

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
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ROBERT J. HARBISON, III  
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<http://www.irrc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 17, 1999

Peter H. Garland, Ph.D., Executive Director  
State Board of Education  
333 Market Street, 1st Floor  
Harrisburg, PA 17126

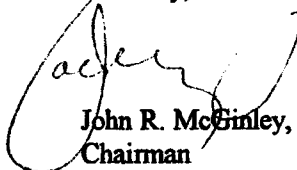
Re: IRRC Regulation #6-258 (#1827)  
State Board of Education  
Certification of Professional Personnel

Dear Mr. Garland:

The Independent Regulatory Review Commission disapproved the subject regulation at its public meeting on June 17, 1999. Our Order is enclosed and is available on our website at <http://www.irrc.state.pa.us>.

Section 7(a) of the Regulatory Review Act requires you to notify us within seven days from receipt of this letter if you will: (1) withdraw the regulation; (2) proceed with promulgation under Section 7(b); or (3) proceed with promulgation under Section 7(c).

Sincerely,



John R. McGinley, Jr.  
Chairman

JRM:cae  
Enclosure  
cc: Eugene W. Hickok, Jr.

JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
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## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

June 24, 1999

Elizabeth Weber  
Pennsylvania Association of School Personnel Administrators  
801 North Second Street  
Harrisburg, PA 17102

Re: IRRC Regulation #6-258 (#1827)  
State Board of Education  
Certification of Professional Personnel

Dear Ms. Weber:

On June 17, 1999, the Independent Regulatory Review Commission disapproved the above captioned regulation. The Commission is required to notify you of the disapproval. A copy of the Commission's Order, explaining the reasons for the disapproval, is enclosed.

On June 23, 1999, the State Board of Education informed the Commission that it intends to revise and resubmit this regulation within the 40-day period prescribed by Section 7 of the Regulatory Review Act. This means the regulation must be resubmitted on or before July 27, 1999.

If you have any questions regarding the order, you may contact James M. Smith at 783-5439.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce  
Executive Director

REN:wbg  
Enclosure

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RECEIVED  
HARRISBURG

## INDEPENDENT REGULATORY REVIEW COMMISSION

14th Floor, 333 Market Street  
Harrisburg, PA 17101

Commissioners Present:

Public Meeting Held June 17, 1999

John R. McGinley, Jr., Chairman  
Alvin C. Bush, Vice Chairman  
Arthur Coccodrilli  
Robert J. Harbison, III  
John F. Mizner



State Board of Education  
Certification of Professional Personnel

Regulation No. 6-258

### BY ORDER OF THE COMMISSION

On April 9, 1997, the Independent Regulatory Review Commission received this proposed regulation from the State Board of Education. This rulemaking amends Subchapters A, B, and C of 49 Pa. Code. The authority for this regulation is Sections 1201 - 1268, 1109, 1141, 2603-B and 2604-b of the Public School Code (24 P.S. §§ 12-1201 - 12-1268, 11-1109, 11-1141, 26-2603-B and 26-2604-B). The proposed regulation was published in the April 19, 1997 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on May 17, 1999.

This regulation is the result of the Board's decennial review of certification rules and procedures. In response to comments from the Standing Committees, the public and the Commission, the Board made several major amendments to the final-form regulation. The Board removed controversial provisions for alternate entry, temporary waivers, and professional development. The final-form regulation will add Program and Certificate principles, improve the assessment program for certification and collapse two levels of supervisory and administrative certificates into one level.

We have reviewed this regulation and have found that it is not in the public interest. We have two concerns with the final-form regulation. First, the provisions relating to the establishment of certification standards are not within the Board's statutory authority. Second, the Educational Specialist II certificate requirements do not meet the criteria of clarity and reasonableness.

