

Regulatory Analysis Form

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INDEPENDENT LEGISLATIVE
REVIEW COMMISSION

(1) Agency

State Board of Education

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

#006-279

IRRC Number: 2349

(3) Short Title

Pupil Attendance

(4) PA Code Cite

22 Pa. Code Chapter 11

(5) Agency Contacts & Telephone Numbers

Primary Contact: Patricia A. White
717-787-3787

(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 proposed regulations update items primarily in the Sections of the chapter regarding: 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 and regulations.

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

N/A,

(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.

Regulatory Analysis Form

(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 will be required to comply with the regulations. The regulations directly impact the 1.8 million school age students enrolled school districts, charter schools, vocational schools and alternative schools in the Commonwealth.

(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 regulations throughout their development on the State Board of Education web pages to solicit public comment. Numerous groups provided comment to the Board. These include the Education Law Center, Pennsylvania School Boards Association, Pennsylvania Association of Pupil Services Administrators, Pennsylvania State Education Association, Pennsylvania Homeschoolers' Accreditation Agency and the School District of York.

(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 permitting 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						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

N/A.

Regulatory Analysis Form

(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 five-days.

(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.

Regulatory Analysis Form

(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.

The majority of 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.

No additional public hearings on Chapter 11 are planned during the public comment period, as public meetings have already taken place on this regulation. A committee of the Council of Basic Education developed these regulations. The committee 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. In addition, a public hearing was held on June 12, 2002 in Harrisburg. Eight individuals provided testimony to the committee.

Regulatory Analysis Form

(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 five days of notification. These records are not generally standardized except involving student health records (Department of Health form) and in cases where a student with a disability has an Individual Education Plan in which a standard Department of Education form is used.

(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)

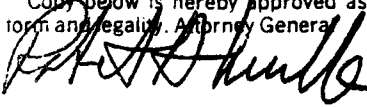
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REVIEW COMMISSION

2349

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality. Attorney GeneralBY: _____
(DEPUTY ATTORNEY GENERAL)

JUL 23 2003

DATE OF APPROVAL

☐ Check if applicable.
Copy not approved. Objections
attached.

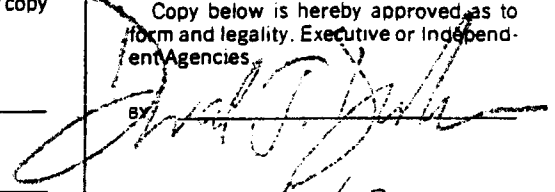
Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

State Board of Education

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 006-279

DATE OF ADOPTION: _____

BY: Patricia A WhiteTITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)Copy below is hereby approved as to
form and legality. Executive or Independent
AgenciesBY: _____
(DEPUTY GENERAL COUNSEL)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

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

Proposed Rulemaking

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

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 11]

Pupil Attendance

The State Board of Education (State Board) proposes to amend Chapter 11 (Pupil Attendance) to read as set forth in Annex A. In doing so, the State Board acts under the authority of the Public School Code of 1949, act of March 10, 1949 (P.L. 30, No. 14), particularly section 2603-B, 24 P.S. § 26-2603-B.

Purpose

Chapter 11 sets forth requirements for student attendance in public schools. Proposed revisions to the regulations reflect current statutory provisions, court decisions and Department practices.

Requirements of the Regulations

The amended regulations revise the following items:

Section 11.3. Minimum required hours. Under the current regulation, school districts are penalized in the receipt of subsidies from the Commonwealth when they do not meet the minimum daily hours of instruction – even when they far exceed the annual minimum. The State Board proposes to revise this section to provide additional flexibility to school districts in meeting the statutory-based minimum annual hours of instruction that must be offered by schools.

Section 11.5. Part-time attendance for potential graduates. The State Board proposes to revise this section to reflect the current practice of the Department of Education which permits a school district to count students enrolled in courses at postsecondary institutions in the district's average daily membership when the district pays the cost of tuition, fees and textbooks.

Section 11.6. Part-time enrollment of alternative education students. The State Board proposes to amend this section to conform it to amendments to the Public School Code made by Act 48 of 1999. In enacting Act 48, the General Assembly added Article XIX-E to the Public School Code (24 P.S. §§ 19-1901-E–1903-E).

