

Comments of the Independent Regulatory Review Commission



Department of Education Regulation #6-349 (IRRC #3315)

Charter Schools and Cyber Charter Schools

November 17, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the September 18, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the Department of Education (Department) to respond to all comments received from us or any other source.

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. We received comments from Rep. Curt Sonney, Chairman of the House Education Committee and Sen. Tim Kearney. The Senate Education Committee (Committee) voted to submit comments at their meeting and submitted the formal comment letter on November 8, 2021. We also received a separate letter from the Democratic Chair and members of the Committee dated November 16, 2021. Commenters and legislators have provided input both for and against this proposed regulation. Chairman Sonney comments that several provisions of the regulation are contrary to the intent of the law, lack clarity, and impose unreasonable requirements on charter schools and cyber charter schools. Sen. Kearney comments that the regulation is a step forward, but there are gaps in the regulation on how the standard application process for charters will compare to local charter school applicants, how renewals of applications will occur, what a random selection process should look like, and what criteria should be considered in the fiscal management and audit requirements, amongst other concerns. The Committee comments dated November 8 express concern with many aspects of the proposed regulation as follows:

- 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.

- 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.
- 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.
- 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.
- 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.
- . . . [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.
- . . . , the economic and fiscal impact to the regulated community remains in question. 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.
- 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.

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)

- Districts that elect to create their own form with additional information should be permitted to require use of the local form.
- The application should include plans for culturally responsive and sustaining education.
- 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.
- 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.
- 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.
- 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.

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.
- Public notice of the selection process should include the number of available slots and the number of applicants.
- 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.
- Further instruction should be provided on criteria for a random selection process to build greater trust in the process and to prevent abuse.

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.

Fiscal and Auditing Standards (713.7)

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

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.

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.
- 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.
- 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.

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

The 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.

Under the RRA, the comments, objections, or recommendations of a committee and written comments submitted by current members of the General Assembly are two of the criteria the Commission must consider when determining if a regulation is in the public interest. Our comments below address many of the issues raised by the Committee and legislators. When this proposal is delivered as a final-form regulation to this Commission and the standing committees for review, we will evaluate the Department’s responses to the issues raised by the Committee and legislators in determining whether the regulation is in the public interest.

2. Compliance with the RRA.

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.

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

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.

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 into 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?

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

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. 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.

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

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.

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

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.

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.

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.

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.

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

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.

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.

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.

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.

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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.

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

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.

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.

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.

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.

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.

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.