

Regulatory Analysis Form

This space for use by IRRC

(1) Agency

State Board of Education

(2) I.D. Number (Governor's Office Use)

#006-279

IRRC Number: 2349

(3) Short Title

Student Attendance

(4) PA Code Cite

22 Pa. Code Chapter 11

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jim Buckheit

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(6) Type of Rulemaking (check one)

Proposed Rulemaking

☒ Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

☒ No

Yes: By the Attorney General

Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The final form regulations update items in the parts of the chapter that address: admission to public schools, absences for temporary periods, excusals from public school attendance, applicability, exceptions, as well as general provisions of the chapter.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Act of March 10, 1949, P.L. 30, No. 14, §26-2603-B, added by the Act of March 30, 1988, P.L. 321, No. 43.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

These regulations are not mandated by law, court order or regulation. The enabling statute for the State Board of Education requires it to: "adopt broad policies and principles, and establish standards governing the education program of the Commonwealth" (24 P.S. § 26-2603-B (a)).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations update, provide clarity and bring the regulations into conformity with state and federal statutes, regulations and judicial decisions.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Not applicable

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

1.8 million school age students enrolled in school districts, charter schools, vocational schools and alternative schools will directly benefit from these regulations.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effect is anticipated.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All public school districts, area vocational-technical schools, alternative schools and charter schools are required to comply with the regulations. The regulations directly effect the 1.8 million school age students enrolled school districts, charter schools, vocational schools and alternative schools in the Commonwealth. Other provisions also apply to students enrolled in private or non-public schools and to students who are home educated or privately tutored.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A committee of the Council of Basic Education held several open public meetings, a public hearing, transmitted copies of the draft regulations to interested parties and posted copies of the proposed regulations on the State Board of Education web pages to solicit public comment. Numerous groups provided comment to the Board. These include the members and staff of the Education Committee of the House of Representatives; the Education Law Center; The Children's Home of Easton Services, Inc.; the Conestoga Valley School District; the School District of the City of York; the Pennsylvania School Boards Association; Asian Americans United; the Latino Leadership Alliance of Bucks County; the Department of Elementary and Early Childhood Education at Millersville University; the Migrant Education Program at Millersville University; the State College Area School District; Glade Run Lutheran Services; Auberle Family Foster Care; the United Methodist Home for Children; Concern, Inc.; and Independent Regulatory Review Commission (IRRC).

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

Changes to § 11.3 will result in indeterminate cost savings to schools, by giving schools additional flexibility in meeting the minimum hours of instruction required to be conducted in schools each year. The current regulation limits this flexibility by establishing minimal daily and weekly hourly requirements.

Schools may need to update their policies regarding enrollment and attendance as a result of these changes. Since many of the changes, such as permitting students to remain in school through the end of the school term in which they turn 21 years of age and allowing students excused absences to participate in agricultural fairs, are as a result of statutory changes, court decisions or federal requirements, schools should have already revised their policies to reflect the changes as they occurred over the past several years. Schools also normally update their enrollment and attendance policies annually, since this area also is frequently changed as a result of state and federal statutory requirements and court decisions. Therefore, any costs associated with updating local policies to reflect the regulations will be negligible.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Since these regulations largely reflect changes in state and federal statutes, court decisions and regulations the costs associated with compliance will be negligible. Schools traditionally update enrollment and attendance policies annually, since they provide their policies to students and their parents each school year. Some schools may need to improve student record keeping and retrieval to comply with the requirement that student records be transmitted within five days to the school to which a student transferred. Any costs associated with this policy will depend upon current record keeping procedures and support. In cases where a transferred student has a disability, the new school may be required to incur costs in conducting a new evaluation of the student when records are not promptly received. Any costs associated with compliance with this change will be outweighed by the benefits provided to students and schools receiving student records.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Changes to the requirement that schools provide a minimum number of hours of instruction per day, week and month will provide additional flexibility to schools in meeting the statutorily established minimum 900 hours of instruction for elementary schools and 990 for secondary schools and may impact state subsidy payments to a small number of school districts.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Minimal, if any, savings or costs are expected because of the promulgation of these regulations.

These regulations do not impact revenues.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
None				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of this regulation include:

- Establishes a consistent framework for local school district policies on student enrollment and attendance issues.
- Provides single source of current state and federal policy based on statute and federal regulations and court decisions.
- Protects educational rights of parents and students by putting into regulation rulings of state and federal courts.
- Will speed up delivery of appropriate educational services to students who transfer to another school through the prompt transfer of student records.

The costs of this regulation include:

- Possible restructuring of student record systems in some school districts to comply with the requirement that records be transferred within ten days. Current regulations set no timeframe for the transfer of student records.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Department of Education has already used nonregulatory alternatives to address many of the changes proposed in these regulations. The Department has issued Basic Education Circulars to provide guidance to schools on many of the issues addressed in these regulations. Since Basic Education Circulars do not have binding legal authority, the proposed regulations are needed to ensure that schools promptly enroll and educate students as provided by statute, federal regulations and court rulings.

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(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The only alternative is to leave the regulations as currently written. Since they are out-of-date given statutory, regulatory and judicial decisions, the only viable option, short of eliminating the regulation, is to bring the regulations up-to-date.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Most of the issues addressed by this regulation are state, not federal requirements. One new item added in § 11.11(e) is a requirement of the U.S. Department of Education, Office of Civil Rights.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These regulations will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

A committee of the State Board of Education held several public meetings over a two year period to develop these regulations. Meeting dates were: January, 2001; May, 2001; January, 2002; May, 2002; July, 2002; November, 2002. A public hearing was held on June 12, 2002 in Harrisburg. Eight individuals provided testimony to the committee. The final form regulation was adopted by the State Board at a public meeting on January 22, 2004.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulations will change existing requirements regarding transmittal of student records when a student relocates to another school. Current regulations do not provide a timeframe for the transmittal of student records. These regulations provide that schools transmit student records within ten days of notification.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

§ 11.11 has a number of changes that are added to address the unique challenges faced by children in foster care, children under the care of institutions, children whose parents have separated or divorced, immigrants and those who speak or whose parents speak a language other than English. In addition, the regulations address issues regarding students who are home educated and privately tutored.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Effective upon final publication in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of Chapter 11 will be reviewed by the State Board of Education every 4 years, in accordance with the Board's policy and practice respecting all regulations promulgated by the Board.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

2349

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

State Board of Education
(AGENCY)

DOCUMENT/FISCAL NOTE NO. #006-279

DATE OF ADOPTION: 1/22/04

BY: *J. Buckheit*

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independent
Agencies

BY: _____

5/24/04
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General
approval or objection within 30
days after submission.