Section 11.7. Religious objections. The State Board proposes to revise this section to conform Chapter 11 to language now contained in Chapter 4 (22 Pa Code § 4.4(d)(3)) regarding excusals from instruction due to a conflict with religious beliefs.

Section 11.11. Entitlement of resident children to attend public schools. The State Board proposes to revise subsection (a) of this section to address student enrollment issues when a child's parents (who are divorced, separated or live apart for other reasons) live in different school districts. The State Board proposes to add subsections (b) and (c) to establish consistent student enrollment procedures across the Commonwealth. The intent is to limit delays in student enrollment that are common for many students, particularly those in foster care, students living with a relative or another adult who is not their natural parent, and students living in families who relocate frequently throughout the year.

The State Board proposes to add a new § 11.11(d) to reflect the decision of the United States Supreme Court in the case of *Plyler v. Doe*, 457 U.S. 202 (1982). In *Plyler*

v. *Doe*, the Supreme Court held that it is unconstitutional to deny free public education to children who are not legally admitted into the United States. Therefore, school districts must provide a free public education to children whose immigration status is not documented. The federal Immigration Reform and Control Act of 1986 (Pub. L. 99-603) requires that students with F-1 Visas pay tuition in order to attend school.

The State Board proposes to add a new § 11.11(e) to put existing practice and Department of Education policy, as outlined in a Basic Education Circular, into regulatory form.

Section 11.12. School age. The State Board proposes to amend this section to reflect section 10 of Act 88 of 2002, which amended section 1301 of the Public School Code (24 P.S. § 13-1301). The new provision permits students who attain age 21 while still enrolled in school to continue school enrollment through the end of the school term.

Section 11.16. Early admission of beginners. The State Board proposes to amend this section to delete the mental age test as a mandatory criteria used by schools in determining early school admission for beginners. This provision currently limits the discretion of school districts in permitting early enrollment of children in school and presents expensive and inappropriate burdens on school officials in determining the mental age of children.

Section 11.19. Nonresident child living with a district resident. The State Board proposes to amend this section 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). This provision permits school boards to require that residents seeking to enroll a child in school, who is not their own, to provide reasonable information that substantiates their

sworn statement as required by section 1302. Act 35 authorizes school boards to request additional information based on guidelines issued by the Department of Education.

Section 11.20. Non-immunized children. The State Board proposes to amend this section to clarify that children who are not immunized or for whom an exemption is obtained may not attend any educational program that meets compulsory school attendance requirements regardless of the type of educational institution or program. This provision would be revised to ensure that all children, regardless of where they are educated, obtain necessary childhood immunizations or are exempted from doing so. This change fills a gap that exists in the current regulations.

Section 11.25. Temporary excusals due to illness or other urgent reasons. The State Board proposes to amend this section 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 appropriate, so that the excusals are not used to avoid addressing the educational needs of students.

Section 11.27. Graduation. The State Board proposes to amend paragraph (3) of this section to put into regulatory form existing Department of Education practice and policy as outlined in a Basic Education Circular. The State Board proposes to add a new paragraph (4) to permit schools to count students in their average daily membership – a number that helps to determine State subsidy amounts – students with disabilities who participate in the graduation ceremony with their class even though the student might continue to attend school in the next and subsequent school terms.

Section 11.31. Students not enrolled in public schools due to private tutoring. The State Board proposes to amend subsection (a) of this section to reflect provisions of

Act 169 of 1988, which amended section 1327 of the Public School Code (24 P.S. § 13-1327) and Chapter 4 of the State Board's regulations. Subsection (b) would be amended to clarify the role of school districts in approving private tutoring programs.

Section 11.31A. Students not enrolled in public schools due to participation in a home education program. The State Board proposes add this new section to clarify the role of school districts in approving home education programs.

Section 11.33. Dual enrollment. The State Board proposes to update this section to permit students who are home educated or privately tutored, and who also are enrolled part-time in the public schools, to be counted for State reimbursement purposes on a pro-rated basis. In doing so, the child's attendance would be included in the calculation of the school district's average daily membership, which is one factor in determining the amount of a school district's State subsidy.

Section 11.41. School district policies and rules. The State Board proposes to revise subsection (c) of this section to incorporate the provisions of section 13 of Act 35 of 2001, which amended section 1329 of the Public School Code (24 P.S. § 13-1329) regarding excusal of students to attend agricultural fairs.

