

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Monday, March 21, 2022  
14<sup>th</sup> Floor Conference Room  
333 Market Street

**I. CALL OF THE MEETING**

The March 21, 2022 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:09 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:       George D. Bedwick, Chairman  
  John F. Mizner, Esq., Vice Chairman  
  John J. Soroko, Esq.  
  Murray Ufberg, Esq.

Telephone:                       Dennis A. Watson, Esq.

**II. APPROVAL OF THE MARCH 10, 2022 PUBLIC MEETING MINUTES**

Chairman Bedwick asked for a motion for approval of the March 10, 2022 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Commissioner Ufberg seconded, and the motion passed 5-0.

Chairman Bedwick stated the Commission would correct the previous meeting's minutes in which he erroneously indicated Saudi Arabians culturally consider the right hand to be unclean instead of the left hand.

Chairman Bedwick announced Cheryl Yohn, Director of Administration/Comptroller, would soon enter retirement and presented a plaque to her in commemoration of her service. Vice Chairman Mizner expressed his gratitude towards Ms. Yohn and wished her a "happy and healthy retirement."

**III. NEW BUSINESS**

**A. DEEMED APPROVED**

**1. No. 3317 Department of Agriculture #2-195: State Food Purchase Program Regulations**

**B. ACTION ITEMS**

**1. No. 3315 Department of Education #6-349: Charter Schools and Cyber Charter Schools**

Michelle Elliott, Regulatory Analyst, indicated the regulation's provisions clarify elements of the Charter School Law and set conditions that emphasize accountability, equity, quality and transparency. Ms. Elliott stated the Commission received five public comments in support of the regulation are eight individual comments, seven form letters, and a petition "signed by more than 3,000 parents, students, staff and supporters of charter schools" opposing the final regulation. She noted the Commission received letters from both the Senate and House Education Committees disapproving the regulation, though Democratic committee members from both chambers sent letters indicating dissent from these decisions and offering support.

Dr. Noe Ortega, Secretary, Dr. Sherri Smith, Deputy Secretary, Office of Elementary and Secondary Education, Julie Kane, Policy Director, Adam Schott, Special Assistant to the Secretary, Ben Hanft, Chief, Division of Subsidy Administration, and Wallace Rejrat, Assistant Counsel, Department of Education (PDE), were present to answer any questions.

Secretary Ortega affirmed the Wolf administration's support for allowing students to enroll in cyber charter schools. He detailed the work that went into the regulation and its attempts to strengthen the quality of education and accountability for school districts.

Representative Mark Longietti (D-Mercer), Minority Chairman, House Education Committee, outlined his support for the regulation's passage. He asserted the regulation provides information that would clarify the enrollment and fiscal processes for charter schools. Representative Longietti added charter schools would have their jurisdictions more clearly defined. He described the regulation as an important step forward in providing transparency for charter school operations.

Christine Seitz, Majority Executive Director, House Education Committee, noted she is representing House Education Committee Chairman Curt Sonney (R-Erie) and indicated he sent a letter to the Commission disapproving the regulation.

Dr. Tina Chekan, CEO and superintendent, Propel Schools and Propel Schools Foundation, voiced her opposition to the regulation. She stated the regulation "stifles school choice" and impacts the finances and operations of charter schools. Dr. Chekan added charter schools would have to cease operations if they do not follow the provisions of the regulation. She urged the Commission to reject the regulation.

Commissioner Ufberg asked if the regulation's requirements are "onerous." Dr. Chekan answered existing regulations for different processes make the regulation onerous.

Vice Chairman Mizner asked which laws are contradicted by the regulation. Dr. Chekan stated it is the Charter School Law. Vice Chairman Mizner asked if Dr. Chekan believes charter schools are required to do more than public schools. Dr. Chekan replied in the affirmative and claimed she feels her school is "put under a microscope" due to yearly audits and annual reports

requesting "more and more" information. She asserted public schools do not have the feeling they could be easily shut down.

Christopher Dormer, Executive Director, Leaders for Educational Accountability and Reform Network (LEARN), expressed his support for parents to choose the school they think best teaches their children. He explained LEARN promotes legislative reform to the Charter School Law rather than through regulation. Mr. Dormer professed support for some of the regulation's aspects, including standardization.

Commissioner Ufberg queried why LEARN opined the regulation is onerous. Mr. Dormer explained charter schools should be the ones studying available information and ensuring Charter School Law requirements are met and quality programs are offered. Commissioner Ufberg asked if the issue is school districts' concern for individual choice as it relates to school districts. Mr. Dormer answered he believes the Charter School Law is "lacking" in helping school districts make informed decisions when considering an application.

