

PROPOSED RULEMAKING

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 711]

Charter Schools; Advance Notice of Proposed Rulemaking

Sections 1732-A(c) and 1751-A of the Public School Code of 1949 (School Code) (24 P.S. §§ 17-1732-A(c) and 17-1751-A) authorize the Department of Education (Department) to promulgate regulations relating to charter schools and to implement the Charter School Law (CSL) (24 P.S. §§ 17-1701-A—17-1751-A). Through this advance notice of proposed rulemaking (ANPR), the Department is announcing its intention to exercise this authority and submit a rulemaking that will propose amendments to 22 Pa. Code Chapter 711 (related to charter school and cyber charter school services and programs for children with disabilities).

A. Background and Purpose

The CSL was enacted in 1997. Apart from amendments enacted in 2001 to authorize the establishment of cyber charter schools, the CSL has remain largely unchanged since its enactment. Significant, sustained growth of the number of charter schools and cyber charter schools (collectively, charter school entities) and the number of students enrolled in charter school entities has led to an increased focus on the establishment, governance and operation of charter school entities across the Commonwealth.

Transparency and accountability in the establishment, governance and operation of charter school entities are vital to ensuring that constituencies impacting charter school entities—including charter school entities, the Boards of Trustees that govern charter school entities, the for-profit organizations that play a role in the management of charter school entities and authorizers of charter school entities—adhere to structural and operational norms that maintain the effectiveness of the CSL. To that end, the Department's proposed rulemaking will be a comprehensive package intended to ensure such transparency and accountability in implementation of the CSL's provisions related to the establishment of a charter school entity, the governance and operation of a charter school entity, and the closure of a charter school entity.

B. Specific Areas of Regulatory Effort

1. Application requirements

The CSL requires all charter school applicants to include certain information in applications to establish a charter school entity. See 24 P.S. §§ 17-1719-A and 17-1747-A. Through this ANPR, the Department is announcing its intention to develop a model application template to inform local authorizing decisions, and which would help ensure compliance with the requirements of the CSL. In this regard, the Department seeks input regarding how it may best ensure that charter school applicants demonstrate the net benefit that they will provide to the authorizing district's students; show capacity for implementing innovative educational practices that improve student learning; and meet the unique needs of authorizing districts.

2. Admissions policies

An applicant seeking to establish a charter school entity must provide information as to the applicant's admission policy and criteria for evaluating the admission of students. See 24 P.S. § 17-1719-A. Accordingly, the Department intends to require that charter school entities establish that their admissions policies are in compliance with section 1723-A of the CSL (24 P.S. § 17-1723-A), which provides that “[a] charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability, . . . or athletic ability, measures of achievement or aptitude, status as a person with a disability, proficiency in the English language or any other basis that would be illegal if used by a school district.” The Department further intends to establish a process by which charter school entities shall demonstrate that they are implementing their admissions policies in accordance with the requirements of section 1723-A, especially as such policies relate to the admission of students with disabilities and students with limited English proficiency. Through its proposed rulemaking, the Department further intends to establish requirements to ensure that authorizing districts, or regional Local Education Agencies, remain involved in identifying and serving the needs of these students.

3. Accountability of Boards of Trustees

Accountability begins at the highest level of a charter school entity—the Board of Trustees. Therefore, the Department intends to establish rules governing conflicts of interest. The Department intends to preclude individuals with vested or familial interests in the actions of a charter school entity from serving on a charter school entity's Board of Trustees or participating in certain actions taken by the charter school entity, including the awarding of contracts in which a current or proposed Board member may have an interest.

