proposed rulemaking definition and vice versa. In this event, charter and cyber charter schools would be held to two differing standards that could cause some students to lose access to much-needed specialized instruction and contribute to data inaccuracies. As such, parity between the federal legislation and these proposed regulations is of utmost importance.

4. Multiple charter school organizations and regional charter schools might span across multiple districts, counties, and/or intermediate units, creating confusion around appropriate policies and procedures. In such situations, the location of the administrative office is identified as the distinguishing location identifier as seen in Section 713.9(b)(1)(ii) of this proposed rulemaking. As such, designation of a single central office for administration is critical for statutory and regulatory parity.

SUBCHAPTER B. APPLICATION REQUIREMENTS

Section 713.2 – Section 713.3

§ 713.2. Content of charter school or regional charter school application.

- (a) An applicant seeking to operate 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 submit additional information for the local board of directors to evaluate the application in accordance with section 1717-A(e)(2) of the Charter School Law (24 P.S. § 17-1717-A(e)(2)).
- (c) The application forms in subsection (a) must, at a minimum, include the following:
 - (1) Name, address, phone number and email address of the charter school or regional charter school applicant.
 - (2) Name of the proposed charter school or regional charter school.
 - (3) 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.
 - (4) Proposed governance structure of the charter school or regional charter school, including:
 - (i) Articles of incorporation filed with the Pennsylvania Department of State.

- (ii) By-laws 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 a description of their roles and responsibilities.
 - (D) Name of any foundation or other entity with which the school will be associated and its financial status (for example, an organization that is 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))).
- (v) Standards for board of trustees' performance, including compliance with all applicable laws, regulations, and terms of the charter.
- (vi) 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.

- (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) 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 the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.), 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.
- (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.
 - (ii) Curriculum to be offered, 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 (24 P.S. § 17-1723-A) 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, 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.
 - (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 (24 P.S. § 4-437) 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 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 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 (24 P.S. § 15-1502).
- (12) A description and address of the physical facility in which the charter school or regional charter school will be located, the ownership thereof, 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, common space custodial services, and the like).
 - (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, music instruction, and the like).
 - (v) 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 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 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.
- (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, pursuant to section 111 of the School Code (24 P.S. § 1-111), 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 by 23 Pa.C.S. Ch. 63 Subch. C.2 (relating to background checks for employment in schools), 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 (24 P.S. § 17-1719-A), 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).

Comments and Recommendations:

1. (c)(3)(i)-(iv): Modify the enrollment requirements of the application to be indicative of the number of students the school is prepared to support and the targeted population demographics rather than proposed actual enrollments.
2. (c)(4)(iv)(D): PSEA highlights the importance of including information about foundations on the application.
3. (c)(4)(iv): PSEA commends the high level of specificity and detail in the application requirements regarding Educational Management Service Providers. We support this element in full.
4. (c)(5)(ii): Add an additional subsection, (D), to include plans for culturally responsive and sustaining education.
5. (c)(9) line 1: PSEA supports the inclusion of financial plans in the application for parity with the budgeting requirements of non-charter public schools.
6. (c)(12)(ii): Add a subsection to request plans for facility cost payment, specifying use of state moneys from the charter school facility lease reimbursement program and the charter school facility grant program.
7. (c)(13)(ii): PSEA highlights and supports the inclusion of stated caseload limits for staff serving students with disabilities in charter applications.
8. (c)(13): Add a subsection to include a plan and process for induction programming.

Rationale:

1. PSEA finds the application criteria to be detailed and an overall positive; however, the inclusion of proposed enrollment data in the application precludes the use of random selection policies, as designated in Section 713.4 and 713.5, due to the nature of random selection. As such, PSEA recommends a focus on the number of students, both overall and by subgroup, that the school plans to be able to support. The planning and proposing stage for charter and cyber charter schools would include considerations of staffing needs and allow for appropriate designations in this area. Further, this data could be considered in combination with data collected in Section 713.4(d)(3) and 713.5(d)(3) to evaluate congruency between the numbers and subgroups of students the charter or cyber charter school plans to be able to support and the acceptance of students within those confines. Not only does this add an element of potential accountability, but it also helps to ensure that schools are not enrolling students who are English Learners or who have special needs beyond the number they are able to adequately support. Caseload management for these specialized instructional professionals serves as an important labor negotiation, thus presenting as of particular importance to PSEA.
2. PSEA supports the inclusion of foundation information on the application because this helps members to understand potential support for after-school programming and student wrap-around services, especially when the nature of foundational relationships is made transparent.
3. PSEA finds the detailed elements relating to Education Management Service Providers

(EMSP) required by the application to be of utmost importance for several reasons. First, EMSPs continue to grow in both numbers and impact throughout the commonwealth. In fact, a National Education Policy Center report found a 275% increase in EMSP-supported charter and cyber charter schools in the US over the last five years (2014-2019).¹ Additionally, PSEA agrees with the potential of EMSP transparency as a method to increase collaboration through reduced suspicion.² A greater understanding of EMSPs and their roles allows for meaningful partnerships and community engagement, which create positive learning environments for students and educators alike. Educators in such environments can serve students and communities best. SEA supports effective educators and represents member interests that allow this to occur.

