



PHILADELPHIA
1800 JFK Blvd., Suite 1900A
Philadelphia, PA 19103
T 215-238-6970
F 215-772-3125

PITTSBURGH
429 Fourth Ave., Suite 702
Pittsburgh, PA 15219
T 412-258-2120
F 412-535-8225

Education Law Center
Comments to IRRC – Proposed Charter School Regulations
October 18, 2021

Thank you for the opportunity to comment on proposed Regulation #6-349: Charter Schools and Cyber Charter Schools, which clarifies elements of the Charter School Law and sets conditions that emphasize accountability, equity, quality, and transparency. We applaud the Pennsylvania Department of Education for issuing proposed regulations to clarify charter school ethics, application, and lottery requirements and to correct governance practices that undermine accountability and transparency. We support the swift adoption of the regulations, which will create a stronger charter sector, provide greater clarity in the application process, and improve equity in charter enrollment.

For more than 45 years, the Education Law Center has advocated for the legal rights of students in Pennsylvania, with a mission of ensuring that all of Pennsylvania’s children have access to a quality public education. The focus of our advocacy has always been the students who are most underserved by our public schools – students of color, students living in poverty, students with disabilities, students experiencing homelessness, English learners, students in the foster care and juvenile justice systems, and LGBTQ youth. Our comments on the proposed charter regulations reflect this focus, and our recommendations are informed by our work representing individual students and families seeking to enroll in, or remain in, the charter schools of their choice; work that has provided a window into the policies and practices of individual charter schools that reduce access and limit choice for underserved students.

The charter school law (CSL) was enacted in 1997 with the expectation that charters would operate as laboratories to test new pedagogies and approaches to learning and share innovative practices with other public and charter schools. The intervening years have revealed weaknesses in the charter school model, particularly with respect to ethics, governance, and financial accountability. Stronger ethical standards and greater financial accountability are necessary to restore public confidence, and the regulations will provide greater clarity to help authorizers ensure an accountable and high-quality charter sector.

The CSL reflects a commitment to equity in the legislative intent of “increas[ing] learning opportunities for all pupils,” not just the selected few. It makes clear that authorizing school districts do have the authority to ensure proposed charters are able to serve all pupils by specifying that authorizers may terminate, non-renew, or revoke a charter that is in “[v]iolation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.” (17-1729 (5))

Data from numerous sources, including Pennsylvania specific reports by the Education Law Center: [Safeguarding Educational Equity](#), Education Voters of Pennsylvania: [Fixing the Flaws](#) in PA's Special Education Funding for Charter Schools, Research for Action: Special [Education](#) Funding Memo, and the School District of Philadelphia [Demographic Characteristics of District and Charter Students](#), show that charters as a group serve fewer economically disadvantaged students, fewer students experiencing homelessness, fewer English learners, and enroll a population of students with disabilities that is very different from that served by district schools in terms of disability type. As a result, charters worsen segregation across race, socioeconomic status, and disability, which impacts students in the charters themselves and in sending school districts.

Equitable access is firmly grounded in the CSL and integral to the idea of school choice, but, despite the statutory authority to do so, criteria that measure equity have been given little consideration in the framework for charter authorizing practices. Much focus has been on academic performance, which has been deficient for many charter schools, but equity and academic performance are inextricably linked. Currently, charters can more easily accomplish promised achievement levels that they are evaluated on annually by inequitably choosing to serve more advantaged students. This is, in part, because these students require fewer supports and resources as they encounter fewer systemic barriers to achieving academic success. To comply with the CSL and advance its mission, charters must be accessible to all students and equitable access should be supported through regulation and practice.

Our recommendations below reflect ELC's goals for the charter regulations. These include:

1. Adequately referencing local school boards' authority and responsibilities with respect to charter applications, renewals, and terminations.
2. Ensuring that charter schools' admissions, enrollment, and operational practices are legally compliant and designed to serve the needs of all student groups.
3. Eliminating differences in special education requirements for district and charter schools that contribute to charters' underserving those students with disabilities who have the greatest educational needs.
4. Creating greater accountability to students, parents, and taxpayers by strengthening ethics standards for Charter Boards of Trustees.

1. The regulations should reference local school boards' authority and responsibilities with respect to charter applications, renewals, and terminations.

The proposed regulations will strengthen the ability of charter authorizers to make sound decisions and ensure that charter applicants are able to open schools that are sustainable and meet the needs of students and families. These draft regulations are a great improvement; however, we believe additional language would provide further clarity while still remaining consistent with current charter law. We recommend the following:

Incorporate legislative intent

The CSL requires authorizers (boards of school directors for brick-and-mortar charters and PDE for cyber charters) to evaluate charter applications based on criteria that include, among others, the extent to

[Ensuring that all of Pennsylvania's children have equal access to a quality public education.](#)

which the application conforms to the legislative intent. To provide additional clarity and guidance to charter schools and boards of school directors, Section 713.1(1) should restate the intent enumerated in 17-1719 (2)(iii) of the charter school law:

- (1) Improve pupil learning.
- (2) Increase learning opportunities for all pupils.
- (3) Encourage the use of different and innovative teaching methods.
- (4) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.
- (5) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- (6) Hold the schools established under this act accountable for meeting measurable academic standards and provide the school with a method to establish accountability systems.