Vice Chairman Mizner questioned if there is a school board where Mr. Dormer works and how many members are on it. Mr. Dormer replied there is a school board with nine members. Vice Chairman Mizner inquired if the school board members adhere to residency requirements for where the school district is located. Mr. Dormer responded the board members must adhere to residency requirements in the school district they represent.

Chairman Bedwick asked if board members must comply with state ethics laws. Mr. Dormer replied in the affirmative.

Commissioner Soroko queried if the situation revolves around charter schools and their ability to examine and approve or deny applicants. Mr. Dormer responded this is accurate. Commissioner Soroko described the issue as charter schools and public schools having different application processes. Mr. Dormer replied in the affirmative and clarified he and LEARN "are looking for an application process that gives us a better basis" to determine if the Charter School Law is upheld. Commissioner Soroko asserted the issue is "what should the requirements or burden on charter schools be or not." Mr. Dormer stated this is correct.

Chairman Bedwick asked if school districts have the right to request additional information under the Charter School Law, regardless of what PDE determines is a "model application." Mr. Dormer disclosed that is correct from his understanding.

Jennifer Arevalo, Board Member, Pennsylvania Coalition of Public Charter Schools (PCPCS), commented her organization does not support the regulation and encouraged the Commission to vote against it. She asserted the regulation circumvents the Charter School Law and PDE is exceeding its authority. Ms. Arevalo explained public school districts and charter schools could undergo strained relations. She added the regulation would make it harder for new charter schools to begin operations and deter low-income students from applying to charter schools. Ms. Arevalo claimed not enough analysis was conducted by PDE to understand the situation.

Commissioner Soroko requested elaboration on the difficulties Ms. Arevalo encountered during discussions with public schools. Ms. Arevalo responded that despite her school's success and high enrollment, the nearby school district refused to meet with her. She stated her school then went through a "lengthy" petition and appeal process before ultimately being denied.

Vice Chairman Mizner asked how charter schools provide funds for upfront costs, such as legal fees. Ms. Arevalo replied her school had a committed lawyer who aided it until the lawyer could no longer be paid.

Chairman Bedwick remarked the barriers Ms. Arevalo encountered are only at a local level and inquired what other issues could arise for charter schools. Ms. Arevalo answered the public school district's standard of health care created problems for her school, as well as the costly work of redirecting one student to her school. Chairman Bedwick highlighted Ms. Arevalo's comments that determining what health care means at a public school is not clearly defined. He asked if the regulation makes this issue worse. Ms. Arevalo opined the situation involves "unknowns" regarding operation and application processes for charter schools to be the same as public schools. Chairman Bedwick inquired if the regulation makes the charter school application process more difficult than it currently is. Ms. Arevalo replied she could not give that answer.

Commissioner Ufberg wondered if Ms. Arevalo or PCPCS discussed the issue with state legislators. Ms. Arevalo responded they have spoken to PDE officials. She opined there is polarization on the issue of charter schools. Ms. Arevalo stated her belief that her school and others have adhered to requirements. Commissioner Ufberg noted the Charter School Law has existed for "quite a while." He professed his surprise the General Assembly did not provide greater clarification. Commissioner Ufberg suggested Ms. Arevalo and PCPCS were not successful in reaching out to legislators. Ms. Arevalo answered though the coalition has reached out to legislators, they were not able to further discuss the situation with them. She cited the increasing number of students applying to charter schools exhibits a "hunger" for charter schools.

Commissioner Watson asked what the funding for Ms. Arevalo's charter school from school districts entailed. Ms. Arevalo replied the majority of funding comes from the authorizing district. Commissioner Watson requested a dollar amount for the provided funding. Ms. Arevalo detailed her school also receives federal funding. She estimated about three-quarters of her school's budget is provided by its authorizing district. Commissioner Watson inquired if Ms. Arevalo's charter school's board members file ethics statements. Ms. Arevalo replied in the affirmative.

Susan Spicka, Executive Director, Education Voters of Pennsylvania, detailed her organization's support for charter schools to adhere to the fiscal requirements of public school districts, provide accountability for its board of trustees, and equitably and inclusively approve students.

Sidney Clark, business manager, Shanksville-Stonycreek School District, offered his support for parts of the regulation. He argued he has never seen legislative action on charter schools in his career. Mr. Clark opined charter schools have their own "sandbox" in which they

operate and regulate their school. He remarked the costs needed to address public schools' students are insufficient compared to charter schools.