Final-Form Regulation

Title 22 - Education
State Board of Education
Chapter 11, Pupil Attendance

FINAL REGULATIONS
PREAMBLE

TITLE 22--EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE--CH. 11]

Student Attendance

The State Board of Education (Board) amends Chapter 11 (relating to student attendance) to read as set forth in Annex A. Notice of proposed rulemaking was published at 33 Pa.B. 4300 (August 30, 2003), with an invitation to submit written comments.

Chapter 11 governs generally the subject of student attendance. The amendments affect primarily the sections that relate to admission to public schools; absences for temporary periods; excusals from public school attendance; applicability; and general provisions.

Statutory Authority

The Board takes this action under the authority granted to it by section 2603-B of the Public School Code of 1949 (24 P.S. § 26-2603-B) and other sections of the Public School Code.

Background

Chapter 11 sets forth the requirements for student attendance in public schools. The amendments to the regulations generally reflect statutory changes that have been made and court decisions that have been rendered since Chapter 11 was last amended in

1986, as well as existing Department of Education policies and practices. In addition, the Board is amending some provisions to afford public schools with additional flexibility. Other provisions are being added to standardize requirements statewide.

Summary of Amendments

- Title. The title of the regulations is being changed from “Pupil Attendance” to “Student Attendance.” In all of its regulations under Title 22, the Board is using the term students, rather than pupils, to conform to common usage.
- Section 11.3 (relating to minimum required hours). The Board is revising § 11.3 to provide additional flexibility to schools in providing the required minimum annual hours of instruction.
- Section 11.5 (relating to part-time attendance for potential graduates). The Board is revising § 11.5 to reflect current policies and practices of the Department of Education.
- Section 11.6 (part-time enrollment of alternative education students). The Board is revising § 11.6 to align the regulation with the provisions of Act 48 of 1999 that added a new Article XIX-E to the Public School Code of 1949 (24 P.S. §§ 19-1901-E—19-1903-E).
- Section 11.7 (religious objections). The Board is revising § 11.7 to align it with § 4.4(d)(3) (relating to academic standards and assessment; general provisions).
- Section 11.11 (entitlement of resident children to attend public schools).

The Board is revising subsection (a) of § 11.11 to address student enrollment issues that arise when the parents of a child who are divorced, separated or live apart for other reasons, live in different school districts. The

amendment also addresses the obligation of school entities for the transportation of these students.

Subsections (b) and (c) of § 11.11 are new subsections designed to standardize student enrollment procedures across the Commonwealth.

The Board has added a new subsection (d) to reflect the decision of the Supreme Court of the United States in *Plyler v. Doe*, 457 U.S. 202 (1982), and the requirements of the federal Immigration Reform and Control Act of 1986 (Pub. L. 99-603).

The Board has added subsection (e) to reflect policies and practices of the Department of Education.

- Section 11.12 (school age). The Board has revised § 11.12 to reflect section 10 of Act 88 of 2002, which amended section 1301 of the Public School Code (24 P.S. § 13-1301).
- Section 11.16 (early admission of beginners). The Board is revising § 11.16 to remove mental age as a criteria to be used to determine if a child is to be granted early entry into first grade. That criterion will be replaced with a requirement that the child must “demonstrate a readiness” for entry into school.
- Section 11.19 (nonresident child living with a district resident). The Board is revising § 11.19 to reflect the provisions of section 12 of Act 35 of 2001, which amended section 1302 of the Public School Code (24 P.S. § 13-1302).
- Section 11.20 (non-immunized children). The Board is revising § 11.20 to clarify existing requirements that prohibit students from attending a public, nonpublic,

private, special education or vocational school without required immunizations or without an exemption.

- Section 11.25 (temporary excusals due to illness or other urgent reasons). The Board is revising § 11.25 to ensure that all students who are excused from school attendance or who are provided homebound instruction are returned to the regular school program as soon as possible.
- Section 11.27 (graduation). The Board is amending § 11.27 to reflect Department of Education policy and practice. New language is also being added to allow school entities to permit students with disabilities to participate in the graduation ceremony with their peers, even though the student might continue his or her school enrollment as outlined in the student's Individual Education Plan. This revision will allow school entities to continue to count these students in their average daily memberships.
- Section 11.31 (students not enrolled in public schools due to private tutoring). The Board is amending § 11.31 to incorporate amendments made to section 1327 of the Public School Code (24 P.S. § 13-1327) made by Act 169 of 1988. The section is also being revised to align it with the curriculum requirements outlined in Chapter 4 (relating to academic standards and assessment). Finally, subsection (b) is being amended to clarify the role of school superintendents in addressing complaints about the education of a student who is being privately tutored.
- Section 11.31A (students not enrolled in public schools due to participation in a home education program). The Board has added a new § 11.31A to clarify the role of school superintendents in approving home education programs.

- Section 11.33 (dual enrollment students enrolled part-time in the public schools).

The Board is revising § 11.33 to permit students who are home educated or privately tutored and who are enrolled part-time in the public schools, to be counted in the school's average daily membership for State reimbursement purposes.

- Section 11.41 (school district policies and rules). The Board is revising § 11.41 to reflect section 13 of Act 35 of 2001, which amended section 1329 of the Public School Code (24 P.S. § 13-1329).

Summary of Public Comments and Changes

The proposed regulations were published as proposed in the August 30, 2004, issue of the *Pennsylvania Bulletin* (33 Pa.B. 3600). The proposed regulations were also published on the Department of Education's website located at www.pde.state.pa.us. The Board accepted formal written comments within a 30-day public comment period after publication of the proposed amendments. The Board received comments from members and staff of the Education Committee of the Pennsylvania House of Representatives; the Education Law Center; The Children's Home of Easton Services, Inc.; the Conestoga Valley School District; the School District of the City of York; the Pennsylvania School Boards Association; Asian Americans United; the Latino Leadership Alliance of Bucks County; the Department of Elementary and Early Childhood Education at Millersville University; the Migrant Education Program at Millersville University; the State College Area School District; Glade Run Lutheran Services Auberle Family Foster Care; the

United Methodist Home for Children; Concern, Inc.; and the Independent Regulatory Review Commission (IRRC).

Following is a summary of the comments and the Board's response to those comments:

Section 11.1. School term.

Comment: IRRC recommended that a definition be included for the term "meritorious educational programs."

Response: The Board has added the definition in as part of new § 11.8 (relating to definitions).

Section 11.2. School day.

Comment: IRRC and the staff of the House Education Committee recommended that the term "instructional activities" be added.

Response: The Board has added the suggested definition in new § 11.8.

Section 11.5. Part-time attendance for potential graduates.

Comment: IRRC recommended that the term "postsecondary institution" be defined.

