



The New Jersey Charter Schools Association (the “Association”) hereby submits comments to the jointly proposed rules by the Commissioner of the New Jersey Department of Education (“DOE”) and the Secretary of the Department of Higher Education, *N.J.A.C.* 6A:26A, which allocate up to \$75 million in State grants towards school facility security upgrades (the “Proposed Rules”). The Association represents the State’s public charter school community and the 54,000 students and their parents it serves.

The Securing Our Children’s Future Bond Act (“Act”) was adopted to enhance funding for public school security. The Proposed Rules make public charter schools ineligible for school security grants. On this basis they are inconsistent with the plain terms of the enabling Act, as well as the public referendum question incorporated therein, and are violative of the underlying legislative intent of the Act and its companion statute, Alyssa’s Law, *P.L. 2019, c.33*.

The Proposed Rules also do not address whether public charter schools are required to implement State-mandated security systems, and if so, fail to address the significant economic impact that such a mandate will have on them and by what financial mechanism such security improvements will be funded. In this respect they have not been proposed in conformity with the Administrative Procedures Act, *N.J.S.A.* 52:14B-4(a)(2), which require that proposed agency rules set forth the true costs of their implementation. Our specific legal objections to the Proposed Rules are outlined, below.

*I. The Proposed Rules Are Violative of the Plain Language of the Public Referendum and the Act and are Therefore *Ultra Vires**

The public question that was passed by the Legislature, signed into law by the Governor and approved by State voters at the November 6, 2018 general election provides, in relevant part, as follows:

“Do you approve the Securing our Children’s Future Bond Act? This bond act authorizes the State to issue bonds in the aggregate principal amount of \$500 million. The money from the sale of the bonds would be used to provide grants to schools, school districts, county vocational school districts and county colleges...Money would also be used for school security upgrades and school district water infrastructure improvement projects.” (emphasis added).

The plain language of this statutory provision requires that the State provide grants to “schools” and “school districts” for school security upgrades. In the Act’s



preamble it declares the reasons for its enactment include authorization for the “...creation of debt of the State of New Jersey...for the purpose of school security upgrades...”. The Act further defines “Schools” to mean, “an educational institution that includes any of the grades kindergarten through 12,” which is inclusive of public charter schools. *N.J.A.C. 6A:26A-1.2*. Beyond that, in many respects public charter schools are included in the definition of “school district” under the law. *See N.J.S.A. 18A:36A-7(A* charter school shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools . . .) *see also e.g., N.J.A.C. 6A:23A-7.1(b)(1)* (“References to ‘school districts’ shall also mean charter schools”).

A. The Proposed Rules Contradict State Bond Referendum

N.J.S.A. 19:3-6 provides as follows in pertinent part:

Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon. Where the question concerns any amendment to the State Constitution or any act or statute or other legal titles of any nature, the printed phrasing on the ballots shall include a brief statement interpreting same.

With respect to interpretive statements called for in *N.J.S.A. 19:3-6*, they must be designed in such a way as to “help the voter understand more about the [issue] than disclosed in the [public question] for purposes of aiding the voter in his or her decision. *See City of Orange Tp. Bd. of Educ. v. City of Orange Tp.*, 451 N.J. Super. 310, 324 (Ch. Div. 2017). The interpretative statement is to be added to help the voter understand more about the amendment than the public question tells [them] for the purpose of aiding [them] in [their] decision. *DeSanctis v. Borough of Belmar*, 455 N.J. Super. 316, 330 (App. Div. 2018), quoting *Gormley v. Lan*, 88 N.J. 26 (1981). It must also be fair. *Id.*

The referendum question is very clear and according to its plain meaning, informs voters that if they approve the question, bonds will be sold to fund grants to schools and school districts for security upgrades. There is no reference to carving out a significant segment of the public school community as ineligible for these State grants. The interpretive statement, which appeared immediately below the public question, also fails to mention the disenfranchisement of public charter schools.

In *City of Orange Tp. Bd. of Educ.*, supra, the court entered an injunction enjoining certification of the results of a referendum question changing the school board from an appointed school board to an elected school board. The court agreed with the plaintiffs



that the referendum's failure to inform city residents about how the change from a Type I to a Type II school board would impact the district's financial process, including funding of school improvements, violated its citizens' rights. *Id* at 323.