4. PSEA supports PDE's focus on Culturally Responsive and Sustaining Education and awaits the issuance of the PA standards in this area expected in the coming year. With this focused effort, PSEA believes planning for success to be a critical element of a comprehensive school plan.
5. Pennsylvania has two charter school lease programs, lease reimbursement and lease grants, of which the latter is currently inactive. Media³ and official⁴ outlets throughout the Commonwealth share stories of loopholes in this process that allow charters to gain lease reimbursements for schools owned by the charter's foundation. While this is unlikely to stop in full, requiring transparency at the application stage could help to prevent inaccurate facility funding in the future. It could also provide a way to see whether the school can cover building costs under special circumstances such as those presented under the current COVID-19 pandemic.
6. As noted in item 1, caseload limits are a critical element in the contractual negotiation of various educational employees. Individuals such as school psychologists, school counselors, special educator teachers, and English Language teachers need to have healthy and manageable student caseloads if expected to provide adequate services to students. As such, PSEA has a vested interest in the inclusion of caseload information in the charter and cyber charter application.
7. According to 22 Pa. Code §49.16 and §49.83, charter schools in PA are required to have a state-approved teacher induction plan for first-year teachers. High quality induction programs are linked to higher retention rates, better use of instructional practices, higher-expectations for all students, use of standard-based curricular frameworks, and curricular goal achievement.⁵ As such, the inclusion of the proposed induction plan in the application ensures that charter and cyber charter schools are both aware of and prepared for this state

¹ Miron, G., et al. (2021). Profiles of for-profit and non-profit education management organizations: Fifteenth edition. <https://nepc.colorado.edu/publication/emo-profiles-fifteenth-ed>

² Hentschke, G. C., Oschman, S., & Snell, L. (2003). Trends and best practices for education management organizations. West Ed: https://www2.wested.org/www-static/online_pubs/PP-03-02.pdf

³ Palochko, J. (Feb 9, 2018). How a loophole let charter schools 'buy' buildings and still collect rent for sale. The Morning Call: <https://www.mcall.com/news/watchdog/mc-nws-allentown-executive-education-academy-charter-school-lease-reimbursements-20171204-story.html>

⁴ PA Dept of the Auditor General. (Aug 3, 2016). Auditor General DePasquale says PDE provided more than \$2.5 million in questionable lease reimbursements to 9 charter schools.

https://www.paauditor.gov/Media/Default/Print/RLS_DePasquale_PropelCS_Leases_080316_FINAL.pdf

⁵ PDE. (Feb 2019) Educator Induction Plan Guidelines: <https://www.education.pa.gov/Documents/Teachers-Administrators/Act%2048-PERMS/Educator%20Induction%20Plan%20Guidelines.pdf>

requirement in a manner that is supported by the approving board. Further, the inclusion of the plan allows for better contractual negotiations for charter and cyber charter teachers in their first year of instruction.

§ 713.3. Contents of cyber charter school application.

An applicant seeking to operate 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) and all provisions of section 17-1747-A of the Charter School Law (24 P.S. § 17-1747-A).

Comments and Recommendations:

PSEA agrees with this section.

Rationale:

Parity between the requirements for charter and cyber charter schools is valid and important.

SUBCHAPTER C. ENROLLMENT

Section 713.4 – Section 713.5

Section 713.4. Random selection policies for a charter school or regional charter school.

- (a) Within three (3) months of the effective date of this Chapter or upon the granting of a charter, a charter school or regional charter school must 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 must be included in the contents of the application pursuant to section 1719-A(6) of the Charter School Law (24 P.S. § 17-1719-A(6)).
- (c) The policy identified in subsection (a) must:
 - (1) Be posted on the charter school's or regional charter school's publicly accessible website.
 - (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. Such notice must be posted on the charter school's or regional charter school's publicly accessible website 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 (24 P.S. § 17-1728-A) and shall, at least annually, publish on its publicly accessible website the following information:
- (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

Comments and Recommendations:

1. Section 713.4 is an important element to include in charter reform as it promotes continued transparency and a focus on educational equity.
2. PSEA recommends adding the disaggregation of data in annual reports in a way that is consistent with the disaggregation requirements under Pennsylvania's ESSA Consolidated State Plan.