Tomea Sippio-Smith, K-12 education policy director, Children First, expressed her support for the regulation. She stated the regulation's provisions do not overstep PDE's reach. Ms. Sippio-Smith continued the regulation clarifies existing law, gives authorizers better tools to adhere to law, and provides oversight and transparency for charter schools.

Donna Cooper, Executive Director, Children First, detailed her support for the regulation. She reiterated earlier sentiments that charter schools should adhere to requirements that already exist for public schools and provide transparency regarding their application processes.

Commissioner Soroko asserted more parents and students are applying to charter schools than there are open spots in charter schools. Ms. Cooper replied in the affirmative. She added waiting lists exist for public schools in school districts with multiple school district buildings. Commissioner Soroko repeated his question and asked if that is a fair description. Ms. Cooper answered she is unsure if that can be asserted due to a lack of evaluations of waiting lists. Commissioner Soroko claimed many people make similar observations of charter school supply and demand. Ms. Cooper responded she agrees but added assertions should not be relied upon without evidence. Commissioner Soroko repeated his description of applicants to charter schools and available spots. Ms. Cooper stated she believes parents want their children to enter better schools and there are formal challenges to accomplishing this.

Vice Chairman Mizner questioned if sometimes spots are not open for an individual wishing to enroll at a public school. Ms. Cooper answered these situations can occur for nearby schools in school districts with multiple schools.

Commissioner Watson inquired why television advertising and solicitation is conducted by charter schools for students if they have waiting lists. Ms. Cooper responded a charter school operator would need to answer the question as there may not be uniform demand across all charter schools.

Sharon Ward, Policy Advisor, Education Law Center, echoed earlier statements that the proposed regulation would clarify requirements and processes placed upon charter schools. She noted other states, like West Virginia, have passed similar regulations for their charter schools. She argued the regulation would promote inclusive approval of various students to enroll in charter schools across the state.

Dr. Mark DiRocco, Executive Director, Pennsylvania Association of School Administrators (PASA), outlined PASA's support for the regulation. He asserted the regulation's changes regarding standardized application processes, inclusivity of students and holding charter school trustees accountable are positive changes. Dr. DiRocco added it is a "great idea" for all kinds of schools in the Commonwealth to undergo annual auditing. He concluded the regulation is not onerous.

Lisa Augustin, Director of charter schools, School District of Pittsburgh, affirmed her responsibility is to communicate relevant information and transparency to parents so they can make informed decisions. She expressed her school district's support for the regulation. She asserted charter schools should continue to be held to the same standards as public schools. Ms. Augustin described the regulation's provisions as reasonable and beneficial to parents.

Commissioner Soroko asked who deemed the Charter School Law the worst in the nation. Ms. Augustin replied it was a 2016 study from the state auditor general. Commissioner Soroko inquired if the auditor general studied every other state charter school law to make that determination. Ms. Augustin replied she is unsure. Commissioner Soroko asked if Ms. Augustin shares the opinion. Ms. Augustin stated she is unable to answer without examining other charter school laws but asserted Pennsylvania's Charter School Law is in need of dire reform. Commissioner Soroko wondered if PDE or the General Assembly should be the agent of reform. Ms. Augustin replied if it moves the situation closer to passing reform then she supports PDE.

Commissioner Ufberg asked how long Ms. Augustin has been in her current role. Ms. Augustin replied 12 years. Commissioner Ufberg pondered if there have ever been efforts to urge state legislators to make changes. Ms. Augustin responded many efforts have been made without result.

Lawrence Jones, African American Charter School Coalition (AACSC), asserted AACSC believes the regulation's focus on application processes could be biased against minority students. He voiced his concern that Black-owned charter schools are unable to approve minority students who could be positively served by the schools.

Commissioner Ufberg wondered which aspect of the regulation has been specifically difficult for schools represented by AACSC. Mr. Jones explained acquiring facilities could be difficult to locate. He added the requirement that a school must acquire 1,000 signatures during the school's application process is also a challenge. Commissioner Ufberg requested clarification for the response about school buildings. Mr. Jones explained a school official like him is often unable to access the expertise needed to get a school facility approved for operation. He argued the regulation as written is not problematic, but the practicality is onerous.