Response: The Board added a definition of postsecondary institution in new § 11.8.

Section 11.11. Entitlement of resident children to attend public schools.

Comment: IRRC expressed concerns about the clarity and reasonableness of the proposed change regarding the use of the term “any other documentation specifically required by law.” IRRC also suggested that addressing issues related to non-resident students in the section dealing with resident students is confusing.

Response: The Board concurs with IRRC. The section has been revised to focus on resident students. The Board also has added new language to §§ 11.18 (relating to nonresident children living in facilities or institutions) and 11.19 (relating to nonresident child living with a district resident) to clarify that the enrollment requirements outlined in § 11.11 (relating to entitlement of resident children to attend public schools) also apply to children in those settings.

Comment: The Pennsylvania School Boards Association (PSBA) recommended that the proposed language be revised to address the issue of student transportation for students whose parents live in different school districts. PSBA also recommended that parents be limited to selecting one school district each school year. PSBA also suggested a reference in this section to the Interstate Compact on the Placement of Children.

Response: The Board added a new subsection (a)(2) to address the transportation issue. However, the Board felt that limiting choice of a school district to once each year would be too restrictive and unrealistic given the realities facing many families and their children in this situation. The Board felt it unnecessary to address the Interstate Compact on the Placement of Children in these regulations as the Compact is already addressed in regulations of the Department of Public Welfare.

Comment: Fourteen members of the House Education Committee expressed opposition to the proposed language that prohibits immigration status from being used to determine eligibility for school enrollment. This provision was added to reflect the decision of the United States Supreme Court in *Plyler v. Doe*, 547 U.S. 202 (1982). In their letter, the Representatives shared language from the dissenting opinion written by then-Chief Justice Warren Burger, which argued that children who are not legally admitted to the United States should not be entitled to the benefits provided to its citizens and to those legally admitted.

Response: The Board is obliged under the Constitutions of the United States and Pennsylvania, the Commonwealth Documents Law, the Regulatory Review Act, the Commonwealth Attorneys Act, and the Public School Code to promulgate regulations consistent with the U.S. and Pennsylvania Constitutions, relevant statutes and binding judicial decisions. The regulation that the Board will adopt is consistent with the binding rulings of the Supreme Court of the United States on matters of Federal constitutional law. The views of then-Chief Justice Burger, expressed in *Plyler v. Doe*, have not been embraced by the Supreme Court in the more than two decades since *Plyler v. Doe* was decided. Were the Board to defy the holding in *Plyler v. Doe*, the General Counsel and the Attorney General of the Commonwealth would be obliged to reject the regulation as contrary to law. The Board and Pennsylvania's public schools are required to adhere to the Supreme Court's rulings. Consequently, the Board has retained the language as proposed.

Comments: School officials from the Conestoga Valley School District, the School District of the City of York, and the State College Area School District wrote in

support of the proposed language. In addition, Asian Americans United, the Latino Leadership Alliance of Bucks County, the Department of Elementary and Early Childhood Education at Millersville University, the Migrant Education Program at Millersville University, and the Education Law Center wrote in support of the proposed language that bars consideration of immigration status in determining eligibility for school enrollment.

Comment: Glade Run Lutheran Services, Auberle Family Foster Care, the United Methodist Home for Children, Concern, The Children's Home of Easton, and the School District of the City of York wrote in support of the proposed language in § 11.11 designed to remove barriers to school enrollment faced by children in foster care.

Section 11.12 (school age).

Comment: Members of the House Education Committee expressed concerns about revising the definition of the beginning of school age from entrance to kindergarten to the earliest admission age to school entity's educational program.

Response: The Board has restored the definition of school age as beginning with enrollment in kindergarten. The other proposed revision refers to the right of students to continue their education through the end of the school term in which they reach 21 years of age. This revision aligns the regulation with an amendment to section 1301 of the Public School Code made by Act 88 of 2002.

Section 11.16 (early admission of beginners).

Comment: The PSBA expressed support for eliminating the requirement that schools determine whether a child has a “mental age of 7 years of more” in determining whether a child should be granted early entry into first grade. However, they suggested that some other criteria are needed to replace it and suggested inserting “and has demonstrated readiness for entry.”

Response: The Board added the suggested language to the final form regulation.

Section 11.19 (nonresident child living with a district resident).

Comment: The PSBA raised concerns about the Board’s interpretation of the term “*gratis*” with regard to exempting health insurance coverage from being considered as support for a child.

Response: The Board believes that health insurance coverage for children is a vital public policy interest to the Commonwealth. The Commonwealth invests significant resources to provide health care coverage to all children through the Children’s Health Insurance Program (CHIP). The Board believes that health care coverage should not be used as a factor in determining a child’s eligibility for school enrollment. However, the Board recognizes the principles outlined in *Brenner v. West Shore School District*, 780 A.2d 726 (Pa. Commw. Ct. 2001), and has modified the proposed language to indicate that a child must be fully supported by the non-resident adult.

Comment: IRRC recommends that the term “other reasonable information” be replaced with the detailed listing of items outlined in Department of Education Basic Education Circular 24 P.S. 13-1302.

Response: The term “other reasonable information” is taken from section 1302(2) of the Public School Code. It provides authority to the Department of Education to issue guidelines to address what other reasonable information might be requested by a school district. The Board has decided not to impose upon the Department of Education any additional requirements beyond those required by statute.

Section 11.20 (non-immunized children).

Comment: Members of the House Education Committee expressed concern that this provision would increase the record-keeping burden on public schools and would impose new burdens on non-public school students. In addition, the committee shared an e-mail message from the advisory board of the Pennsylvania Home Educators Association, which expressed the Association’s opposition to the proposed language as it applies to home education and students who are privately tutored.

Response: The Board has deleted the language that would have expanded this provision to apply to home education and privately tutored students. The new language reflects existing Department of Health requirements outlined in 28 Pa. Code § 23.81 (relating to school health), which includes a requirement that school districts work with private and non-public schools to insure that all students attending those schools are properly immunized or exempted from the immunization requirements.

Section 11.25 (temporary excusals due to illness or other urgent reasons).

Comment: IRRC recommended that the proposed language be revised to state clearly that the school district, not the parent or guardian, is responsible for seeking Department of Education approval to extend providing a student with homebound instruction beyond three months.

Response: The Board has revised this section to add the suggested clarification.

Section 11.27 (graduation).

Comment: IRRC and the House Education Committee staff recommended that the proposed language state clearly that it is the option of the school entity, not the parent or student, to permit a student to participate in the graduation ceremony with his or her peers, though the student plans to continue to be enrolled in school to carry out the program of education outlined in the student's Individual Educational Plan.

Response: The Board concurs and has revised this section.

