



Philadelphia Charters
for Excellence

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March 18, 2022

Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

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**Independent Regulatory
Review Commission**

Members of the Independent Regulatory Review Commission,

Philadelphia Charters for Excellence (PCE) is an alliance of 80+ public, brick-and-mortar charter schools in Philadelphia that believes all parents deserve a choice of quality public school options for their children. PCE was founded in 2011 to unify the City’s charter community, which educates 70,000 students under a shared commitment to accountability, equity and quality. PCE’s members are committed to providing the highest quality education to their students while adhering to the highest standards of fiscal and operational management and public school governance.

PCE opposes Regulation #6-349: Charter Schools and Cyber Charter Schools in its final form and calls on the members of the Independent Regulatory Review Commission (IRRC) to vote NO on approving these regulations. Please accept the following public comment on behalf of PCE regarding specific objections to Regulation #6-349.

1. Regulation #6-349 is an improper attempt by the Wolf Administration to bypass the legislative process.

The Pennsylvania Department of Education (PDE) contends the “need” for Regulation #6-349 is because Pennsylvania’s Charter School Law has remained “*largely unchanged since its enactment.*” The lack of legislative action to change or update the Charter School Law is a call to action for the General Assembly, not PDE. The Charter School Law does not give PDE the authority to update laws they view as outdated.

PCE’s recognizes that there are significant updates that must be made to Pennsylvania’s Charter School Law to improve the procedures, standards and accountability for public charter schools and their authorizers (school districts and PDE). Fair and meaningful changes to the Charter School Law could improve relations between public charter schools and their authorizers, and ultimately improve educational services for Pennsylvania students. These changes include preserving charter school funding, creating a legal process for charter amendments, increasing charter term lengths, and streamlining the charter renewal process.

Due to the significant impact that Pennsylvania’s Charter School Law has on the 170,000 students who are served by public charter schools and their families, along with the thousands of educators and staff who are employed by Pennsylvania’s 180+ public charter schools, PCE opposes the use of the regulatory process to make changes to the Charter School Law.



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Regulation #6-349 creates more, not fewer opportunities for conflict between public charter schools and their authorizers because its provisions were drafted to benefit one side of a complicated dynamic and lacks true compromise.

PCE encourages Governor Wolf and PDE to pull back their proposed charter school regulations and engage the General Assembly in negotiations to craft, pass and enact comprehensive charter reform that is fair and balanced.

- 2. PDE did not properly engage the public charter school community in drafting these regulations and the Department failed to address the concerns of the charter school community in the final-form regulations.**

In the “Regulatory Analysis” for Regulation #6-349, PDE outlines the communication and input that it had with the regulated community and it is clear that PDE focused its engagement on the charter school authorizers (school districts and its own Charter School Office). The public charter school community has continued to call on PDE to engage with them in the creation of these regulations but the Wolf Administration’s biases against public charter schools has resulted in ZERO collaboration. For instance, during a virtual briefing session held by PDE for stakeholders on April 15, 2021, a representative from the public charter school community asked PDE if they would have an opportunity to work with PDE on drafting the regulations and a staff member from PDE said NO.

In addition to ignoring the charter school community in drafting Regulation #6-349, it is clear in the final-form regulations that PDE ignored the concerns, feedback and questions submitted by the charter school community during the public comment period (September 18 – October 18, 2021). Philadelphia Charters for Excellence (PCE) submitted seven pages of questions, suggested changes and concerns to PDE on October 18, 2021, but the Department only referenced PCE six times in the final form “Comment and Response Document”. Unfortunately, in the responses that we did get, PDE either gave a standard, unspecific response they had used previously with other critiques of their regulations or they said our concern/analysis were incorrect. Why the Department would ignore the recommendations and concerns of an organization that represents 80+ public, brick-and-mortar charter schools in the Commonwealth is irresponsible and flies in the face of the regulatory process.

- 3. PDE failed to fully research and present the negative impacts that Regulation #6-349 may have on the public charter school students, their families, educators and staff, and the community they serve.**

It is clear, in the “Regulatory Analysis” provided by PDE, that the Department did not conduct a balanced study of relevant data or current research in creating Regulation #6-349. In citing the reports that informed the drafting of the “quality and standards requirements of the content of the charter school application”, PDE only provides four citations - - three of which are from the same



national source and one by a Pennsylvania-based group that has a reputation for pushing an anti-charter agenda (and was the previous employer of the PDE executive who let the effort to craft Regulation #6-349). Why were reports/research from the National Association of Charter School Authorizers or the National Alliance for Public Charter Schools not considered by PDE? Again, it is blatantly obvious that PDE's primary focus and goal in drafting Regulation #6-349 was to appease the Governor's political-base of supporters and the traditional public school conglomerate. These proposed regulations ensuring that charter school authorizers (school districts and the Department itself) had the legal authority to make the authorizing process more burdensome on charter school leaders, and make it easier for the denial and nonrenewal of charter schools.