Vice Chairman Mizner asked if it is true eight non-minority charter schools were recently approved and no minority charter schools were recently approved. Mr. Jones indicated "non-minority" means the individuals "who operate and have the full decision-making" of the charter school, such as founders and board members. Vice Chairman Mizner wondered why this is the case. Mr. Jones noted Philadelphia hired an independent investigator to examine why the city has not recommended several minority-owned charter schools despite the high minority population. He stated possible reasons include unknown bias, overregulation, and difficulties for smaller organizations to operate and acquire funding.

Commissioner Soroko inquired if issues with supply and demand of charter schools exist within Philadelphia. Mr. Jones replied this is accurate and added collaboration can result in children having a "menu" to decide the best school for them. Commissioner Soroko voiced his concern that too many school options could exist. Mr. Jones expressed his agreement. He stated

he opposes the regulation since it could limit available educational options as well as the type of educational options. Mr. Jones continued AACSC works to ensure schools do not informally segregate their student populations but provide options related to surrounding communities.

Chairman Bedwick questioned if the Philadelphia school board is the main authority and if it is investigating potential racial bias in charter school applications. Mr. Jones replied in the affirmative.

Vice Chairman Mizner pondered what attracts minorities to charter schools. Mr. Jones suggested minority families have faced disenfranchisement in public schools and minority students seeing teachers with similar characteristics and backgrounds is "powerful." He repeated earlier comments that parents just want to choose the best school for their children no matter what school it is.

Commissioner Ufberg asked if Black parents who applied for their children to enroll in charter schools usually do so successfully. Mr. Jones responded, "A good many have."

Recessed at 11:50 a.m. Resumed at 12:02 p.m.

Dr. Alan Fegley, Superintendent, Phoenixville Area School District (PASD), supported the regulation for its clarity regarding charter schools' disclosure of their financial data and student redirecting information. He urged the Commission to approve the regulation.

Vice Chairman Mizner questioned if PASD contains both a cyber charter school and renaissance school. Dr. Fegley explained PASD has a cyber school established by four county intermediate units that requires superintendents to sit on the cyber charter school board. Vice Chairman Mizner referenced Mr. Jones and his concerns regarding minority students and requested Dr. Fegley's opinion. Dr. Fegley stated as far as cyber schools are concerned, he observed every applicant was approved and the number of applicants allowed for cyber schools was renewed. Vice Chairman Mizner wondered about the barriers Mr. Jones encountered. Dr. Fegley responded it was interesting to hear Mr. Jones's comments as challenges for English language learner students were more prevalent than other minority populations. Vice Chairman Mizner asked about acquiring 1,000 signatures. Dr. Fegley replied he is unsure about that issue.

Commissioner Watson asked for comment on the \$500,000 advertising budget for a cyber school Dr. Fegley mentioned. Dr. Fegley explained the 21st Century Cyber Charter School requested the budget for approval and that he serves on the school's board.

Chairman Bedwick inquired if the law requires payment from schools by the fifth of each month for redirected students. Dr. Fegley replied in the affirmative. Chairman Bedwick inquired if payment must still be made and then changed later if a payment is disputed. Dr. Fegley replied that is correct. Chairman Bedwick asserted nothing in the regulation would delay payment to the charter schools. Dr. Fegley responded that is true and added in some instances payments cannot be disputed due to use of letters. He continued the regulation's employment of set standards could allow payments to be disputed online.

Toya Algarin, parent of a former student and board member, KIPP Philadelphia Public Schools (KIPP), expressed her and other parents' opposition to the regulation. She related her son's experience entering KIPP in sixth grade and his educational development from a third-grade reading level to one of the best students in his class. Ms. Algarin cited security concerns as another reason in support of charter schools. She divulged her recent unhappiness that her grandchildren must be on a waiting list for a KIPP school. She argued she was not fully represented by officials who make decisions regarding her and other Philadelphia minorities' children.

Vice Chairman Mizner asked how Ms. Algarin became aware of the proposed regulation. Ms. Algarin explained she served on KIPP's board for six years and is a strong advocate for others to enroll at KIPP schools.

Commissioner Ufberg inquired what specifically is in the regulation that adversely affected Ms. Algarin's grandchild. Ms. Algarin stated there are not enough open spots. She added the renewal process may play a role in this problem.

Commissioner Ufberg wondered how cyber charter schools are funded, such as through state funds or private investment. Ms. Algarin answered cyber charter schools are public schools and they should receive the same amount of funding. Commissioner Ufberg pondered how cyber charter schools can meet the increased demand. Ms. Algarin responded her focus is on the education and bureaucracy issues rather than financial concerns.