Section 11.28 (out-of-school programs and part-time employment).

Comment: IRRC recommended that the Board define "out-of-school program" or include a list of examples.

Response: The Board added a definition of "out-of-school programs" to new § 11.8.

Section 11.31 (students not enrolled in public schools due to private tutoring).

Comment: Members of the House Education Committee expressed dismay with the deletion of “loyalty to State and Nation” as one of the areas of instruction that must be provided to privately tutored students.

Response: The Board has restored “loyalty to State and Nation” to the final form regulation.

Comment: IRRC recommended that the regulation be revised to outline clearly the circumstances of when it is appropriate for a superintendent to request additional evidence of satisfactory progress. IRRC also suggested listing the types of evidence that might be required.

Response: The Board has added language to address these concerns.

Section 11.31A (students not enrolled in public schools due to participation in a home education program).

Comment: IRRC and PSBA suggested that this section be amended to reference section 1327(d) of the Public School Code to recognize the needs of students eligible for special education services.

Response: The Board has added the reference.

Section 11.33 (dual enrollment, students enrolled part-time in the public schools).

Comment: PSBA recommended adding language to make clear that dual enrollment for some students is not required and is at the discretion of the school entity.

Response: Because this regulation addresses merely whether students who are dually enrolled can be counted for State subsidy purposes, the Board retained the language as proposed.

Additional comments:

In addition to these comments, IRRC and the House Education Committee staff offered a number of technical corrections with their comments. These included changing the title of the chapter from Pupil Attendance to Student Attendance and revising the numbering of the subsections in § 11.27 (relating to graduation). The Board has made all of these suggested changes.

Fiscal Impact and Paperwork Requirements

Because these regulations largely reflect changes in Federal and State statutes, court decisions and regulations, the costs of compliance should be negligible. Schools traditionally update enrollment and attendance policies annually, since they provide their policies to students and their parents each school year.

Some schools might need to improve student record keeping and retrieval to comply with the requirement that student records be transmitted within five days to the school to which a student has transferred. Costs associated with this policy will depend upon the school's current record keeping procedures and support. In cases where a transferred student has a disability, the new school might be required to incur costs in conducting a new evaluation of the student when records are not promptly received. Any

costs associated with compliance with this change will be outweighed by the benefits provided to students and schools receiving student records.

Changes to § 11.3 (relating to minimum required hours) will result in indeterminate cost savings to schools, inasmuch as the amendment will permit public schools additional flexibility in meeting the minimum hours of instruction required each year. The current regulation limits this flexibility by establishing minimum daily and weekly hourly requirements. Changes to the requirement that schools provide a minimum number of hours of instruction per day, week and month also will provide additional flexibility to schools in meeting the statutorily established minimum 900 hours of instruction for elementary schools and 990 for secondary schools; and the change might affect State subsidy payments made to a small number of school districts.

Schools might need to update their policies regarding enrollment and attendance as a result of these changes. Since many of the changes, such as permitting students to remain in school through the end of the school term in which they turn 21 years of age and allowing students with excused absences to participate in agricultural fairs, are already statutory mandates or requirements imposed by court decisions or federal law, schools should have already revised their policies to reflect these changes. Schools also normally update their enrollment and attendance policies annually, since this area also is frequently changed due to statutory amendments and court decisions. Consequently, any costs associated with updating local policies to reflect the regulations should be negligible.

Effective Date

The regulations will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by it, the Board will review the effectiveness of Chapter 11 after four years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 30, 2003, the Board submitted a copy of this proposed rulemaking (published at 33 Pa.B. 4300) for review and comment by IRRC and the House and Senate Committees on Education.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing the final-form rulemaking, the Board considered the comments received from IRRC, the Committees and the public.

In accordance with section 5.1(a) of the Regulatory Review Act (71 P.S. § 745a(a)), the Board submitted the final-form rulemaking to IRRC and the Committees for review as provided by section 5.1 of the Regulatory Review Act.

In accordance with section 5.1 of the Regulatory Review Act, these final-form regulations were approved/deemed approved by the Committees on _____, and were approved/deemed approved by IRRC on _____.

Contact Person

The official responsible for information on these final-form regulations is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, telephone (717) 787-3787 or TDD (717) 787-7367.

Findings

The State Board of Education finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the Public School Code of 1949.

Order

The State Board of Education, acting under authorizing statute, orders that:

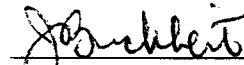
(a) The regulations of the Board, 22 Pa. Code Chapter 11, are amended to read as set forth in Annex A.

(b) The Executive Director will submit this Order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Executive Director of the Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon final publication in the Pennsylvania Bulletin.

By the State Board of Education:



Jim Buckheit
Executive Director
State Board of Education

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

SUBPART A. MISCELLANEOUS PROVISIONS

CHAPTER 11. ~~PUPIL~~ STUDENT ATTENDANCE

GENERAL PROVISIONS

§ 11.1. School term.

Public kindergartens, elementary and secondary schools shall be kept open each school **[year]** **term** for a minimum of 180 days of instruction for **[pupils]** **students**. No days may be counted as days taught on which the schools are closed, and no time may be counted as a **[pupil]** **student** session for an activity to which admission is charged. However, **[upon request,]** **when a meritorious educational program warrants**, the Secretary may, **[when a meritorious educational program warrants]** **upon request**, approve a school **[year]** **term** containing a minimum of 990 secondary or 900 elementary and 450 kindergarten hours of instruction as the equivalent of 180 school days.

§ 11.2. School day.

Instruction time for **[pupils] students** shall be time in the school day devoted to instruction and instructional activities provided as an integral part of the school program under the direction of **[certificated] certified** school employees.

§ 11.3. Minimum required hours.

(a) Minimum hours of instruction time for **[pupils based on a school term of 180 days] students** shall be as follows:

<i>[Grade</i>	<i>Day</i>	<i>Week</i>	<i>Year</i>
K	2.5	12.5	450
1-6	5.0	25.0	900
7-12	5.5	27.5	990]

Grade Hours

<u>K</u>	<u>2 hours, 30 minutes, each day of the school term</u>
<u>1-6</u>	<u>900 hours for the school term</u>
<u>7-12</u>	<u>990 hours for the school term</u>

(b) Schools with grade level configurations that differ from those outlined in subsection (a) (for example, K-8), are required to meet the minimum annual hourly requirements for each specified grade level.

§ 11.4. Early withdrawal for postsecondary institution attendance.

[Pupils] **Students** attending a postsecondary institution full-time prior to graduation from high school shall be dropped from the membership roll of the district at the time they stop attending school.

§ 11.5. Part-time attendance for potential graduates.