4. Regulation #6-349 is based on broad, undefined terms which are not contained in Pennsylvania's Charter School Law.

Regulation #6-349 is explained as a series of rules that *"sets conditions that emphasize accountability, equity, quality, and transparency."*

However, none of these cited terms are defined in PA's Charter School Law or Pennsylvania's Public School Code. Over the past six years, the Wolf Administration have taken the liberty to define these terms in ways that justify calls for funding reductions to public charter schools and imposing burdensome mandates on public charter schools. The Department does not have authority to "emphasize" terms and concepts it deems important, while ignoring clear legislative intent for Pennsylvania's Charter School Law, such as school choice and charter school autonomy.

5. The proposed rules, specifically new requirements for charter applications, significantly undermine charter school independence. In certain respects, the proposed regulations are antithetical to legislative intent.

Pennsylvania's Charter School Law was enacted to *"provide opportunities to teachers, parents, students, and community members to establish and maintain charter schools that operate independently from the school district structure."* 24 P.S. § 1701702-A.

School districts regularly and nearly routinely deny charter school applications. In this vein, the legislature created the Charter School Appeal Board (CAB) to act as an impartial judge to regulate authorizer conduct. Without statutory authority, proposed Section 713.2 of Regulation #6-349 creates dozens of new application requirements in pursuit of a "standard application form". While certain sections of the Charter School Law delegates authority to PDE to develop forms (e.g. 24 P.S. § 17-1728-A – annual reports to be on forms "prescribed by the Secretary"), there is no similar authority granted to PDE to standardize the charter school application process outlined in 24 P.S. §§ 17-1717-A, 17-1719-A.

Even if there was appropriate authority, the proposed "standard" requirements will severely curtail, if not eliminate altogether, the ability of community members to establish a charter school. The proposed Section 713.2 contains dozens of requirements beyond the language of the current



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Charter School Law which are technical in nature. The proposed regulations would also explicitly permit authorizers to “*require an applicant [to] submit additional information*” beyond the standard form to be used in a district’s evaluation of the application. This will inevitably result in school districts engaging in a subjective analysis to the detriment of charter applicants.

6. Other specific proposals in Regulation #6-349 are flawed.

The following are PCE’s specific concerns about and objections to the proposed charter school regulations:

General Provisions

- “Charter school” definition should be identical to the definition in Pennsylvania’s Charter School Law:
 - “Charter school” shall mean an independent public school established and operated under a charter from the local board of school directors and in which students are enrolled or attend. A charter school must be organized as a public, nonprofit corporation. Charters may not be granted to any for-profit entity. (Section 1703-A)
- While PDE amended the definition of “Educational management service provider” the definition remains very broadly written and vague, to the point that it could conceivably encompass any individual or business entity that has or intends to have a contract with a charter school. PCE submits that the scope of this definition should be limited to those contractors who contract to provide all or substantially all of a charter’s functions in a given area, e.g.:
 - “Educational management service provider” shall mean a nonprofit or for-profit entity with which a board of trustees of a charter school entity contracts to provide management or operation of all or substantially all of the charter school's functions, or all or substantially all of the charter school's instructional, curricular or administrative functions. The term shall not include a charter school foundation.

Application Requirements

- PCE opposes the use of applications created by individual authorizers which creates inconsistencies, inequities and abuses of power.
- PCE supports the creation and required use of a standard charter school application created by the PA Department of Education, but we have serious concerns about the items included in § 713.2.(c).
 - A standard form application should provide charter applicants with clear expectations about the charter application process. Section 713.2 of the proposed regulations does the opposite. PDE is expanding the information required in nearly all areas – budget, professional development, curriculum – beyond current caselaw as set forth by CAB and the Courts. The expansion of requirements only creates more opportunities for school districts to deny applications for trivial reasons.
 - Pennsylvania’s Charter School Law requires charter applicants to include a budget and a financial plan with their application, consistent with the requirements of the current law in 24 P.S. § 17-1719-A(9). The proposed regulations expand these basic