Commissioner Soroko asked if Ms. Algarin's disregard for finances could result in fewer students enrolling at charter schools. Ms. Algarin replied she is present to comment on charter schools but asserted she is in support of "quality schools" instead of a certain type of school. Commissioner Soroko questioned if Ms. Algarin would like to see more students enrolled at charter schools. Ms. Algarin stated she would not want to see "KIPP's hand being held."

Commissioner Ufberg inquired if Ms. Algarin would want to see public schools offer the same opportunities as charter schools. Ms. Algarin emphasized the importance of having more quality schools rather than a specific type of school. She conceded she advocates for KIPP because of her personal experience with her child's results.

Dr. Smith professed her appreciation for each commenter's passion for ensuring quality education for students. She remarked previously there was a lack of a script for handling charter schools as they became increasingly prevalent and the lack of clarity on standards has caused frustration. Dr. Smith argued PDE approached the proposed regulation from the standpoint that accuracy and clarity are needed for all involved parties and that it will not allow a school to open if it is unable to run as a school.

Ms. Kane added PDE agrees with several of the earlier comments. She noted specific regulations for charter schools and cyber charter schools are lacking in comparison to public schools. Ms. Kane disclosed PDE has communicated with both the state legislature and the public for input.



Commissioner Watson questioned if charter schools in Pennsylvania currently receive \$3 billion in public funds. Mr. Schott special assistant to the secretary, PDE, replied in the affirmative. Commissioner Watson asked if charter schools are advertising for students. Mr. Schott responded advertising does occur, particularly for cyber charter schools, though not every charter school advertises. Commissioner Watson inquired if this is due to cyber charter schools having an unlimited number of spots open for students. Mr. Schott replied cyber charter schools can enroll students from any district in Pennsylvania due to the lack of physical restrictions. Commissioner Watson asked if PDE has considered increasing funds for cyber charter schools as their student populations grow. Mr. Schott answered these schools report financial data and have established curriculums and staff. Commissioner Watson queried if staff-to-student ratios are altered depending on the number of students. Dr. Smith stated caseloads do not exist for charter schools and cyber charter schools.

Vice Chairman Mizner asked for the definition of caseloads. Dr. Smith explained the term means "the number of students per teacher."

Commissioner Watson highlighted Mr. Clark's previous comments contrasting how much money small and large school districts spend on their students versus charter schools. He requested the panel's comment on this statement. Mr. Schott explained it is a function of the Charter School Law. Commissioner Watson asked if it would behoove a cyber school to attract students from smaller school districts under current law. Mr. Schott contended the regulation does not address the specific issue but noted charter schools pay around \$10,000 to \$20,000 on their students regardless of tuition payments. Commissioner Watson queried if PDE is aware of charter schools providing in-person presentations on their financial situation. Mr. Schott responded PDE receives an annual report from each authorized charter school and cyber charter school along with school visits. Commissioner Watson asked if physical charter schools must provide a yearly presentation on the school's performance to its authorizing district's school board. Mr. Schott replied there is no such requirement.

Commissioner Watson inquired if the regulation's provisions concerning educational management services providers and the implementation of accepted accounting procedures provide additional information to PDE or a local school board on the costs expensed by a cyber school or physical charter school. Ms. Kane replied the panel is unaware of any regulations requiring this additional information. Commissioner Watson highlighted the 2016 auditor general report and wondered if PDE cited the report in their regulatory analysis form (RAF) for the proposed regulation. Dr. Smith replied in the affirmative. Chairman Bedwick interjected to explain RAF refers to the regulatory analysis form submitted to the Commission alongside proposed regulations. Commissioner Watson questioned if there were other reports from the auditor general considered by PDE in the proposed regulation. Mr. Schott affirmed the study was utilized alongside yearly auditing reports. Commissioner Watson asked if the 2016 report recommends using the General Assembly to address the shortcomings of the Charter School Law. Mr. Schott responded the auditor general did make such recommendations. Commissioner Watson asked if these recommendations were acted upon since the 2016 report was published. Mr. Schott referenced a "variety of legislative reforms," but noted not all recommendations have been enacted.