(a) [A pupil] Students of school age may qualify for graduation by attending the public school part-time when lawfully employed part-time or when officially enrolled in a postsecondary institution part-time. For reimbursement purposes, membership in the public school shall be calculated by counting the time the [pupils] **students** spend in the public school on a *pro rata* basis.

(b) Public schools that offer students enrollment at a postsecondary institution as part of the high school program and pay the tuition, fees and textbooks on behalf of students may continue to include the students in their average daily membership.

§ 11.6. Part-time enrollment of alternative education students.

Students may be allowed to attend public school less than full-time because of participation in a Department approved alternative **[educational]** program operated by a public school **or a private alternative education institution as provided by section 1903-E of the Public School Code of**

1949 (24 P.S. § 19-1903-E). For reimbursement purposes, the students may be counted as in full membership.

§ 11.7. Religious objections.

[Upon written parental request, a school district may excuse a pupil from instruction in those portions of science and health courses which conflict with the religious beliefs of the pupil.] Students shall be excused from instruction as provided by § 4.4(d)(3) (relating to general policies).

11.8. DEFINITIONS.

***INSTRUCTIONAL ACTIVITIES*—CLASSROOM INSTRUCTION AND INSTRUCTIONAL ACTIVITIES PROVIDED UNDER THE DIRECTION OF CERTIFIED SCHOOL EMPLOYEES; STUDENT SERVICES, SUCH AS GUIDANCE AND COUNSELING SERVICES, PSYCHOLOGICAL SERVICES, SPEECH PATHOLOGY AND AUDIOLOGY SERVICES AND STUDENT HEALTH SERVICES; OPENING EXERCISES; HOMEROOM PERIODS; SUPERVISED STUDY HALLS; ASSEMBLIES; CLUBS, STUDENT COUNCILS AND SIMILAR ACTIVITIES CONDUCTED DURING SCHOOL HOURS; SCHOOL, GROUP OR CLASS EDUCATIONAL TRIPS, TO WHICH ADMISSION IS NOT CHARGED TO STUDENTS OR PARENTS AND A CERTIFIED SCHOOL EMPLOYEE ACCOMPANIES THE STUDENTS; CIVIL DEFENSE, FIRE, BUS EVACUATION AND SIMILAR DRILLS; KINDERGARTEN ORIENTATION, SNACK-TIME AND PLAY-TIME IF THEY ARE AN INTEGRAL PART OF THE KINDERGARTEN CURRICULUM; UP TO 3 DAYS FOR GRADUATION PREPARATION BY STUDENTS IN**

GRADUATING CLASSES, SO LONG AS THE PREPARATION OCCURS WITHIN 60 DAYS OF THE COMMENCEMENT CEREMONY AND UNDER THE SUPERVISION OF CERTIFIED SCHOOL EMPLOYEES; AND EARLY DISMISSAL AND DELAYED OPENING DUE TO INCLEMENT WEATHER.

***MERITORIOUS EDUCATIONAL PROGRAM*—AN EDUCATIONAL PROGRAM THAT, IN THE OPINION OF THE SECRETARY, WARRANTS AN EXCEPTION TO THE DATES AND TIMES OF SCHOOL TERMS AND SESSIONS AS PROVIDED IN SECTION 1504(A) OF THE PUBLIC SCHOOL CODE OF 1949 (24 P.S. § 15-1504(A)).**

***OUT-OF-SCHOOL PROGRAMS*—PROGRAMS CONDUCTED OFF SCHOOL GROUNDS, SUCH AS COOPERATIVE EDUCATION, JOB SHADOWING, INTERNSHIPS, COMMUNITY EXPLORATION, REGISTERED APPRENTICESHIPS, COMMUNITY SERVICE-LEARNING DESIGNED TO PROVIDE STUDENTS WITH REAL WORLD EXPERIENCES UNDER THE GENERAL SUPERVISION OF PROFESSIONAL SCHOOL STAFF.**

***POST-SECONDARY INSTITUTION*—A COMMUNITY COLLEGE, TWO-YEAR COLLEGE, COLLEGE, UNIVERSITY OR OTHER AUTHORIZED DEGREE GRANTING INSTITUTION APPROVED BY THE DEPARTMENT OF EDUCATION IN ACCORDANCE WITH CHAPTER 31 (RELATING TO HIGHER EDUCATION GENERAL PROVISIONS) AND CHAPTER 40 (RELATING TO INSTITUTIONAL APPROVAL).**

ADMISSION TO PUBLIC SCHOOLS

§ 11.11. Entitlement of resident children to attend public schools.

(a)(1) A school age child is entitled to attend the public schools of the child's district of residence. A child's district of residence is that in which the parents or the guardian resides [or, if], When the parents reside in different school districts due to separation, divorce or other reason, the child may attend school in the district of residence of the parent with whom the child lives for a majority of the time, unless a court order or court approved custody agreement specifies otherwise. If the parents have joint custody and time is evenly divided, the parents may choose which of the two school districts the child will enroll for the school year. If the child is an emancipated minor, the resident school district is the one in which the child is then living. For purposes of this section, an emancipated minor is a person [below the age of] under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated.

(2) **TRANSPORTATION FOR STUDENTS SHALL BE PROVIDED CONSISTENT WITH THE POLICY OF THE SCHOOL DISTRICT THAT THE STUDENTS ARE ATTENDING.**

(b) A school district or charter school shall normally enroll a child the next business day, but no later than 5 business days of application. The school district or charter school has no obligation to enroll a child until the parent, guardian or other person having control or charge of the student making the application has supplied proof of the child's age, residence, and immunizations as required BY law; completed a sworn statement in accordance with section 1304 A of the Public School Code of 1949 (24 P.S. § 13-1304 A); and supplied any other

documentation specifically required by law. School districts and charter schools receiving requests for educational records from another school district or charter school shall forward the records within 5 10 business days of receipt of the request.

(c) The requirement of subsection (b) applies equally to nonresident children who are children living in facilities, OR institutions, or foster homes as defined in § 11.18 (relating to nonresident child living in facilities or institutions), OR FOSTER HOMES, or with a district resident who is supporting the child without personal compensation as defined in § 11.19 (relating to nonresident child living with a district resident), provided that the person making the application has supplied the documentation required by law.

(d) A child's right to be admitted to school shall not be conditioned on the child's immigration status. A school may not inquire regarding the immigration status of a student as part of the admission process. This provision shall not relieve a student who has obtained an F-1 visa from the student's obligation to pay tuition under Federal law.

(e) A school entity shall administer a home language survey to all students seeking first time enrollment in its schools in accordance with requirements of the U.S. Department of Education's Office for Civil Rights.

§ 11.12. School age.