Our first concern relates to the Board's delegation, in Subchapter B, of the authority to establish standards for individual certification to the Department of Education. In the proposed rulemaking, the Board amended the requirements for instructional certificates, educational specialist certificates, supervisory certificates, and administrative certificates (Sections 49.81(b), 49.101, 49.111(a)(5) and 49.121(d)). The amendments are similar in that they provide that state certificates will be issued to candidates "...who meet *Department prescribed standards based on the following principles:*" (Emphasis added.)

Under the Public School Code and miscellaneous education laws, the authority to establish standards for certification resides solely with the Board. The Board's overall authority in this area is set forth in the Public School Code, 24 P.S. § 26-2606-B (Cooperation between the Board and the Department of Education), which provides:

Statements of policy, standards, rules and regulations promulgated by the board shall be binding upon the Department of Education. The department **shall submit to the board for approval, modification or rejection**, all rules and regulations proposed by the department in the areas under control of the board. The Department of Education shall furnish upon request of the board such data and information as the board may, from time to time, require, and the department shall provide administrative services for and on behalf of the board for the implementation of the board's statements of policy, standards, rules and regulations. [Emphasis added]

This section must be read in *pari materia* with Miscellaneous Laws, 24 P.S. § 1226 (Powers and duties of the State Board of Education). This section provides, in part:

The State Board of Education shall have the power, and its duty shall be –

\* \* \* \* \*

(b) To establish and promulgate standards of preliminary and professional education and training for teachers in such schools. [Emphasis added]

Finally, 24 P.S. § 2070.2. (Certification requirements) provides:

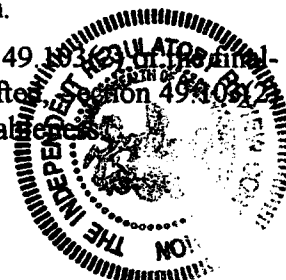
No person shall teach in a public school in the Commonwealth unless he has met the ***certification requirements as established by the State Board of Education*** which are applicable to the institution where he is employed. [Emphasis added]

While the Board states it approves certification standards as a matter of practice, there is no obligation, in the regulation, for the Board to approve the Department's prescribed standards. To meet its statutory requirements and the criteria of clarity, the regulation should require the Board to approve the standards for each certificate developed by the Department.

Our second concern relates to Educational Specialist Certificates. The existing regulation requires an applicant for an Educational Specialist II certificate to "have completed 3 years of satisfactory *service* on a Level I Educational Specialist Certificate." (Emphasis added.) This section recognizes that some educational specialists do not teach.

In the proposed regulation, Section 49.103(2) altered this requirement by requiring an applicant to "have completed 3 years of satisfactory *teaching* on an Educational Specialist I Certificate." (Emphasis added.) We recommended that the Board delete the requirement for *teaching* and continue the existing requirement for *service* in this provision.

The Board did not respond to our comment on this issue. Section 49.103(2) of the final-form regulation would require three years of satisfactory teaching. As drafted, Section 49.103(2) of the final-form regulation does not meet the criteria of clarity and reasonableness.



**THEREFORE, IT IS ORDERED THAT:**

1. Regulation No. 6-258 from the State Board of Education, as submitted to the Commission on May 17, 1999, is disapproved;
2. The State Board of Education shall, within seven days of receipt of this Order, notify the Governor, the designated Standing Committees of the House of Representatives and the Senate, and the Commission of its intention to either proceed with the promulgation of the regulation without revisions, to revise the regulation, or to withdraw the regulation. Failure to submit notification within the seven-day period shall constitute withdrawal of the regulation;
3. The Commission will transmit a copy of this Order to the Legislative Reference Bureau; and
4. This Order constitutes a bar to final publication of Regulation No. 6-258 pursuant to Section 6(b) of the Regulatory Review Act.

  
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John R. McGinley, Jr., Chairman



IRRC    gulation #6-258 (#1827)  
State Board of Education  
Certification of Professional Personnel

Peter H. Garland, Ph.D., Executive Director

  
\_\_\_\_\_

Date: \_\_\_\_\_

6/17/99