4. Information related to charter school management companies

Charter school entities are publicly funded. Taxpayer funds distributed to charter school entities should be subject to the same transparency standards that apply to school districts. The Department's proposed rulemaking will establish requirements for strict oversight by the charter school entity and the relevant authorizer of the for-profit management companies doing business with a charter school entity. The Department will propose that management companies must: (1) submit to and make public annual audits; and (2) be precluded from engaging in transactions with any founder, incorporator or trustee of a charter school entity without public discussion, comment and arms-length approval by the charter school Board of Trustees. Further the Department intends to require charter school entities to adhere to public bidding requirements, as set forth in procurement rules applicable to local government units or 62 Pa.C.S. §§ 101—2311 (relating to Commonwealth Procurement Code), or both. Additionally, the Department intends to preclude transactions that disburse taxpayer funds to private interests without a good-faith return on the investment. The Department is particularly concerned about arrangements in which charter school entities lease space from foundations established solely to support the charter school entity and thereby receive reimbursement from the Commonwealth on behalf of these related entities. See 24 P.S. § 25-2574.3.

5. *Liability coverage*

Section 1719-A(17) of the CSL requires a charter school applicant to include in its application “[h]ow 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.” See 24 P.S. § 17-1719-A(17). Accordingly, the Department’s proposed rulemaking will seek to establish adequacy and propriety of insurance or other security for charter school entities.

6. *Fiscal and auditing standards*

A charter school entity is required to continuously meet generally accepted standards of fiscal management or audit requirements and maintain the ability to educate students and provide services to students and staff. See 24 P.S. §§ 17-1729-A(a)(3); 17-1741-A(3), (3)(ii); 17-1749-A(a)(1). Through the proposed rulemaking, the Department will seek to establish and define the “generally accepted standards of fiscal management or audit requirements” to which charter school entities must adhere.

7. *Funding for charter schools*

Under section 1725-A of the CSL (24 P.S. § 17-1725-A) a charter school entity may request that the Department redirect a school district’s subsidy when the charter school entity believes that the school district has failed to pay the charter school entity for the education of its resident students. The proposed rulemaking will seek to establish parameters and procedures for the administrative processes set forth in section 1725-A of the CSL. These parameters will work to ensure fairness and predictability for charter school entities and school districts and will establish timeframes and required documentation that must be adhered to and provided by each party to the process.

8. *Academic accountability*

The Department seeks comment on an accountability matrix to assist authorizers in evaluating whether a charter school entity is meeting the requirements for student performance set forth in 22 Pa. Code Chapter 4 (relating to academic standards and assessment). See 24 P.S. § 17-1729-A. The proposed accountability matrix will be developed to ensure equity and academic quality across the charter school sector and tie any further growth of the sector to academic quality and equity.

C. *Comments Requested by the Department*

The Department invites any person or entity to provide data, information and comment on the proposals discussed in Section B of this ANPR that would be helpful to the Department in preparing the proposed rulemaking.

The Department also seeks comment in the following areas:

- The proper standard of review of the Charter School Appeal Board (CAB) under section 1717-A(i)(6) of the CSL (24 P.S. § 17-1717-A(i)(6)).

- Whether the proposed rulemaking should include a process for the submission of amendments to a charter.

- Whether parameters should be defined related to the requirements for delivery of curriculum and instruction to students through the Internet and other electronic means, and the proper use of a cyber charter school’s physical facilities.

- Whether Chapter 711 should be amended to establish caseload requirements for special education teachers who provide special education supports and services to students with disabilities in charter school entities.

- Whether charter school entities should be subject to a law similar to the Financial Recovery Act (24 P.S. §§ 6-601-A—6-603-B).

This ANPR does not contain an exhaustive list of areas subject to the proposed rulemaking. The information received in response to this ANPR will be evaluated and will be used to refine the list of subject matters proposed to be regulated.

D. *How to Provide Data and Information*

Comments, data and analysis, and other information may be forwarded to the Office of the Secretary, 333 Market Street, 10th Floor, Harrisburg, PA 17126.

E. *Contact Persons*

Questions concerning the ANPR and the subsequent rulemaking may be addressed to Adam Schott, Special Assistant to the Secretary at adschott@pa.gov.

PEDRO A. RIVERA,
Secretary

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