



**Comments on Proposed Rulemaking
Department of Education
22 PA CODE CH 713
Charter Schools and Cyber Charter Schools - #6-349**

The PA Charter Performance Center, an initiative of the non-profit advocacy group Children First, produces unbiased, accurate, and timely information to advance sound state-level charter school policy. The PA Charter Performance respectfully submits these comments in support of the proposed rulemaking #6-349 relating to Charter Schools and Cyber Charter Schools. The comments focus on two areas that will materially improve transparency and accountability regarding charter school entities and educational management service providers.

1) The regulations will provide more transparency about the business relationships between cyber charter schools and educational management service providers (EMSPs).

As defined in the regulations, EMSPs are nonprofit or for-profit charter management organizations, education management organizations, school design providers, business managers or other entities or individuals that enter into a contract or agreement with a charter school entity. EMSPs effectively control vast public resources in Pennsylvania's cyber charter sector. Half of Pennsylvania's 14 cyber charters are managed by for EMSPs and one recent analysis estimated that cyber charters collectively spend over \$130 million on outside managers.¹

A review of the latest available Form 990 tax filings and AFR expenditures data shows that EMSP contracts with cyber charter schools often exceed total spending by entire school districts despite the fact that EMSPs are not subject to the same level of oversight. For example, Pennsylvania Cyber Charter School, Commonwealth Charter Academy, and Agora Cyber Charter School are the three largest cyber charters. According to their most recent Form 990 filings, all three cyber charter schools hold contracts with EMSPs worth at least \$20 million. ***Pennsylvania Cyber Charter School's contract with Lincoln Learning Solutions for curriculum and managed services in the 2019-20 school year totaled \$38.5 million or more than total annual expenditures of over half (251) of the school districts in the Commonwealth for that same year.***²

Despite the fact many EMSPs command more public resources than school districts, EMSPs are not accountable to the state education department. By virtue of the fact that they derive their revenues directly from cyber schools, EMSPs are, in effect, funded by public tax dollars, but they are not required to make detailed financial information available to the department or the public to assess their effectiveness. Similarly, employees of EMSPs are not considered public officials and are not required to disclose any potential conflicts of interest. Under these

circumstances, more transparency is needed to evaluate EMSPs and hold them accountable for improving charter school performance.

The proposed regulations in section 713.2 (for charter schools and regional charter schools) and section 713.3 (for cyber charter schools) take a meaningful step toward the goals of transparency and accountability. Key provisions of Section 713.2(c)(4)(vi) require that if the school has contracted with or intends to contract with an educational management service provider, the following shall be provided:

- (A) Evidence of the educational management service provider's record in serving student populations, including demonstrated academic achievement and growth.
- (C) The final or proposed contract between the ... school and the educational management service provider.
- (J) The compensation structure, including clear identification of all fees to be paid to the educational management service provider, to include a total of fees expressed as a percentage of all school expenditures.
- (M) Disclosure and explanation of any existing or potential conflicts of interest between members of the board of trustees and the proposed educational management service provider.

The increased level of transparency and accountability will both benefit students who rely on the educational services provided by EMSPs and the taxpayers who are the ultimate funders.

2) The proposed regulations clarify ethics and conflict of interest standards that will reduce the risk of misuse of public funds.

In 2020-2021, Pennsylvania taxpayers will spend nearly \$3 billion on charter school tuition bills, including an estimated \$980 million for cyber charter schools. Public spending on this magnitude in any sector inevitably comes with the risk of mis-, mal-, and non-feasance. Case in point, earlier this year, the Indiana Attorney General filed suit to recover \$85 million in improper payments in a case involving two cyber schools, 13 defendants, 14 contractors.³ Closer to home, in 2016, Pennsylvania Cyber Charter's former CEO received a prison sentence for siphoning off \$8 million "through an elaborate web of related party transactions among other nonprofits organizations, a for profit vendor and a bricks and mortar charter school."⁴

Section 713.6 of the proposed regulations clarify that the ethics and conflict of interest standards in state law apply to board of trustee members of charter school entities. Specifically, this section clarifies that:

- Each member of a board of trustees of a charter school entity is a public official subject to the Public Official and Employee Ethics Act.
- Each member of a board shall file a statement of financial interest.

- No member of a board of trustees of a charter school may participate in the selection, award, or administration of any contract if the member has a conflict of interest.
- Members must abstain from voting on a matter that would result in a conflict of interest.
- Members (or family members) cannot directly or through any other individual, entity, partnership, or corporation in which the member holds stock or has a financial interest or other organization, provide a loan, forbearance or forgiveness of loan or other debt, service or product or lease a property to a charter school entity if such action is a conflict of interest.
- Violations are subject to penalties imposed under the State Ethics Commission.

These provisions are the minimum that the public should expect in light of the size and complexity of the charter school sector. They promote transparency and accountability by setting forth clear expectations for members of any charter school board of trustees.

For these reasons, the PA Charter Performance Center supports the proposed rulemaking #6-349 relating to Charter Schools and Cyber Charter Schools.

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¹ Susan DeJarnatt – Virtual reality: Cyber CS and the Need for Reform, PA Bar Association Quarterly, January 2021.

² Pennsylvania Cyber Charter Academy, Form 990 (for the year ending June 2020) and PA Department of Education, Finances AFR Expenditures, 2019-20.

³ <https://www.childrenfirstpa.org/news/follow-the-right-example-jul-30-2021/>

⁴ <https://www.washingtonpost.com/education/2019/09/03/how-big-mess-is-pennsylvanias-charter-school-sector-this-big/>