School age is the period of a child's life from the earliest admission age to a school district's [kindergarten] KINDERGARTEN ~~educational~~ program [or, when no kindergarten program is provided, to the district's earliest admission age for beginners,] until [the age of 21 years or] graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever ~~{occurs first} should first occur~~ OCCURS FIRST.

§ 11.13. Compulsory school age.

Compulsory school age refers to the period of a child's life from the time the child enters school as a beginner (which may be no later than at the age of 8 years), until the age of 17 or graduation from a high school, whichever ~~{occurs first}~~ ~~should first occur~~ **OCCURS FIRST**. A beginner is a child who enters a public school district's lowest elementary school grade that is above kindergarten.

§ 11.14. Admission to kindergarten when provided.

When kindergarten is provided, the board of school directors shall establish the district's minimum entry age to kindergarten **[which may]. The minimum entry age to kindergarten may** not be less than 4 years, no months, before the first day of the school term. **[and the] The** district's maximum entry age to kindergarten**[, which]** shall be less than the district's entry age for beginners.

§ 11.15. Admission of beginners.

The board of school directors shall establish the district's minimum entry age for beginners, which may not be less than a chronological age of 5 years and 7 months before September 1, nor more than 6 years, no months, before the first day of the school term of the district. The board of school directors shall permit a child of beginners' age to attend the district's first grade and may not require the child to attend kindergarten, pre-first grade, transitional class or other grade or class that is not regular first grade without parental consent.

§ 11.16. Early admission of beginners.

The board of school directors of a school district may, upon parental request[,], **and** when recommended by a public school psychologist and approved by the district superintendent of schools, admit as a beginner a child with a chronological age of 5 years **[and a mental age of 7 years or more]** **AND WHO HAS DEMONSTRATED READINESS FOR ENTRY** as of the first day of the district's school term. A board of school directors is not required to admit a child as a beginner whose chronological age is less than the district's established admission age for beginners.

§ 11.18. Nonresident children living in facilities or institutions.

(a) The board of school directors of a school district in which there is located **[an agency supervised or]** **a** licensed shelter, group home, maternity home, residence, facility, orphanage or other institution for the care or training of children or adolescents, shall admit to the district's public schools school-age children who are living at or assigned to the facility or institution and who are residents of the district or another school district in this Commonwealth.

(b) The board of school directors of a school district[,], in which a day treatment program, operated under approval from the Department of Public Welfare by a private children and youth agency, is located [,] may purchase educational services for a child referred to the program under section 1310(b) of the Public School Code of 1949 (24 P. S. § 13-1310(b)).

(c) If the school district of residence of a child living at or assigned to a facility or institution, as described in ~~subsection~~ **SUBSECTIONS** (a) or (b), cannot be determined, but it is decided by the Secretary that the child is a resident of this Commonwealth, the child shall be permitted to attend the public schools of the district. A child covered by this subsection shall include a child whom the Secretary finds to have been placed by the child's resident parents or guardian in the care or custody of a Commonwealth facility and subsequently abandoned or deserted.

(D) THE ENROLLMENT REQUIREMENTS OUTLINED IN § 11.11 (RELATING TO ENTITLEMENT OF RESIDENT CHILDREN TO ATTEND PUBLIC SCHOOLS) SHALL ALSO APPLY TO NONRESIDENT CHILDREN LIVING IN FACILITIES OR INSTITUTIONS.

§ 11.19. Nonresident child living with a district resident.

(A) A nonresident child is entitled to attend the district's public schools if that child is **FULLY** maintained and supported in the home of a district resident as if the child were the resident's own child and if the resident receives no personal compensation for maintaining the student in the district. Before accepting the child as a **[pupil] student**, the board of school directors of the district **[may] shall** require the resident to file with the secretary of the board of school directors **either appropriate legal documentation to show dependency or guardianship or** a sworn statement that

[he] the child is a resident of the district, [that he] the child is [supporting the child] supported FULLY without personal compensation or gain, [that he] and that the resident will assume ALL personal obligations for the child relative to school requirements and [that he] intends to so keep and FULLY support the child continuously and not merely through the school term. The resident's receipt of public payments, such as Supplemental Security Income (SSI), [Aid to Families of Dependent Children (AFDC)] Temporary Assistance for Needy Families (TANF), maintenance on public or private health insurance, pre-adoptive support or other payments for or on account of the child, may not be deemed to be personal compensation or gain under this section. The school board may require other reasonable information to be submitted by the resident to substantiate the sworn statement in accordance with guidelines established by the Department of Education, AS AUTHORIZED BY SECTION 1302(2) OF THE PUBLIC SCHOOL CODE OF 1949 (24 P.S. § 13-1302(2)).

(B) THE ENROLLMENT REQUIREMENTS OUTLINED IN § 11.11 (RELATING TO ENTITLEMENT OF RESIDENT CHILDREN TO ATTEND PUBLIC SCHOOLS) SHALL ALSO APPLY TO A NONRESIDENT CHILD LIVING WITH A DISTRICT RESIDENT.

§ 11.20. Non-immunized children.

(a) No child may be admitted to or permitted to attend [the] a public [schools unless the child has received immunizations required by], private, nonpublic, special education, or vocational school or to participate in a home education or private tutoring program in a district

unless the immunization, exemption or provisional admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C (relating to immunization), have been met or the child has received from the [school district superintendent;] chief school administrator of the public, private, nonpublic, special education, or vocational school a medical or religious exemption from immunization under 28 Pa. Code § 23.84 (relating to exemption from immunization).

(b) A child who has not received all doses of the required immunizations or who has not been exempted from immunization, but who has received at least one dose of each of the required immunizations, may be provisionally admitted and attend public school for a period of up to 8 months. Provisional admission or continued attendance shall be conditioned upon the [parents'] parent's PARENT or guardian's submission to the superintendent of a plan for the [pupil's] student's completion of the required immunization doses. The plan shall be reviewed by the school district at least every 60 calendar days. If, after 8 months, the child has not received all doses of the required immunizations, the child thereafter ~~may~~ **SHALL** not be further admitted to or be permitted to attend the public schools until all doses have been received.

[(c) No school age child may be admitted to or permitted to attend a private, nonpublic, special education or vocational school unless the immunization, exemption or provisional admission requirements of the Department of Health at 28 Pa. Code Chapter 23, Subchapter C have been met.]

[(d)] (c) A child who has been admitted to school or permitted attendance in violation of this section may not be counted toward receipt of Commonwealth reimbursement for the period of the admission or attendance.

ABSENCES FOR TEMPORARY PERIODS

§ 11.21. Religious holidays and religious instruction.

(a) Upon written parental request, and in accordance with the policies of the district's board of school directors, **[pupils] students** may be excused from school for religious holidays observed by *bona fide* religious groups.