Commissioner Soroko requested clarification regarding the recommendations not being enacted. Mr. Schott explained legislation could have been authored that implements the recommendations, but the bill may have not passed out of committee or received a positive number of votes. Commissioner Soroko asked if the lack of recommendations being put into law compelled PDE to put forth the regulation. Dr. Smith answered that description is "fair," but added the regulation attempts to clarify the relationship between charter schools and authorizing districts. Dr. Ortega reiterated the proposed regulation would better define regulations implemented through some level of consensus among the state legislature. He noted the regulation's passage would not prevent further regulations. Commissioner Soroko repeated the question, inquiring if PDE's impetus for submitting the regulation was due to the General Assembly's inaction. Dr. Ortega replied that is a "fair assessment."

Commissioner Watson asked if the regulation defined a health care benefit to be provided to the school's employees if a cyber school or physical charter school resides within a particular school district. Mr. Schott responded this is correct and the administrative headquarters' location decides sameness. Commissioner Watson asked if the regulation means these schools would have to complete the same form PDE issues to active public school board members. Ms. Kane stated that is correct. Commissioner Watson queried if PDE encountered a situation in which a public school had difficulty with providing audit statements to PDE. Ms. Kane replied in the negative.

Vice Chairman Mizner questioned if ethics forms are established by statute rather than regulation. Ms. Kane responded this is correct. Vice Chairman Mizner suggested any official handling taxpayer funds should have to complete an ethics form. He asked where PDE believes it has statutory authority to require completion of ethics forms. Mr. Rejrat affirmed the Charter School Law states board of trustee members are public officials and therefore under the requirements established by the State Ethics Commission. Vice Chairman Mizner inquired if law already requires ethics forms to be completed. Mr. Rejrat explained the Charter School Law defines public officials but does not task them with completing the forms. Vice Chairman Mizner asked if any state law requires the completion of ethics forms. Mr. Rejrat replied in the affirmative.

Vice Chairman Mizner wondered why PDE included the requirement in its proposed regulation. Ms. Kane answered charter school employees are not always aware they are public officials and cited an incident where \$18 million was embezzled by a charter school. Vice Chairman Mizner argued a financial ethics form would not prevent embezzlement. Ms. Kane agreed and divulged PDE wants to add an additional layer to remind public officials of their responsibilities, which are the same as those running public schools. She added entities from outside of the commonwealth could have different laws they were following. Vice Chairman Mizner asked about the statutory basis for school board members to not have a child within the school district they represent. Ms. Kane replied that requirement may be in the Charter School Law, but the regulation does not require this. Vice Chairman Mizner asked what Ms. Kane and her son, who was enrolled in a charter school, experienced throughout their time at the school. Ms. Kane emphasized she believed her son would have been better served in a cyber school setting at that time and the experience was "very positive." She asserted she would not support

the regulation if it stifled the option to enroll at a charter school. Ms. Kane conceded the lack of social interaction contributed to her son's move to public school.

Chairman Bedwick asked if the proposed regulation's increase in the number of application questions for a charter school from 17 to 81 is going beyond what is required by statute or a "breaking down" of what is required by statute. Ms. Kane explained the latter is correct. She divulged the 17 questions already contain further questions and PDE wanted to provide specifics for the questions. Chairman Bedwick questioned if the application is mandatory for school districts. Ms. Kane stated it is not mandatory, but law dictates additional information must be provided on the applications if available. Chairman Bedwick asked if there have been charter schools that failed and what the costs to the public entailed. Dr. Smith responded charter schools have been closed. She added if free appropriate public education is not provided to students with disabilities, PDE would need to cover the cost.

Chairman Bedwick requested elaboration on how barriers to underserved students can be overcome. Dr. Ortega detailed schools must consider who is enrolling at the school and who is providing instruction. He argued the regulation allows for students' needs to be balanced with quality education. Dr. Ortega highlighted the importance of holding everyone accountable for aspects of education that need improvement. Ms. Kane added her support for the belief that students are more comfortable with teachers of a similar background. She professed diversity and inclusion issues are a priority for PDE.

Vice Chairman Mizner apologized to the panel for his erroneous belief that school board members must have a child in attendance at a school represented by the school board's district.

Dr. Ortega offered his support for the parents who provided comments as they represent a number of other Pennsylvanians. He commented the regulation's passage would provide more clarity and help address every student's needs.

Commissioner Ufberg expressed his surprise at the number of commenters who pointed out specifics of the Charter School Law. He urged concerned individuals to respect the wishes of the opposite side of the argument. Commissioner Ufberg remarked the change Pennsylvania underwent over the past two decades has not resulted in clarifications to demographics as they relate to education. He declared he hopes the passage of the regulation works as an incremental step to providing for student and taxpayer needs. Commissioner Ufberg thanked the panel and PDE for their efforts in creating the regulation.