- requirements and would require an applicant to provide several budget documents: one using specific PDE-created accounting codes, one addressing items not covered by the codes and predictions about fund balances. Requiring charter applicants to use school-accounting specific codes is a barrier to entry in the charter school space.
- Further, the proposed regulations state that the budget information *"includes, but is not limited to"* these items, enabling charter authorizers to require additional, unspecified budget information. This is an invitation for authorizers to create their own standards, which would hinder transparency and equity - - the exact opposite result that PDE was promoting with the proposed regulations.
 - Pennsylvania's Charter School Law currently requires charter applicants to provide the proposed faculty and plans for professional development in 24 P.S. § 17-1719-A(13). The proposed regulations would require charter applicants to submit information *"that complies with Chapters 4 and 49 [of Title 22]"* and includes projections for full-time equivalent employees in eight (8) different categories and projected special education caseloads. Essentially, the proposed regulations would require charter applicants to predict the future - - there is no conceivable way that a charter applicant will know which students will walk through their school's doors with such specificity.
 - Pennsylvania's Charter School Law requires that new charter school applications include a description of *"how the charter school will provide adequate liability and other appropriate insurance for the charter school, its employees and the board of trustees of the charter school"* in 24 P.S. § 17-1719-A(17). The proposed regulations (Section 713.2.(c)(17)) expand this requirement beyond the Charter School Law and opens the door for authorizers to require insurance from charter school applicants that are excessive, unattainable and cost prohibitive.
 - Essentially, the language contained in #Regulation 6-349 could prevent any new public charter school from opening in our Commonwealth, which would be devastating for the 23,000+ students on brick-and-mortar charter school waitlists in Philadelphia.

Enrollment

- Regulation #6-349's Enrollment section (§ 713.4.) is redundant, unnecessary, and may disrupt the current application process that the majority of Philadelphia's public brick-and-mortar charter schools utilize.
 - A lottery enrollment policy is already a required element in the New Charter Application process and is part of PDE's standard application. This provision now creates the opportunity for confusion with families seeking to enroll their students in public charter schools.
 - The requirements of this proposed regulation would create a scenario where the enrollment policy included in a charter's application (which is part of the charter agreement) could conflict with this "new policy". If this occurs, it provides authorizers with the ability to non-renew charters or require that charter schools file an amendment that could be a lengthy and expensive process.
 - The majority of Philadelphia's 85 public, brick-and-mortar charter schools utilize Apply Philly Charter, which is an online system created by Philadelphia School Partnership



where families in the City can fill-out and submit a universal charter school application. This is an established process that families in Philadelphia have become accustomed to and eliminates barriers to enrollment. It is unclear how § 713.4. of Regulation #6-349 will impact Apply Philly Charter and PDE did not address the charter community's concerns about the impact on this program in the final-form regulations.

- While PDE claims that Regulation #6-349's Enrollment section (§ 713.4.) would ensure equity in student access to public charter schools, the Department's regulations could do the exact opposite.

Boards of Trustees

- The proposed regulations dealing with Boards of Trustees (§ 713.6.) is redundant and unnecessary.
 - Charter schools' board of trustee members have long been acknowledged as public officials – which is already part of Pennsylvania's Charter School Law.
 - Statements of Financial Interests are not under the jurisdiction of PDE but are under the jurisdiction of Ethics Commission. Hence, there is no corresponding provision in the existing education regulations or the Pennsylvania School Code for school district board members, intermediate unit board members, and career and tech school board members.

Fiscal and Auditing Standards

- Independent audits are governed by national organizations that are experts in this area and the Certified Public Accountants (CPA) who conduct these audits are professionals who are governed by their own standards. PDE's regulations on Fiscal and Auditing Standards (§ 713.7.) are outside of their scope of expertise and authority, and establishes different standards for one type of public schools.
 - The delineation of standards for audits is not included in Section XXIV of the School Code and PDE is not granted the authority to set these standards.
 - Like all public schools in the Commonwealth, charter schools are currently required to have an independent audit done after each fiscal year. Certified Public Accountants (CPA) are provided rules and regulations from a number of organizations such as the Governmental Accounting Standard Board (GASB) and the Financial Accounting Standard Board (FASB). To the extent that the proposed regulations expand the requirements of the CPA, it is estimated that these new requirements will cost each public charter school an additional \$5,000 per year.
 - Regulation #6-349 is explained as a series of rules that "*sets conditions that emphasize accountability, equity, quality, and transparency*" for public charter schools, but PDE failed to explain how they will impose these same conditions on school districts and intermediate units. School districts and intermediate units receive billions in taxpayer dollars each year – much more than what public charter schools receive – and it would only be equitable to require these same auditing standards for these two public entities.
- Regulation #6-349 would create different and unequal standards for a particular type of public school.



