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**Independent Regulatory  
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**Comments Regarding Proposed Regulation #6-349: Charter Schools and Cyber Charter Schools**

On behalf of the more than 5,000 school directors and administrators governing the state's school districts, intermediate units and career and technology centers, the Pennsylvania School Boards Association (PSBA) is submitting the following comments on Final Regulation #6-349: Charter Schools and Cyber Charter Schools.

PSBA is thankful to the Department of Education for making several clarifications to the proposed regulations and for its response to several of the comments we submitted on the proposed regulations. However, there are still several areas in the final regulations which we believe would benefit from further clarification.

We once again recognize the limited reach of the regulatory process to substantially address much-needed reforms to the Charter School Law (CSL), but generally support the final regulations, with some recommended revisions, as we view the regulations as a step in the right direction.

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

The final regulations would require an applicant seeking to open a charter school to submit either the application form created by PDE or the application created by the local school district. PSBA supports the regulations allowing local authorizing school districts to develop their own charter school application, but the regulations contain no requirement that the charter school applicant use the locally created application, if one has been developed pursuant to the express authority to do so granted under the regulations. In the Department's description of the changes made to section 713.2, the following paragraph appears:

*"Final-form § 713.2 requires applicants seeking to establish a charter school or regional charter school to apply using either an application form created by the Department that includes minimum information requirements set forth in subsection (c) or an application developed by the authorizing school district or districts if such application meets the minimum requirements set forth in subsection (c) and is needed by the local board of directors, as the authorizer, to evaluate the application in*

accordance with section 1717-A(e)(2) of the CSL (24 P.S. § 17-1717-A(e)(2)).”<sup>1</sup> The emphasized language seems to imply that a charter school applicant would be required to use a locally developed application if the authorizing school board determined that the local application was needed to evaluate the application. Yet, language to this effect does not appear in the final regulations. We would recommend that the regulations make this clear so as to alleviate confusion and conflict among charter school applicants and authorizing school districts.

School districts may receive multiple charter school applications in the same school year. Under the current form of regulations, those applications could differ in format and content depending on which application the applicant chooses to use, regardless of whether the authorizer has invested time and resources in creating a form application that addresses unique factors associated with educating students within that school district.

The final regulations also add new language to section 713.2(c)(2) which would require charter school applicants to include the words “charter school” in the proposed school’s name “to indicate a free and public nature of the school...”. We were surprised to see a reference to charter schools being “free” when the costs of charter school tuition fall squarely on the student’s home school districts. In fact, school districts are anticipated to spend more than \$3 billion in taxpayer dollars on charter school costs this year. While attending a charter school is free to students and their families, the costs associated with their attendance are paid for by taxpayers. Many legislative charter reform proposals, including the Governor’s, recognize this fact and prohibit charter schools from advertising attendance at the school as “free”.

One of the new provisions added as section 713.2(f) lacks clarity and is of significant concern. The language suggests that the regulations do not prohibit a charter school or regional charter school, as those terms are defined in the regulations, from providing additional information to the authorizer as part of the process to establish or renew a charter. Because this provision is added to the section dealing with charter applications, it is unclear as to whether this provision is intended to apply to an applicant for a charter school or regional charter school or the application process itself such that an applicant would be able to submit supplemental information at any time during the application process, even after the school district has evaluated the application. Given the timelines in the Charter School Law, 24 P.S. § 17-1717-A(d)-(e), allowing an applicant to supplement the record under review at any time or in a serial fashion could undermine the statutorily-required review process by the board of school directors, who are accountable to the taxpayers, and not permit proper and timely evaluation of the additional materials. Further, if an applicant is permitted to submit additional information at any time, the regulation effectively nullifies the process in the Charter School Law that authorizes a denied applicant the ability to revise and resubmit the application to address the issues identified by the board of school directors in the denial.

PSBA would like to once again point out that although the final regulations contain numerous forward-looking requirements, in terms of whether the charter applicant has engaged in sufficient planning to begin operating, the regulations do not contain any requirements related to a charter renewal application or other backward-looking provisions intended to evaluate the charter school’s

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<sup>1</sup> Pages not numbered in the original document, page 33 of 182 on the posted pdf. Emphasis has been added.

performance over the term of its charter. PSBA believes that the regulations should provide guidance on what the renewal process should entail, including the development of a renewal application.

### § 713.7 Fiscal Management and Audit Requirements

As recipients of more than \$3 billion in public taxpayer money, PSBA supports efforts to ensure that charter schools are subject to generally accepted standards of fiscal management and audit requirements.

We continue to believe that subsection (b) is too limited in its description of how a charter school entity may satisfy the requirement to adhere to generally accepted standards of fiscal management and audit requirements. The final regulations continue to require only two things:

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

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

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

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

- There are no requirements that the charter school have any particular financial policies in place for auditors to then ascertain if the charter school is in compliance with its own standards. The charter school's financial policies might be woefully inadequate or may not exist at all but there is no standard for what should exist in every charter school for the auditor to then evaluate.
- Item (c)(1) requires a review of the charter school's enrollment records but there is nothing to indicate what types of enrollment records are required to be maintained. What is the auditor supposed to review to determine if there is support for the charter school's invoices? What if the records only reflect supportive information and not the full gamut of information available such as residency information?

- There are no requirements for audits to address non-payment or delayed payments of bills and why this occurred.
- Auditors could also check to make sure Statements of Financial Interest are properly and timely filed by all charter school trustees and public employees.

In response to these points from PSBA's comments on the proposed regulations, the Department stated that the items sought above would be included in a "Single Audit" which is only required if a charter school expends more than \$750,000 of federal funding in a fiscal year. While most, if not all, charter schools would have reached or surpassed this threshold in the current year due to federal pandemic relief funding, this may not be the case extending into the future. For comparison, in the 2019-20 fiscal year, less than half of all charter schools (43%) received more than \$750,000 in federal funding, which means that approximately sixty percent of all charter schools in the Commonwealth would not be subject to the Single Audit requirements once the federal pandemic relief funding is expended.

The Department also responded that all public school entities should be subject to the same audit requirements. However, school districts, as charter school authorizers, are required to ensure charter schools are meeting "generally accepted standards of fiscal management or audit requirements". Failure to do so is one of the bases under section 1729-A(a) for which a charter can be nonrenewed or terminated. While this standard has not been defined in the CSL, the Charter School Appeal Board (CAB) has interpreted this provision more broadly than these final regulations. This difference is concerning and we would recommend that the regulations recognize the work done by the CAB in interpreting this provision of the CSL.

#### § 713.8 Redirection Process

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

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