Commissioner Watson expressed similar appreciation for the commenters and the PDE panel. He noted the matters addressed by the regulation are long overdue. Commissioner Watson opined the concern for entities having difficulty opening new charter schools is overstated. He concluded the regulation strengthens PDE's ability to exercise "oversight of a \$3 billion, taxpayer-funded" charter school industry and ensure financial propriety.

Commissioner Soroko announced he would vote against the regulation, citing regulatory overreach and that the regulation is not in the public interest. He argued the regulation would negatively impact the charter school industry. Commissioner Soroko advocated for legislative

activity to address the issues raised by the regulation and criticized the panel's assertion the General Assembly has "failed to act."

Vice Chairman Mizner declared he would also vote against the regulation and underscored Commissioner Soroko's argument that the state legislature should solve the issues facing schools.

Chairman Bedwick noted he would vote to approve the regulation. He explained the regulation is a clarification instead of an expansion of the Charter School Law. Chairman Bedwick conceded the law is not perfect but claimed action must be taken. He implored the panel to observe the results of the regulation's passage and communicate any problems to the Commission.

Commissioner Ufberg made a motion for approval. Commissioner Watson seconded, and the motion passed 3-2, with Vice Chairman Mizner and Commissioner Soroko dissenting.

Recessed at 1:30 p.m. Resumed at 1:39 p.m.

## **2. No. 3322 Department of Labor and Industry #12-114: Minimum Wage**

Scott Schalles, Regulatory Analyst, indicated the regulation's provisions update the regulations governing tipped employees and clarify how the base hourly rate for overtime of salaried employees is calculated. He added the Commission received a letter of support from Senate Labor and Industry Committee Minority Chairman Christine Tartaglione (D-Philadelphia) signed by 18 other Democratic senators, as well as letters from House Labor and Industry Committee Minority Chairman Gerald Mullery (D-Luzerne), Community Legal Services, and two individuals. Mr. Schalles disclosed the Commission received letters in opposition from Senate Labor and Industry Committee Chairman Camera Bartolotta (R-Washington), House Labor and Industry Committee Chairman Jim Cox (R-Berks) and nine other Republican representatives from the committee, and the Workplace Policy Institute of Littler Mendelson P.C. He noted the opposition objected to the new provision concerning regulating service charges on a customer's bill, the new provision regulating credit card transactions, and a fluctuating workweek for salaried employees due to the method of calculating overtime. Mr. Schalles further noted that both standing committees of the Senate and House deemed the regulations approved.

Commissioner Soroko asked if the regulation summary's citation that 57,000 businesses in Pennsylvania would be impacted, that there would be a \$4 million impact for fiscal year 2022-2023, and it is estimated employers would bear up to \$20 million annually in credit card processing costs. Mr. Schalles replied each statistic was included in the Department of Labor and Industry's (L&I) RAF.

Robert Schramm, Deputy Chief Counsel, Julia Grubbs, Policy Director, and Thomas Foley, Deputy Policy Director, L&I, were present to answer any questions.

Mr. Schramm stated the purpose of the Minimum Wage Act is to protect wages for workers. He commented L&I's regulation attempts to cover both tipped and salaried employees for overtime. Mr. Schramm explained the Minimum Wage Act allows exceptions to the \$7.25 federal minimum wage if employees are tipped enough money to cover the minimum wage rate. He detailed the regulation increases the minimum wage tip threshold to \$135 for work either tipped directly or in support of duties that generate tips. Mr. Schramm added the regulation provides rules for pooling tips among tipped and non-tipped employees, prohibits credit card and other processing fees from being deducted from tips, and requires employers who impose mandatory service charges to notify patrons these fees are not tipped. He concluded the regulation attempts to deter employers from scheduling erratic workweeks and instead calculate overtime for non-exempt salaried employees. Mr. Schramm related a part of the Minimum Wage Act he asserts does not adequately protect employees in the Commonwealth.

Commissioner Soroko asked for clarification on the timeline of the issues the regulation addresses. Mr. Schramm explained the current federal tipped employee threshold is \$30 per month, as established in 1977 by L&I's current regulation, to be considered a tipped employee.