Clarify the role of the authorizer

The CSL references powers and responsibilities of the board of school directors in the charter school process, which include, “to hold a public hearing and vote to accept or deny the charter application (17-1717 (e)); “to annually assess whether a charter school is meeting the goals of its charter (17-1728-A (a));” and at the end of the five-year term choose to nonrenew or revoke the charter (17-1729-A (a)). The draft regulations include a definition of the term authorizer, which is the common term for entities with these responsibilities. We recommend modifying the definition to restate the responsibilities of authorizers, already enumerated in the CSL, which includes accepting or denying charter applications, assessing charter schools’ success in meeting its goals and renewing, terminating, or nonrenewing charter applications.

2. Ensuring that charter schools’ admissions, enrollment, and operational practices are legally compliant and designed to serve the needs of diverse student groups.

The regulations should ensure that, when making authorizing decisions, local school boards have access to, and carefully examine, information about charter admissions and enrollment processes, discipline practices, services to students with disabilities, English learners, and other student populations, and other policies to ensure that school policies and practices do not impact who can enroll into, access, and remain in a charter school. They should make clear that evidence of segregation and discrimination are legitimate bases for denial, nonrenewal, and termination under the CSL.

Application process

Section 713.2, which sets forth minimum requirements for all charter school applications, will strengthen charter school applications and will help charter authorizers to determine whether the charter applicant is capable, in terms of support and planning, to provide comprehensive learning experiences to students, as required in CSL (17-1717-A((B)(2)(ii)).

While the draft regulations are a major improvement, we believe the application contents can be further strengthened by referencing applicable state and federal law or state regulation. Further we believe that it is the responsibility of the applicant to demonstrate the charter proposal is compliant

with the law. The first step towards ensuring equitable access to all students is for the applicant to demonstrate in its submittal that its leadership is familiar with applicable legal standards and that proposed programs and policies meet those standards, including by providing evidence of nondiscrimination. Providing information about student demographics at applicants' currently operating schools is one way to demonstrate nondiscrimination. To ensure equitable access to charter schools, we recommend the application content section be amended as follows: *Suggested language in italics.*

Projected Student population

(C)(3) For each grade or age level proposed to be served by the charter school or regional charter school:

(v) If the applicant currently operates a charter school or intends to contract with an educational management organization, provide information on the composition of the student population by race, ethnicity, share of students who are economically disadvantaged, and number and share of students with disabilities by disability type in currently operating charter school or charter schools.

Services to students with disabilities and English Learners

(5) Mission and education goals of the charter school or regional charter school, including:

(ii)(c) Plans for meeting the needs of at-risk students, including English Learners and students with disabilities that comply with Federal law, including but not limited to, the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11301 et seq., and the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 et seq.

Admissions practices

(6) Admissions policy that,

(i) Establishes criteria for evaluating the admission of students in accordance with section 1723-A of the Charter School Law (24 P.S. § 17-1723-A) and this Chapter

(ii) Complies with applicable federal and state nondiscrimination statutes.

(iii) Includes specific prohibitions against practices that discriminate on the basis of intellectual ability except as provided under the law, athletic ability, measures of achievement or aptitude, status as a person with a disability, or proficiency in English language as provided under 17-1723-A.

(iv) Describes how prospective parents and guardians will be informed of the results of the lottery.

Student Discipline

(7) Suspension and expulsion procedures including:

(iii) Explanation of due process procedures prior to administering exclusionary discipline, including compliance with procedural rights and protections in 22 PA Chapters 14 and 711, 24 P.S. § 13-1318, and applicable federal laws, including those that prohibit discrimination on the basis of race, color, religion, ethnicity, disability, national origin, sex, gender, sexual orientation, and gender expression.

(v) A description of how the school will assess and systematically address disparities in implementation of disciplinary practices among student groups including the collection and posting of

data on suspensions, expulsions, and disciplinary transfers disaggregated by race, ethnicity, disability and gender.