(b) Upon written parental request, a **[pupil] student** shall be excused from school **[in order]** to attend classes for religious instruction under section 1546 of the Public School Code of 1949 (24 P. S. § 15-1546). The excusal shall be limited to a total of not more than 36 hours per school year.

(c) A **[pupil's] student's** absence from school for religious holidays or for religious instruction shall be recorded as an excused absence. **[There shall be] No** penalty **may be** attached to an absence for religious holidays or instruction.

§ 11.22. Tutorial work.

(a) Upon written parental request, a **[pupil] student** may be excused during school hours for the purpose of receiving tutorial instruction in a field not offered in the district's curricula only if the following requirements are met:

(1) The excusal does not interfere with the **[pupil's] student's** regular program of studies.

§ 11.23. Health care.

Upon written parental request, a **[pupil] student** may be excused during school hours for the purpose of obtaining professional health care or therapy service only if the following requirements are met:

(2) It is not practical or possible for the **[pupil] student** to receive the services outside of school hours.

(3) The time of necessary absence from school involves a minimum of interference with the **[pupil's] student's** regular program of studies.

§ 11.24. Unaccounted absences.

[Children] Students whose names are on the active membership roll, who are at anytime in the school term absent from school for 10 consecutive school days, shall thereafter be removed from the active membership roll unless one of the following ~~{occurs}~~ ~~should occur~~ **OCCURS**:

§ 11.25. Temporary excusals due to illness or other urgent reasons.

(a) A principal or teacher may, upon receipt of satisfactory evidence of mental, physical or other urgent reasons, excuse a **[child] student** for nonattendance during a temporary period, but the term "urgent reasons" **[is] shall be** strictly construed and does not permit **OF** irregular attendance. A school district shall adopt rules and procedures governing temporary excusals **[which] that** may be

granted by principals and teachers under this section. Temporary excusals shall not exceed 3 months.

(b) A SCHOOL DISTRICT, AREA VOCATIONAL TECHNICAL SCHOOL, CHARTER OR INDEPENDENT SCHOOL MAY PROVIDE ~~Students~~ STUDENTS temporarily excused under this section [~~may be provided~~] with homebound instruction for a period not to exceed 3 months. A SCHOOL DISTRICT, AREA VOCATIONAL TECHNICAL SCHOOL, CHARTER OR INDEPENDENT SCHOOL MAY REQUEST APPROVAL FROM THE Department of Education approval is required to extend the provision of homebound instruction, and WHICH shall be reevaluated every 3 months. When a student receives homebound instruction, the student may be counted for attendance purposes as if in school. A school district shall be reimbursed for homebound instruction provided to a student under section 2510.1 of the Public School Code of 1949 (24 P.S. § 25-2510.1).

(c) A school district shall adopt policies [~~which~~] that describe [~~its~~] the instructional services that are available to students who have been excused under this section. The policies shall include statements [~~which~~] that define the responsibilities of both the district and the [~~pupil~~] student with regard to these instructional services.

§ 11.26. Non-school district sponsored educational tours and trips.

(a) A school district may excuse a [~~pupil~~] student from school attendance [~~in order~~] to participate in a non-school district sponsored educational tour or trip, if the following conditions are met:

(1) The [pupil's] student's [parents] PARENT or guardian prior to the tour or trip submits to the school district a written request for the excusal.

(2) The [pupil's] student's participation on the [trip or] tour or trip has been approved by the district superintendent or a designee.

(3) There is an adult who is directing and supervising the [pupil] student during the [trip or] tour or trip who is acceptable to both the parents or guardian and the district superintendent.

(b) A school district may limit the number and duration of [trips or] tours or trips for which excused absences may be granted [pupils] students TO A STUDENT during the school term.

§ 11.27. Graduation.

The intent of this section is to specify the effect of graduation on membership for the purpose of calculating school subsidies **[and not to impose limits on the right to a free and appropriate public education for special education students who participate in graduation ceremonies but who are not being graduated].**

[(1))(a) A [pupil's] student's graduation from high school signifies both the [pupil's] student's fulfillment of the high school graduation requirements set forth in Chapter [5 (relating to curriculum requirements)] 4 (relating to academic standards and assessment) and the end of the [pupil's] student's membership in a school district for the purpose of State subsidy reimbursement. A graduating [pupil's] student's date of graduation shall be that of the commencement ceremony of the [pupil's] student's high school.

[(2)] (b) This subsection applies to a graduating high school [pupil] student who is attending an area vocational technical school (AVTS). If the AVTS instructional calendar extends beyond the [pupil's] student's high school commencement date, for purposes of determining whether the [pupil] student has received 180 days of instruction and for purposes of determining State subsidy computation, the [pupil] student may be maintained in membership at the AVTS until the end of the AVTS calendar.

[(3)] (c) Graduating [pupils] students may be counted as in attendance for no more than 3 days of commencement preparation. Commencement preparation may be held on Saturdays within 60 days of the commencement ceremony. During commencement preparation days, [pupils] students shall be under the supervision of certificated school district [employees] employees.

[(4)] (d) School districts, AVTSs and charter schools may include in their average daily membership count PERMIT students with disabilities identified under Chapter 14 (relating to special education program and services) who choose to participate in graduation ceremonies with their graduating class and continue to receive education services but are not awarded a diploma, EVEN THOUGH THEY WILL NOT BE AWARDED A DIPLOMA AND WILL CONTINUE TO RECEIVE EDUCATIONAL SERVICES UNDER CHAPTER 14. THE PARTICIPATION OF SUCH STUDENTS IN GRADUATION CEREMONIES SHALL NOT PRECLUDE THE SCHOOL DISTRICT FROM COUNTING THOSE STUDENTS IN ITS MEMBERSHIP FOR SUBSIDY PURPOSES.

§ 11.28. Out-of-school programs and part-time employment.

(a) *[Cooperative education and community exploration programs]* Out-of-school programs. For reimbursement purposes, *[pupils]* students engaged part-time in *[a cooperative education or community exploration]* an out-of-school program shall be counted as if in regular school attendance. The programs shall be arranged as an integral part of the school curricula and shall be properly supervised by a certificated *[employee of the district]* employee. *[Pupils]* Students attending school and enrolled in supervised programs may be counted as in full membership.

(b) *[Work experience programs]* Part-time employment. A *[pupil]* student may be excused on a part-time basis from public school attendance *[in order]* to pursue non-school district supervised outside employment. For reimbursement purposes, membership in the public schools shall be calculated by counting the *[pupils]* students only for those periods while they are in school. Excusal of *[pupils]* students *[in order]* to pursue non-school district supervised outside employment shall be consistent with the applicable provisions of section 1330 of the Public School Code of 1949 (24 P. S. § 13-1330) as they relate to excusals from compulsory attendance for purposes of employment and with the school district's rules governing excusals. *[Pupils]* Students excused on a full-time basis may not be counted as in membership.