Chairman Bedwick inquired if the threshold is set by statute. Mr. Schramm answered federal law requires it to be set by statute while in Pennsylvania the threshold is set by regulation. He argued federal regulation is a "floor" for states to utilize in determining wages. Mr. Schramm noted the new threshold figure takes inflation into account. Chairman Bedwick outlined L&I's rejection of the Commission's recommendation to base its wage calculations on the rates for salaried weekly workers. He indicated he could go through each reason for rejecting the recommendations and counter L&I's arguments. He urged L&I to reexamine its method of calculating wages for workers. Mr. Schramm thanked Chairman Bedwick for his comments.

Commissioner Ufberg focused on service charges and how most people do not know it is not a tip. He wondered if employees were given fewer tips due to this misunderstanding. Ms. Grubbs responded L&I examined the issue due to communications with stakeholders during a monthly meeting. She asserted individuals are attempting to use money for tips but end up paying service charges. Commissioner Ufberg wondered about employers who find service charges necessary for operation. Mr. Schramm replied L&I is not trying to prevent employers from imposing service charges and is instead ensuring patrons are informed of service charges. Ms. Grubbs noted the regulatory community did not indicate a large impact on service charges due to the regulation's approval. Mr. Schramm added the only concern L&I received from the regulated community was regarding whether L&I had statutory authority to regulate service charges.

Chairman Bedwick opined the regulation does not go far enough. He related an incident he had in Florida where service charges appeared on the bill, but he was still unsure if tips were included as service charges. Chairman Bedwick suggested further developing the term "service charge" for more clarity. He inquired about the Minimum Wage Act's authority given to the L&I secretary. Mr. Schramm responded the L&I secretary is granted the authority to protect gratuities as a "catch-all" for various circumstances. He pointed out another section of the act outlines how tips are property of the employee, which is why L&I included credit card provisions in the regulation.

Stephen Herzenberg, Executive Director, Keystone Research Center, offered support for the regulation. He argued problems with low wages, tips, service charges and overtime would be eased by the regulation.

Commissioner Soroko stated he would vote for the regulation but noted it is a "close call" due to his concerns with L&I's statistics on the impact on businesses across Pennsylvania. He argued the projected fiscal impact is not inconsequential and could negatively affect small businesses.

Commissioner Ufberg made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 5-0.

#### **IV. OTHER BUSINESS**

##### **Approval of Vouchers**

Chairman Bedwick made motions to approve vouchers and expenses for the period January 21, 2021 through March 10, 2022. Vice Chairman Mizner seconded, and the motions passed 5-0.

#### **V. DATE AND PLACE OF SUBSEQUENT MEETING**

Chairman Bedwick announced the next public meeting is scheduled for Thursday, May 19, 2021, at 10:00 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg.

#### **VI. EXECUTIVE SESSION ANNOUNCEMENTS**

Chairman Bedwick announced that no executive session would be held.

#### **VII. ADJOURNMENT**

Chairman Bedwick adjourned the meeting at 2:14 p.m.

Attachment

GEORGE D. BEDWICK, CHAIRMAN  
JOHN F. MIZNER, ESQ., VICE-CHAIRMAN  
JOHN J. SOROKO, ESQ.  
MURRAY UFBERG, ESQ.  
DENNIS A. WATSON, ESQ.  
DAVID SUMNER, EXECUTIVE DIRECTOR  
LESLIE LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
lirc@lirc.state.pa.us  
<http://www.lirc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 16, 2022

Via Electronic and First Class Mail

Karen Molchanow  
Executive Director  
State Board of Education  
333 Market Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17126

Dear Executive Director Molchanow:

This letter is written to correct an erroneous statement I made at the March 10, 2022 meeting of the Independent Regulatory Review Commission during consideration of IRRC Regulation Number 3283 (relating to Certification of Professional Personnel) being promulgated by the State Board of Education.

During interaction between the members of the Commission and representatives of the Board, I indicated that in preparation for military deployment to Saudi Arabia for the first Gulf War, among the cultural instructions we received was that the Saudi's consider the right hand to be unclean. I cited this as an example of a situation where awareness of cultural relevancy instruction would be of crucial benefit. Following the meeting, I recalled that I was incorrect and that the left hand, not the right, was considered unclean. I wish to apologize for this error and to correct it. Thus, I am sending this letter to you. I will also have this letter placed into the record at the next meeting of the Commission.

Although my recollection was incorrect regarding which hand is considered unclean, it should not detract from serving as an example of the benefits of instruction in cultural relevancy. For example, this cultural knowledge would be very useful to an educator to not return a test paper to the individual with the educator's left hand. And, of course, my incorrect recollection speaks volumes about the usefulness of continuing education.

Sincerely,

George D. Bedwick  
Chair