Rationale:

1. The stated intent of the proposed rulemaking includes the promotion of equity and accountability, which are key elements reflected in this section of the proposed rulemaking.
2. Disaggregation of enrollment data is a current requirement of Pennsylvania's ESSA Consolidated State Plan, which means many schools already collect data in ways that allow for such breakdowns. Adding disaggregation to annual charter school reporting empowers stakeholders to hold charter schools to high-equity standards by enabling stakeholders to assess equity within the proportions of students applying, qualifying, and being offered enrollment in relation to those enrolling in the schools.

Section 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 such terms are agreed to by the Department and the cyber charter school as part of a written charter pursuant to sections 1723-A(d) and 1745-A of the Charter School Law (24 P.S. § 17-1723-A(d); 24 P.S. § 17-1745-A).
- (b) For cyber charter schools with enrollment terms agreed to by the Department and the cyber charter school as part of a written charter pursuant to section 1745-A of the Charter School Law (24 P.S. § 17-1745-A), a cyber charter school must, within three (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) must:
 - (1) Be posted on the cyber charter school's publicly accessible website.
 - (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. Such notice must be posted on the cyber charter school's publicly accessible website 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 pursuant to section 1723-A of the Charter School Law (24 P.S. § 17-1723-A) 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. Details must 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 pursuant to section 1723-A of the Charter School Law (24 P.S. § 17-1723-A) 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 (24 P.S. § 17-1743-A(f)) and shall, at least annually, publish on its publicly accessible website the following data elements:
 - (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.

Comments and Recommendations:

1. As previously stated, Section 713.5 is an important element to include in charter reform as it promotes continued transparency and a focus on educational equity.
2. PSEA recommends adding the disaggregation of data in annual reports in a way that is consistent with the disaggregation requirements under Pennsylvania's ESSA Consolidated State Plan.

Rationale:

1. As before, the stated intent of the proposed rulemaking includes the promotion of equity and accountability, which are key elements reflected in this section of the proposed rulemaking.
2. The items in (d)(i)-(ii) are unlikely to add additional clarity due to the tendency of cyber charter schools to accept all student applications; however, this addition would result in little to no additional effort on the part of the cyber charter schools. As such, all of section (d) should be maintained in the regulations for cyber charter schools for parity with those requirements set for brick-and-mortar charter schools.

SUBCHAPTER D. BOARDS OF TRUSTEES

Section 713.6

Section 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 the Public Official and Employee Ethics Act (65 Pa.C.S. §§ 1101-1113).
- (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) (relating to restricted activities).
- (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 (relating to definitions).

- (f) A member of a board of trustees of a charter school entity who violates any provision of the Public Official and Employee Ethics Act (65 Pa.C.S. § 1101-1113) shall be subject to the penalties imposed under the jurisdiction of the State Ethics Commission.

Comments and Recommendations:

PSEA supports Section 713.6 and maintains that the proposed accountability requirements also should apply to charter school administrators.

Rationale:

PSEA has long supported the application of the proposed operational accountability and ethics requirements for charter school boards of trustees and administrators. The proposed language in Section 713.6 resolves a long-standing oversight in and problem with the law pertaining to charter schools, but it is incomplete without applying these requirements to charter school administrators. There have been numerous examples of potential conflicts of interest and questionable relationships between charter school administrators and education management service providers. Further, there are Ethics Act requirements for school superintendents.

SUBCHAPTER E. FISCAL AND AUDITING STANDARDS

Section 713.7

Section 713.7. Fiscal management and audit requirements.

- (a) Pursuant to section 1729-A of the Charter School Law (24 P.S. § 17-1729-A), 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 (GAAP) as applied to governmental units and as established by the Governmental Accounting Standards Board (GASB).
 - (2) A charter school entity shall obtain an independent annual financial audit that follows Generally Accepted Government Auditing Standards (GAGAS), as issued by the Comptroller General of the United States, and Generally Accepted Auditing Standards (GAAS), as issued by the American Institute of Certified Public Accountants (AICPA).
- (c) The following items must 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.

Comments and Recommendations:

PSEA supports Section 713.7.

Rationale:

PSEA views Section 713.7 as a common sense financial accountability measure to ensure the efficacy and quality of the financial accounting and audits conducted by charter school entities. Of the provisions included in the proposed section, it is most important to have transparency around the fees charged by for-profit education management service providers. PSEA recognizes that all taxpayer resources are precious. PSEA and its members are increasingly concerned that more and more public resources are being devoted to education management service providers, which impairs the ability of charter school entities to raise starting salaries or have the personnel necessary to reduce special education caseloads.