Here, the public was not informed that charter schools, although public in nature, would not be eligible for school security upgrades. Such information would have influenced voters, and most certainly the public charter school community. If one reads the Proposed Rules as drafted, the public referendum did not provide adequate details so as to allow voters to be sufficiently informed. The Association requests that the Proposed Rules be amended to conform to plain language of the referendum question, which promised the public that all public schools would be entitled to security grants.

B. The Proposed Rules Violate the Plain Language of the Act

While administrative agencies have discretion when selecting methods to implement a statute, an agency may not adopt regulatory methods inconsistent with statutory goals. See *In re Adoption of N.J.A.C. 5:96*, 215 N.J. 578, 614 (2013). An agency must not, "under the guise of interpretation," enact regulations that are "plainly at odds with" the enabling statute. *Id*. See also, *In re Freshwater Wetlands Prot. Act Rules*, 180 N.J. 478 (2004) (invalidating Department of Environmental Protection regulations concerning construction near wetlands transition areas as inconsistent with enabling statute and ultra vires.); *Kingsley v. Hawthorne Fabrics, Inc.*, 41 N.J. 521, 529-30 (1964) (invalidating Division of Taxation regulation defining "immediate family" as inconsistent with enabling statute, noting that "if the regulation attempts to add to the statute something which is not there, it can furnish no sustenance to the statute.")

In *T.H. v. Div. of Developmental Disabilities*, 189 N.J. 478, 492 (2007), the Supreme Court of New Jersey determined that administrative regulations imposing an age limit of "before age 22" upon applicants with developmental disabilities was inconsistent with the enabling statute which did not include an express age limitation. *Id*. The Court reasoned:

Although we recognize the deference that an administrative agency regulation is ordinarily accorded, we repeat here the well-established principle that deference is not warranted where the agency alters the terms of a legislative enactment. This is not a case in which an agency simply filled in the interstices of an act or provided details specifically left to it by the Legislature. Rather, in adopting [its regulations the agency] *added an eligibility standard that does not exist in* [the enabling statute]. That regulation, therefore, is not entitled to deference. (emphasis added).

Id.



Here, the Act, which is the framework for DOE security grants, does not designate a subset of public schools to be ineligible for state grants. Yet the DOE has rewritten the broad public safety language of the Act in its Proposed Rules to exclude charter schools from the entire scope of the law.

The Proposed Rules define “school district” to mean,

a local or regional school district, a county special services school district, a county vocational school district, and a district under partial or full State intervention [citation omitted].
For purposes of this chapter, school district does not include charter or renaissance schools. (emphasis added).

N.J.A.C. 6A:26A-1.2

The Proposed Rules provide for school security project grants to school districts. *N.J.A.C. 6A:26A-1.3 (a)1.* Because the Proposed Rules exclude charter schools from the above definition of “school district,” they would be foreclosed from eligibility for the potentially life-saving security alarm systems.

Statutes must be read in their entirety; each part or section should be construed in connection with every other part or section to provide a harmonious whole. *Borough of Pitman v. Monroe Sav. Bank, SLA*, 425 N.J. Super 245, 251 (App. Div. 2012), quoting, *Bedford v. Riello*, 195 N.J. 210, 224 (2008). If the Act intended grant funding only for schools within traditional resident school districts, then the language in the Act providing for grant funding to “schools,” in addition to “school districts,” is superfluous. Also, as noted above, in various contexts, charter schools are included in the definition of “school district.”

For the foregoing reasons, The Association respectfully requests that the Proposed Rules be revised to be consistent with the public question and the Act and encompass all public schools, including charter schools.

**II. The DOE Exceeded its Statutory Authority and Acted Arbitrarily
Because the Proposed Rules Frustrate the Legislative Intent
Underlying the Act and Alyssa’s Law**

In assessing the scope of the Commissioner’s administrative authority courts look beyond the specific terms of the enabling act to the statutory policy sought to be achieved by examining the entire statute in light of its surroundings and objectives. *Hearing Aid Dispensers*, 75 N.J. 544 (1978). The letters to the Commissioner from the legislative sponsors of the Act make clear that, “the intent of the legislation as it pertains to security



project funding was to protect all public school students, including those who attend public charter schools.” See, attached letter dated May 20, 2019 co-signed by State Senators Steven Oroho and Anthony Bucco.

