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**INDEPENDENT REGULATORY REVIEW COMMISSION
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October 29, 2003

James Buckheit, Executive Director
State Board of Education
333 Market Street, 1st Floor
Harrisburg, PA 17126

Re: Regulation #6-279 (IRRC #2349)
State Board of Education
Pupil Attendance

Dear Executive Director Buckheit:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Jess M. Stairs, Majority Chairman, House Education Committee
Honorable James R. Roebuck, Jr., Democratic Chairman, House Education Committee
Honorable James J. Rhoades, Chairman, Senate Education Committee
Honorable Allyson Y. Schwartz, Minority Chairman, Senate Education Committee

Comments of the Independent Regulatory Review Commission

on

State Board of Education Regulation No. 6-279

Pupil Attendance

October 29, 2003

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Education (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on September 29, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 11.1. School term. – Clarity.

This section refers to “meritorious educational programs.” The Board should define this term in the final-form regulation.

2. Section 11.2. School day. – Clarity.

The existing text of this section refers to “instructional activities.” Clarity would be improved by defining this term in the final-form regulation.

3. Section 11.5. Part-time attendance for potential graduates. – Clarity.

This section addresses student attendance at a “postsecondary institution.” Clarity would be improved by defining this term.

4. Section 11.11. Entitlement of resident children to attend public schools. – Reasonableness; Clarity.

Subsection (b) refers to “any other documentation specifically required by law.” Based on our discussion with the Board, this phrase is intended to reference information requirements contained in 24 P.S. § 13-1302(2). Section 13-1302(2) addresses nonresident children living with a district resident and states, in part, “The school board, pursuant to guidelines issued by the Department of Education, may require other reasonable information to be submitted by the resident to substantiate the sworn statement.”

The Department of Education (Department) has established guidelines for “other reasonable information” in the Basic Education Circular (BEC) entitled “Education of Children Residing

With an Adult Other Than Natural Parent.” The BEC specifically lists supplemental information that is required to establish residency in a school district.

There are two issues. First, how is this BEC relevant to Section 11.11? The BEC addresses **nonresident** children, but Section 11.11 pertains to **resident** children. Section 11.19 of the proposed regulation addresses nonresident children. Since it appears that the BEC and Section 13-1302(2) of the School Code would apply to Section 11.19 and not Section 11.11, this language should be deleted from Section 11.11 in the final-form regulation.

Second, if the Board can explain why nonresident children should be addressed in this section, we recommend that Subsection (b) be revised by deleting “any other documentation specifically required by law” and inserting the supplemental information listed in the BEC.

5. Section 11.19. Nonresident child living with a district resident. – Reasonableness; Clarity.

The last sentence of this Section states, “The school board may require other reasonable information to be submitted by the resident to substantiate the sworn statement in accordance with the guidelines established by the Department of Education.” The Board has explained that “other reasonable information” refers to the information requirements contained in the BEC entitled “Education of Children Residing With an Adult Other Than Natural Parent.” Consistent with our recommendation in **Issue #4** relating to Section 11.11, the Board should delete the last sentence and replace it with the list of information requirements set forth in the BEC.

Also, while this section establishes the entitlement for certain nonresident children living with district residents to attend the district’s public schools, it contains no timeframe for enrollment. Section 11.11 *Entitlement of resident children to attend public schools* contains a time frame for enrollment. Why isn’t the same time frame included in Section 11.19?

6. Section 11.25. Temporary excusals due to illness or other urgent reasons. – Clarity.

Subsection (b) states, in part, “Department of Education approval is required to extend the provision of homebound instruction and shall be reevaluated every 3 months.” The final-form regulation should clarify that the school district, not the parent or guardian, is responsible for seeking Department approval to extend the provision of homebound instruction.

7. Section 11.27. Graduation. – Clarity.

Paragraph (4) states the following; “ School districts, AVTSs and charter schools may include in their average daily membership count students with disabilities identified under Chapter 14 (relating to special education services and programs) who choose to participate in graduation ceremonies with their graduating class and continue to receive education services but are not awarded a diploma.” The Pennsylvania School Boards Association (PSBA) believes this language suggests that a student with disabilities has an entitlement to participate in graduation ceremonies.

The Board has informed us that this provision was not intended to deny the school districts discretion to determine when students with disabilities may participate in graduation ceremonies.

Rather, the school districts will retain the option to permit students with disabilities to participate in graduation ceremonies. We suggest that the final-form regulation be amended to reflect the fact that the choice to allow students with disabilities to participate in graduation ceremonies rests with the school district, not the parent or the student.

8. Section 11.28. Out-of-school programs and part-time employment. – Clarity

Subsection (a) states that students engaged part-time in an “out-of-school program” shall be counted for reimbursement purposes. The final-form regulation should either define “out-of-school program,” or provide examples of these programs in this section.

9. Section 11.31. Students not enrolled in public schools due to private tutoring. – Clarity.

The existing text of Subsection (b), states that superintendents may “require evidence deemed necessary to demonstrate that the student is making satisfactory progress.” Under what circumstances would additional evidence be required? What type of evidence would be required?

10. Section 11.31a. Students not enrolled in public schools due to participation in a home education program. – Clarity.

In its comments, PSBA suggests that this section be amended to include a reference to Section 1327(d) of the Public School Code of 1949 to recognize the needs of students who are eligible for special education services. We agree and suggest the Board add this reference.

11. Miscellaneous clarity issues.

- The title of Chapter 11 is “Pupil Attendance,” but in the body of the regulation, all references to “pupil” are being changed to “student.” In the final-form regulation, the title of the chapter should be changed to “Student Attendance.”
- In Section 11.12, the language “occurs first” is being changed to “should first occur.” The same language change is proposed in Section 11.13, and a similar language change is proposed in Section 11.24 (“occurs” is being changed to “should occur”). The existing language in each of these sections is clearer than the proposed revisions. The Board should retain the original language.

IRRC Regulation #6-279 (#2349)
STATE BOARD OF EDUCATION
Pupil Attendance

Mr. James Buckheit, Executive Director

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Date: 10/29/03