Redirection Process

- The proposed regulations for the Redirection Process (§ 713.8.) are clearly not meant to “clarify” the process outlined by the Charter School Law but to impose a new process that is outside of the Pennsylvania Department of Education’s jurisdiction and violates the Law.
 - Regulation #6-349 leaves out a very important clause in the Charter School Law - *“Payments shall be made to the charter school in twelve (12) equal monthly payments...”* (24 P.S. § 1725-A(a)(5)). PDE admits, in the “Comment and Response Document”, that Regulation #6-349 intentionally violates this provision in the Pennsylvania’s Charter School Law and should automatically invalidate these regulations.
 - Regulation #6-349 requires charter school entities to submit payment requests to the school districts *“no later than ten (10) days before the fifth of each month”* which is not a requirement imposed on charter schools in the Charter School Law and a clear overstep in PDE’s authority.
 - PDE attempts to create a standard of what the General Assembly meant by *“If a school district fails to make a payment to a charter school as prescribed in this clause...”* (24 P.S. § 1725-A(a)(5)). The proposed regulations would interpret this part of the Law as a school district not making a payment to a charter school by the fifth of the month, but it excludes instances where school districts make a payment in this timeline but deliberately shortchange a charter school. Under the proposed regulations, it doesn’t appear that the charter school entity would have any recourse to seek assistance from PDE as long as they receive some amount by the fifth of the month.
 - The Charter School Law is clear that if a school district fails to make a monthly payment to a charter school *“the secretary shall deduct the estimated amount, as documented by the charter school, from any and all State payments made to the district...”* (24 P.S. § 725-A(a)(5)). It does not say in the Charter School Law that PDE or the Secretary has any discretion over whether or not these payments are withheld by the district, the law is clear that *“the secretary SHALL”* make the deduction.
 - The Charter School Law does not require a charter school entity to fill out a form in order to obtain a redirection from PDE. The proposed regulations are clearly meant to create additional red-tape and burdensome mandates on public charter schools that are trying to obtain the funding that rightly belongs to their students.
 - Regulation #6-349 will delay payments to public charter schools by requiring charters to wait ten (10) days after a school district fails to make their legally required tuition reimbursement payments. Like school districts, public charter schools have monthly infrastructure expenditures but, unlike school districts, they do not receive their local and state revenue directly. When school districts break the Law and refuse to send their tuition reimbursement payments, it creates a significant strain on charter schools and the proposed regulations only delay those payments by requiring that redirection requests must only be made *“between the 15th and 25th of each month”*.



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School Staff

- Regulation #6-349 pertaining to School Staff (§ 713.9.) seems to give charter school authorizers additional powers that are not provided for in Pennsylvania’s Charter School Law, and could limit a charter school’s ability to compete for high-quality employees and retain their existing staff.
 - Regulation #6-349 appears to give charter school authorizers (school districts and PDE) the authority to define the word “same” when evaluating whether or not a charter school is providing “*the same health care benefits*” (24 P.S. § 1724-A(d)) for their employees as their local district. The Charter School Law does not bestow the authority to define the word “same” on a charter school authorizer. However, Regulation #6-349 seems to grant this power to authorizers by including the following: “*Authorizers may consider the evidence provided by charter schools, regional charter schools, and cyber charter schools as required in subsection (a) when making charter renewal determinations*” (§ 713.9.(b)). By seemingly granting authorizers this power, Regulation #6-349 may allow charter school authorizers to invent barriers that prevent new charter schools from being established and existing charters from being renewed.
 - Furthermore, the new language in this section references “*charter renewal determinations*” (§ 713.9.(b)) which is a subject that PDE said they would not be addressing in Regulation #6-349 and was not contained in the proposed regulations for the public to comment on last year. Pennsylvania’s Charter School Law does not grant PDE the authority to determine what an authorizer shall and shall not consider when evaluating a charter renewal application.
 - Lastly, PDE’s new language in this section (§ 713.9.(b)) will open the door for charter school authorizers to punish local public charter schools that are seeking to provide or already providing a benefits package for their employees that may be viewed as “better” than what is offered by local school districts. With the ever-growing need for high-quality educators, public charter schools need the autonomy and flexibility (that school districts have) to be competitive in recruiting staff members and incentivizing teacher retention. If a public charter school is currently providing a more “appealing” or “better” benefits package to their staff than their local school district, Regulation #6-349 could result in a charter school being forced to cut valuable benefits that have already been promised to their employees.

Philadelphia Charters for Excellence (PCE) believes that the regulations being put forth by the PA Department of Education are not in an effort to set “*conditions that emphasize accountability, equity, quality, and transparency*” but to impose a political agenda from an Administration that has openly attacked and called for the closure of public charter schools. This is a blatant abuse of the regulatory process and the approval of Regulation #6-349 would result in significant harm to the students, families, employees and communities served by Pennsylvania’s 180 public charter schools.

Once again, PCE opposes Regulation #6-349: Charter Schools and Cyber Charter Schools in its final form and calls on the members of the Independent Regulatory Review Commission (IRRC) to vote NO on approving these regulations.



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Sincerely,

A handwritten signature in black ink that reads 'Scott Peterman'.

Scott Peterman,
Executive Director
Philadelphia Charters for Excellence (PCE)