One of the stated purposes of the Proposed Rules is to create a funding mechanism to implement the mandate under Alyssa’s law, *P.L. 2019, c.33*, that “each public elementary and secondary school building shall be equipped with at least one panic alarm...”. In fact, the Governor’s veto of Alyssa’s law, Assembly Bill No. 764, specifically identified the Act as the anticipated funding source for the required school security system improvements.

Alyssa’s Law does not differentiate between public charter schools and resident district public schools—it requires panic buttons in every school building. Its purpose is to protect all school children in the event of an emergency, such as an active shooter situation. The Proposed Rules single out public charter and renaissance schools for ineligibility for security safeguards funding, thus frustrating one of the underlying purposes of the Act, and the primary intent of Alyssa’s Law, that all public-school students benefit from potentially life-saving police alert systems.

Regulations frustrate a statute when they are inconsistent with the statute, extend the statute beyond the Legislature’s intent or “violate[. . .] express or implied legislative policies.” *Education Law Center ex rel. Burke v. New Jersey State Bd. of Educ.*, 438 N.J. Super 108, 116, quoting, *In re Petitions for Rulemaking N.J.A.C. 10:82-1.2 & 10:82-4.1*, 117 N.J. 311 (1989). The general legislative intent influences the interpretation of a statute’s component parts. To that end, statutes must be read sensibly rather than literally. *N.J. State League of Municipalities v. Dep’t of Cmty. Affairs*, 158 N.J. 211, 224 (1999).

Further, legislation on cognate subjects must be construed in *pari materia*. *Board of Education v. Hackensack*, 63 N.J. Super. 560 (App. Div. 1960). The Legislative intent undergirding both the Act and Alyssa’s Law is the protection of public school students from dangerous, possibly deadly attacks, when they attend school. Neither of these laws expressly excludes charter schools from its protective ambit. A correct reading of the Act, consistent with its underlying intent, should have led the DOE to propose rules that include all public schools, resident district and charter schools alike. Public charter schools disproportionately operate in low income communities. Depriving their students and staff from the security enhancements of the law is arbitrary, capricious and unreasonable.

In summary, the Proposed Rules frustrate the legislative intent of the Act, run afoul of the Act’s underlying public policy and must therefore be amended to enable public charter schools to apply for and receive grants from the DOE for security systems.

III. The Proposed Rules as Drafted Violate the State Administrative Procedures Act by Failing to Identify the Detrimental Economic Impact of the Rules on Charter Schools

Beyond the impermissible reduction in scope of covered public schools, the Proposed Rules should be withdrawn because they fail to include an adequate economic impact statement. Such a statement is required by *N.J.S.A. 52:14B-4(a)(2)*, which provides that when a state agency gives notice of a proposed rule, it also must issue a statement containing various information, including “a description of the expected socio-economic impact of the rule.” The Office of Administrative Law (OAL) has implemented this statutory requirement by adoption of an administrative rule, which requires an agency proposing adoption of a rule to provide “[a]n economic impact statement which describes the expected costs, revenues, and other economic impacts upon governmental bodies of the State, and particularly any segment of the public proposed to be regulated.” *N.J.A.C. 1:30-5.1 (c)(3)*. (emphasis added).

While the Economic Impact statement in the Proposed Rules extols the economic benefits of grant funding to the industries involved in school construction, it is noticeably silent concerning its economic impact on public charter schools, which are public local education agencies. Public charter schools are funded primarily through resident districts, at a fraction of the per pupil funding rate. The Proposed Rules seeks to remove from charter school funding the security aid, yet burden it with cost mandates.

The Proposed Rules’ Economic Impact statement does not set forth the true costs of implementation of the rules, because it ignores the costs from excluding public charter schools from eligibility for state security grants. In accordance with the Act, the Proposed Rules provide a mechanism for funding the mandate under Alyssa’s Law that all public school buildings in New Jersey be equipped with at least one silent panic alarm directly linked to local law enforcement for use in the event of a school security emergency. If this mandate is determined to apply to public charter schools, they will have no means by which to fund the required security projects. Leaving charter schools with a significant unfunded mandate is certainly inconsistent with the strong public policies under Alyssa’s Law, to keep public school children safe while attending schools, as well as the stated goals of the Public School Charter Law, i.e., “the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools.” *N.J.S.A. 18A:36A-2*.

For the foregoing reasons, the Commissioner should withdraw the Proposed Rules and amend them to provide for security grants to public charter schools.