Parent Complaint Process

(10) Procedures for reviewing and addressing complaints from parents, guardians and families regarding the operation of the charter school or regional charter school, *including circumstances in which complaints will be shared with local authorizer or the Pennsylvania Department of Education. The procedures for reviewing and addressing complaints must include the relevant policies for investigation of complaints, including policies regarding interviews and consideration of relevant evidence, as well as possible outcomes of an investigation; timely procedures for responding to the person making the complaint; information about potential means of responding to the complaint; reasonable time frames for response; and information regarding how to determine the status of a complaint.*

Random Selection Process

There is ample evidence that charter student populations differ significantly from the student population of sending school districts. In [Safeguarding Educational Equity](#), ELC found that the School District of Philadelphia student population includes more economically disadvantaged students (70% vs. 56%), and more English learners (11% vs. 4%) than district authorized charter schools and that few of the special education students in traditional charters are from the low-incidence disability categories, such as autism and intellectual disability, that typically are most expensive to serve. The demographic makeup of many charter schools would be hard to achieve in a true lottery system: in Philadelphia 30% of charters served no English Learners and the majority of Philadelphia charters are significantly less diverse than district schools, enrolling two-thirds of students from a single racial group. Education Voters' [report](#) found that in every region of the state, district schools enrolled significantly more Tier II and Tier III students and 41% of all charters enrolled no Tier 2 or Tier 3 students with disabilities.

The problem of equitable enrollment in charter schools has been recognized nationally – and several steps have been taken through state law or within charter agreements to help charter enrollment align more closely with the sending student population.

The proposed §713.4, which addresses charter selection policies, are necessary to address the problem of inequitable access to charter schools and will help to weed out some exclusionary practices. Parent complaints to ELC have identified problems at three points during the application process – (i) with the lottery, (ii) when families who have been accepted come in with student information such as grades and IEPs, and (iii) when parents request services for their children prior to enrollment. It is important to note that the problem occurs with both enrollment and retention.

To better ensure that charter enrollment practices are lawful and fully respect parent choice, we recommend the following.

- (1) Amend §713.4(a) to require charters to adopt selection *and retention* policies.
- (2) Include nondiscrimination language on the charter school application form. Many parents are not aware that charter schools, as public schools, must follow the same nondiscrimination laws as other

public schools.

(3) Amend (d) to require that student demographic data is included in the annual report and also posted on the district's publicly available website.

(4) Amend(C) to include (5) *State that public notice of the selection process should include the number of available slots and number of applicants, that this information should be included on the website, and the lottery results should be available for public inspection at the charter school.* This will enable prospective parents to know if slots are available at the times they would like to enroll.

3. Eliminate differences in special education requirements for district and charter schools that contribute to charters' underserving those students with disabilities who have the greatest educational needs.

Aside from requirements related to early intervention services that charter schools do not provide, there is little rationale and no legal basis under federal disability law for charter schools to be held to a lower standard of service provision than district schools in meeting the needs of students with disabilities. Accordingly, the regulations should specifically incorporate into Chapter 711 certain provisions of Chapter 14 that are currently inapplicable to charters but are either required or implicated to ensure effective implementation of the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et. seq., and provisions set forth in 34 C.F.R. Part 300 and to comply with the IDEA's mandate that children with disabilities attending public charter schools must be treated "in the same manner as the local educational agency serving children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools..." 20 U.S.C. § 1413(a)(5). These include provisions related to personnel qualifications and caseload, least restrictive environment requirements, and age range restrictions.

4. Increase accountability and improve ethical operation of charter schools.

Charter School Law requires charters to be governed by boards of trustees and further prohibits for-profit entities from establishing new charter schools.

Pennsylvania caselaw has established that, in the event that a for-profit entity plays a role in the establishment of a charter school, a charter applicant must further demonstrate that the charter school's board of trustees will retain real and substantial authority over the operation of the school, educational decisions, and staff. See Pennsylvania Department of Education Charter School [Basic Education Circular](#).

The independence of charter boards of trustees from educational management organizations has been identified as an issue nationally. The [U.S. Department of Education](#) provides non-regulatory guidance on conflicts of interest to its grantees for the Charter School Program, which provides startup and expansion grants to charter schools, networks, and state education departments, and has established a test to assess the independence of the school from its for-profit Charter Management Organization (CMO) grantees:

Ensuring that all of Pennsylvania's children have equal access to a quality public education.

- The governing board is not selected by, or includes members who are employees of the for-profit CMO;
- The charter school has an independent attorney, accountant and audit firm that works for the charter school, not for the for-profit CMO;
- The contract was negotiated at arm's length, clearly describes each parties' rights and responsibilities, and specifies reasonable and feasible terms under which either party may terminate the contract;
- The fee paid is reasonable for the types of services provided;
- The loan and lease agreements between charter and for-profit are fair and reasonable, documented appropriately, aligned with market rates and include terms that will not change if the management agreement is terminated.

We recommend that 713.4(iv)(a) be amended as follows:

(e) in the event that charter will contract with a for-profit educational management organization, evidence that the charter school's board of trustees will retain real and substantial authority over the operation of the school, educational decisions, and staff.

We support the proposed regulations and also hope you will consider our suggested changes to the language. Thank you for the opportunity to comment.