SUBCHAPTER F. REDIRECTION PROCESS

Section 713.8

Section 713.8. Redirection process.

- (a) Pursuant to section 1725-A(a)(5) of the Charter School Law (24 P.S. § 17-1725-A(a)(5)), a charter school entity shall submit its payment request to the school district no later than ten (10) days before the fifth 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 (24 P.S. § 17-1725-A(a)(5)) when the school district does not make payment to the charter school entity by the fifth 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) must submit the request on a form created by the Department. Such form must include the following information:
 - (1) For each student for which the charter school entity is seeking payment:
 - (i) PAsecureID.
 - (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 falsifications to authorities).

Recommendations:

1. Grant PDE the flexibility to allow larger school districts to have longer than 10 days to make payment but no longer than 15 days.
2. Require charter school entities to notify a designated person within a school district that it is seeking redirection from PDE prior to requesting the payment from PDE. Congruently, require school districts to designate one individual on staff that charter schools are required to notify prior to redirection requests.

Rationale:

PSEA does not object to the creation of a regulatory timeline to provide order and standardization to the redirection process. However, we are concerned with the practicality for some larger districts to meet the ten-day timeline. School districts often must confirm residency of students, which can be more complicated depending on a district's total enrollment size, as well as the total number of charter school entity enrollees in the district.

Additionally, we know that situations will arise in which districts have completed their process and payment is forthcoming, but charter schools may have moved forward with redirection. Some charter school entities will seek redirection immediately and others will give districts a grace period. To prevent these unnecessary situations and ultimately greater financial reconciliation at the end of the fiscal year, PSEA recommends that a charter school entity must notify a designated person in a district prior to seeking redirection from PDE. This affords the opportunity for a business office/administrator to acknowledge that the process is moving forward or prompt notification to the charter school that payment is imminent.

SUBCHAPTER G. SCHOOL STAFF

Section 713.9

Section 713.9. Health care benefits.

- (a) Pursuant to section 1724-A of the Charter School Law (24 P.S. § 17-1724-A), 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:
 - (i) Provides benefits in each of the categories of benefits as described in 42 U.S.C. § 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) Pursuant to 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 42 U.S.C. § 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 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) 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 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, cyber charter school.

Comments and Recommendations:

1. 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 Affordable Care Act in paragraph (a)(1)(i) and (b)(1)(i), but the rather the benefit categories offered by the applicable school district for comparison purposes as required by Section 1724-A(d) of the Public School Code.
2. Ensure greater clarity for the term "substantially equivalent" in Section 713.9(a)(1)(i) and (b)(1)(i).
3. Strike (a)(2) and (b)(2) referred to as "tax advantage account" or otherwise known as a health reimbursement account.
4. Subsection (b) requires greater clarity regarding reference to the term "administrative office." Consistent with our recommendations for the definitions of in Section 713.1 and the application in Sections 713.2 and 713.3, this section should reference a single central administrative office.
5. Clarify how Section 713.9 applies to multiple charter school organizations.

Rationale:

1. Section 1724-A(d) states that "Every employee of a charter school shall 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 law does not cite the Affordable Care Act's essential benefit categories as the standard for comparison. Moreover, many school districts offer health care benefits that are beyond the essential benefit categories covered by federal law.

Therefore, the proposed language in (a)(1)(i) and (b)(1)(i) fails to ensure that charter and cyber charter school employees are provided the same health care benefits as district employees.

2. The regulations should provide greater clarity to charter school employees and their employers as to meaning of the term “substantially equivalent” in Section 713.9(a)(1)(i) and (b)(1)(i). Cost-sharing structures can vary significantly. It isn’t clear whether “substantially equivalent” is referring to percentages or dollar amounts, and there are several factors that come into play when analyzing a cost-sharing structure (e.g., copays, deductibles, and premiums).
3. Section 713.9(a)(2) and (b)(2), relating to the creation of tax advantage accounts or health reimbursement accounts, are too far afield from the statutory requirement under Section 1724-A(d) that the charter school entity provide the “same” health care benefits to charter school entity employees.
4. Cyber charter schools and regional charter schools and multiple charter school organizations often have multiple administrative offices. Consistent with our recommendation regarding the definitions and the charter application, PSEA notes that it is necessary for these charter school entities to identify the central administrative office. Without such specificity, these charter school entities can change their administrative office location and circumvent the intent of the law in providing the “same” health care benefits to employees.
5. Section 713.9 doesn’t speak to the healthcare requirements for multiple charter organizations. Under the current language, it is unclear if all the charters in a multiple charter school organization would be treated as separate charters for purposes of this provision or if they would be treated as one charter with the location of a designated central administrative office being used for purposes of this health care comparison.