Affected Parties

The proposed regulations would affect the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools). Provisions contained in

§§ 11.13, 11.20, 11.22, 11.31, 11.31A and 11.32 also affect students who meet compulsory school attendance laws through enrollment in a private or religious school or through home education or private tutoring.

Cost and Paperwork Estimates

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 the school's 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.

Changes to § 11.3 would result in indeterminate cost savings to schools, by permitting 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. 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 might impact state subsidy payments 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 as a result of statutory changes, court decisions or federal requirements, schools should have already revised their policies to reflect these 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 due to statutory amendments and court decisions. Therefore, any costs associated with updating local policies to reflect the regulations should be negligible.

Effective Date

The proposed regulations would become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

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

Regulatory Review

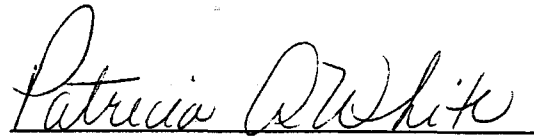
Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 8/18, 2003, the State Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia A. White, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Patricia White at (717) 787-3787 or TDD (717) 787-7367.

A handwritten signature in cursive script, reading "Patricia A. White", written over a horizontal line.

Patricia A. White
Executive Director

Proposed Rulemaking

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 11. PUPIL ATTENDANCE

GENERAL PROVISIONS

Sec.

- 11.1. School term.
- 11.2. School day.
- 11.3. Minimum required hours.
- 11.4. Early withdrawal for postsecondary institution attendance.
- 11.5. Part-time attendance for potential graduates.
- 11.6. Part-time enrollment of alternative education students.
- 11.7. Religious objections.

ADMISSION TO PUBLIC SCHOOLS

- 11.11. Entitlement of resident children to attend public schools.
- 11.12. School age.
- 11.13. Compulsory school age.
- 11.14. Admission to kindergarten when provided.
- 11.15. Admission of beginners.
- 11.16. Early admission of beginners.

Proposed Rulemaking

- 11.17. [Reserved].
- 11.18. Nonresident children living in facilities or institutions.
- 11.19. Nonresident child living with a district resident.
- 11.20. Non-immunized children.

ABSENCES FOR TEMPORARY PERIODS

- 11.21. Religious holidays and religious instruction.
- 11.22. Tutorial work.
- 11.23. Health care.
- 11.24. Unaccounted absences.
- 11.25. Temporary excusals due to illness or other urgent reasons.
- 11.26. Non-school district sponsored educational tours and trips.
- 11.27. Graduation.
- 11.28. Out-of-school programs and part-time employment.
- 11.29. [Reserved].

EXCUSALS FROM PUBLIC SCHOOL ATTENDANCE

- 11.31. Students not enrolled in public schools due to private tutoring.

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

- 11.32. Students attending nonpublic or private schools.
- 11.33. Dual enrollment, students enrolled part-time in the public schools.
- 11.34. Excusals from attendance for other than temporary reasons.

Proposed Rulemaking

APPLICABILITY

11.41. School district policies and rules.

EXCEPTIONS

11.51. Exceptions

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, when a meritorious educational program warrants, [upon request,] the Secretary may, 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.

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

[Grade	Day	Week	Year
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.

Proposed Rulemaking

(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 education[al] program operated by a public school or a private alternative education institution as provided by section 1903-E of the Public School Code (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).

ADMISSION TO PUBLIC SCHOOLS

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

Proposed Rulemaking

(a) 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 21 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.

(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 law; completed a sworn statement in accordance with section 1304-A of the Public School Code (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 business days of receipt of the request.

(c) The requirement of subsection (b) shall apply equally to nonresident children who are children living in facilities, institutions, or foster homes as defined in § 11.18 (relating to nonresident child living in facilities or institutions), or with a district resident who is supporting

Proposed Rulemaking

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. Schools shall 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 must 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] 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 should first occur[s 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 should first occur[s first]. A beginner is a child who enters a public school district's lowest elementary school grade that is above kindergarten.

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§ 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. **The minimum entry age to kindergarten shall [which may]** not be less than 4 years, no months, before the first day of the school term and 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]** 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.

§ 11.17. [Reserved].

Proposed Rulemaking

§ 11.18. Nonresident children living in facilities or institutions.