§ 11.29. [Reserved].

EXCUSALS FROM PUBLIC SCHOOL ATTENDANCE

§ 11.31. [Pupils] Students not enrolled in public schools due to private tutoring.

(a) [Private tutoring by a properly qualified tutor shall be subject to the annual approval of the district superintendent of schools.] The instruction of students not enrolled in public schools due to private tutoring by a qualified tutor under section 1327 of the Public School Code of 1949 (24 P.S. § 13-1327) shall include for elementary school level students: English, including spelling, reading and writing[,]; arithmetic[,]; geography[,]; the history of the United States and Pennsylvania[,]; science[,]; civics~~[-, including loyalty to the State and National Government,-]~~, **INCLUDING LOYALTY TO THE STATE AND NATIONAL GOVERNMENT**; safety education, [and the humane treatment of birds and animals,] including regular and continuous instruction in the dangers and prevention of fires; health, including physical education and physiology[,]; music; and art. For secondary school level students, the instruction shall include: art[,]; English[,]; health[,]; mathematics[,]; music[,]; physical education[,]; science; and social studies, including civics, world history, United States and Pennsylvania history. The instruction may include, at the discretion of the tutor, economics, biology, chemistry, foreign languages, trigonometry, or other age appropriate planned instruction as contained in Chapter 4 (relating to academic standards and assessment). The instruction shall be given during the school year for a minimum of 180 days of instruction or for a minimum of 900 hours of instruction for an elementary level student and a minimum of 990 hours of instruction for a secondary level student as the equivalent of 180 days of instruction.

(b) [The superintendent's approval of the tutor shall be by acceptable evidence of the tutor's ability to teach the program to the pupil and by written assurance from the parent that

the instructional requirements listed in this section shall be met. If approval is granted, the School district approval is not required to commence private tutoring. The parent shall provide written assurance that the instructional requirements listed in this section have been met. The superintendent may [afterwards also] require evidence deemed necessary to demonstrate that the [pupil] student is making satisfactory progress in the tutoring program and that the required subjects are being taught for the time prescribed WHEN A SUPERINTENDENT RECEIVES A COMPLAINT THAT A STUDENT IS NOT BEING PROVIDED INSTRUCTION FOR THE TIME PRESCRIBED OR THAT A STUDENT IS NOT MAKING SATISFACTORY PROGRESS IN THE TUTORING PROGRAM, THE SUPERINTENDENT MAY REQUEST EVIDENCE OF STUDENT ACADEMIC PROGRESS AND DOCUMENTATION THAT INSTRUCTION IS PROVIDED FOR THE REQUIRED NUMBER OF DAYS AND HOURS. EVIDENCE OF SATISFACTORY PROGRESS MAY INCLUDE SAMPLES OF STUDENT WORK, ASSESSMENTS, PROGRESS REPORTS, REPORT CARDS AND EVALUATIONS. DOCUMENTATION OF INSTRUCTIONAL TIME MAY INCLUDE LOGS MAINTAINED BY THE TUTOR OR PARENT, ATTENDANCE RECORDS, OR OTHER RECORDS INDICATING THE DATES AND TIME INSTRUCTION WAS PROVIDED.

§ 11.31a. Students not enrolled in public schools due to participation in a home education program.

Students of compulsory school age participating in a home education program are subject to section SECTIONS 13.27(D) AND 1327.1 of the Public School Code of 1949 (24 P.S. § 13-1327.1) (24 P.S. §§ 13-1327(D) & 1327.1). School district approval is not required to commence home education programs.

§ 11.32. [Pupils] Students attending nonpublic or private schools.

A child of compulsory school age regularly attending full-time a nonpublic school [which] that is in compliance with [§ 5.14 (reserved)] section 1327(b) of the Public School Code of 1949 (24 P.S. § 13-1327(b)) or an accredited or licensed private school, in which the instruction prescribed by statute and this part is taught, shall be in compliance with the compulsory attendance requirements.

§ 11.33. Dual enrollment[–nonpublic school pupils] students enrolled part-time in the public schools.

For reimbursement purposes, membership and attendance of nonpublic school [pupils] students, students in a private tutoring program under section 1327 of the Public School Code of 1949 (24 P.S. § 13-1327), and students in a home education program under section 1327.1 of the Public School Code of 1949 (24 P.S. § 13-1327.1), lawfully enrolled part-time in the public schools, shall be calculated by counting the time the [pupils] students spend in the public school program on a *pro rata* basis.

§ 11.34. Excusals from attendance for other than temporary reasons.

(b) Prior to seeking excusal and the Secretary's approval, the school district shall provide the child's parents with written notice of both the proposed excusal, including the reasons for the excusal, and an opportunity to be heard. For a child enrolled in special education, the notice and opportunity to be heard shall be governed by §§ [14.61 and 14.64 (Reserved)] 14.161 and 14.162 (relating to prehearing conferences; and impartial due process hearing and expedited due process hearing).

APPLICABILITY

§ 11.41. School district policies and rules.

(a) Each school board shall adopt written policies concerning district child accounting, attendance, admission, excusal and program procedures as necessary to implement this chapter. The policies shall be a matter of public record.

(b) Each school [district] board shall adopt, and distribute yearly to parents, written rules governing [pupil] student admissions, attendance, absences and excusals, that are in conformity with this chapter.

(c) Each school board shall adopt a written policy permitting students to be excused for participation in Agricultural Fairs in conformity with section 1329(b) of the Public School Code of 1949 (24 P.S. § 13-1329(b)).



**Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION**

June 24, 2004

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of the final-form regulation 22 Pa. Code, Chapter 11, Pupil Attendance (#006-279) for review by the Commission pursuant to the provisions of section 5 (c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The Department of Education will provide the Commission with any assistance it requires to facilitate a thorough review of these final-form regulations.

Please let me know if there is anything that you need.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Buckheit".

Jim Buckheit
Executive Director

Enclosure

cc: Dr. Vicki L. Phillips
Gregory E. Dunlap, Esquire
Larry White, Esquire

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 006-279
SUBJECT: Pupil Attendance
AGENCY: DEPARTMENT OF EDUCATION

#2349

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/24	M. Starks	HOUSE COMMITTEE ON EDUCATION
6/24	B. O'Leary	
6/24	K. Creola	SENATE COMMITTEE ON EDUCATION
6/24	D. H.	
6/24/04	Boyle & Hoffman	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 25, 2004