(a) The board of school directors of a school district in which there is located a [**an agency supervised or**] 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 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.

§ 11.19. Nonresident child living with a district resident.

A nonresident child is entitled to attend the district's public schools if that child is 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

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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] supported [the child] without personal compensation or gain, [that he] and that the resident will assume personal obligations for the child relative to school requirements and [that he] intends to so keep and 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.

§ 11.20. Non-immunized children.

(a) No child may be admitted to or permitted to attend [the] a public, 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 [schools unless the child has received immunizations required by] 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 for immunization).

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(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** 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.

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(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 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.

(2) The qualifications of the instructor are approved by the district superintendent.

(b) A school district may adopt additional conditions for excusal that it deems reasonable.

§ 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:

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(1) The health or therapeutic services are to be rendered by Commonwealth licensed practitioners.

(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 should occur[s]:

(1) The district has been provided with evidence that absence may be legally excused.

(2) Compulsory attendance prosecution has been or is being pursued.

§ 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] shall not permit irregular attendance. A school district shall adopt rules and procedures governing temporary excusals [which] that may be

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

(b) Students temporarily excused under this section may be provided with homebound instruction **for a period not to exceed 3 months. Department of Education approval is required to extend the provision of homebound instruction and 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 [S]ection 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 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.

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(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** 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 **[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) 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

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subsidy computation, the **[pupil] student** may be maintained in membership at the AVTS until the end of the AVTS calendar.

(3) 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.

(4) School districts, AVTSs and charter schools may include in their average daily membership count students with disabilities identified under Chapter 14 who choose to participate in graduation ceremonies with their graduating class and continue to receive education services but are not awarded a diploma.

§ 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]**. **[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.

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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 (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,**]; safety education, **including regular and continuous instruction in the dangers and prevention of fires; [and the humane treatment of birds and animals,]** 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,**

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trigonometry, or other age appropriate planned instruction as contained in Chapter 4. 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.

§ 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 the provisions of section 1327.1 of the Public School Code (24 P.S. § 13-1327.1).
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 (relating to certification by principal of nonpublic nonlicensed school)] section 1327(b) of the Public School Code (24 P.S. § 13-1327(b)) or an accredited or

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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 (24 P.S. § 13-1327), and students in a home education program under section 1327.1 of the Public School Code (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.

(a) A school district may excuse a school age child from compulsory school attendance upon recommendation of the school physician and a psychiatrist or public school psychologist or both and with the approval of the Secretary. The excusal, which shall be reevaluated every 3 months, may be extended upon the recommendation of the school physician and with the approval of the Secretary. Children so excused shall be entered on the inactive roll.

(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 (relating to notice; and impartial**

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due process hearing)] 14.161 (relating to prehearing conferences) and § 14.162 (relating to 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 (24 P.S. § 13-1329(b)).

EXCEPTIONS

§ 11.51. Exceptions.

The Secretary, in conformity with authority given under statute, may grant exceptions to this chapter as are necessary to adopt them to a school district's needs.



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

August 18, 2003

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Dear Mr. Nyce:

Enclosed is a copy of proposed regulations for review by your Committee pursuant to the Regulatory Review Act. The proposed regulation included in this packet is Chapter 11 which relates to Pupil Attendance.

The Regulatory Review Act, as amended, provides that the standing committees may convey to the Board and the Independent Regulatory Review Commission their comments on the proposed regulations any time prior to Final-Form Regulation Delivery.

The State Board of Education will provide your Committee with any assistance you may require to facilitate a thorough review of these proposed regulations.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia A. White".

Patricia A. White
Executive Director

cc: Dr. Vicki L. Phillips
Gregory Dunlap, Esq.

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

I.D. NUMBER: 6-279
SUBJECT: Pupil Attendance
AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

- X Proposed Regulation
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

RECEIVED
2003 AUG 18 PM 1:51
INDEPENDENT REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/18	<i>M. Holt</i>	HOUSE COMMITTEE ON EDUCATION
8/18	<i>V. O'Leary</i>	
8/18	<i>D. Hook</i>	SENATE COMMITTEE ON EDUCATION
8/18	<i>K. Creola</i>	
8/18/03	<i>E. Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/18/03	<i>Mayra Garces</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

July 29, 2003