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

January 4, 2006

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

Re: Regulation #6-295 (IRRC #2499)
State Board of Education
Academic Standards and Assessment

Dear Mr. 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.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director

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Enclosure

cc: Honorable James J. Rhoades, Chairman, Senate Education Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Education Committee
Honorable Jess M. Stairs, Majority Chairman, House Education Committee
Honorable James R. Roebuck, Jr., Democratic Chairman, House Education Committee
Honorable Gerald L. Zahorchak, Acting Secretary, Department of Education

Comments of the Independent Regulatory Review Commission

on

State Board of Education Regulation #6-295 (IRRC #2499)

Academic Standards and Assessment

January 4, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the November 5, 2005 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Education (Board) to respond to all comments received from us or any other source.

1. Section 4.52. Local assessment systems. – Economic and Fiscal Impact; Reasonableness; Feasibility; Clarity.

The description in the Preamble of the amendment to Subsection (c) considerably understates the change in requirements. We find that proposed Subsection (c) adds significant changes in requirements and enforcement provisions to local assessment systems including:

- If a school entity chooses to use local assessment tests, the school entity must demonstrate the local assessment test is comparable to Pennsylvania System of School Assessment (PSSA) test.
- The existence of significant numbers of students not achieving proficiency on the PSSA who are deemed proficient by a local assessment will raise an inference that the local assessment is not aligned with the PSSA or the PSSA's meaning of proficient.
- A school entity whose local assessment system certification is rejected by the Department of Education (Department) shall use the PSSA until the school entity receives approval of its local assessment.
- If the Secretary is not satisfied with the form or accuracy of the report and certification that have been submitted by the school entity, the Secretary will exercise the powers under Section 2552 of the School Code (24 P.S. § 25-2552) regarding withholding State appropriations.

A joint comment in strong opposition to the proposed revisions of Subsection (c) was submitted by the Pennsylvania School Boards Association, Pennsylvania Association of School Administrators, Pennsylvania State Education Association, American Federation of Teachers, and Pennsylvania Association of Vocational Administrators. Several individual school districts commented in opposition also. These commentators represent a broad spectrum of professionals involved in education.

The proposed rulemaking does not contain sufficient information to fully evaluate its requirements and impact. The regulation imposes new requirements for school entities to

monitor, analyze and report on the progress of their students. If these are not done satisfactorily, the Secretary will take the devastating action of withholding State appropriations. In the final-form regulation submittal, the Board must respond with further information to support this revision including:

- Whether this regulation will make the PSSA essentially a high school exit examination. How many school entities currently have local assessment systems in place that would be acceptable to the Board under the proposed amendments and how many do not? How many use the PSSA?
- How much will it cost for a school entity to develop, get approval and maintain a local assessment system? In comparison, what is the cost of using the PSSA?
- Whether the PSSA is a valid indicator of proficiency, particularly in special education and English language learner programs. How does the Board evaluate the PSSA and why is it a valid standard?

In addition, several provisions within the regulation are not clear:

- How will the Department evaluate local assessment systems in comparison to the PSSA? What criteria will the Department use? How much could a local assessment system vary from the PSSA and still get approval?
- In the event a local assessment system is rejected, how much warning will the school entity have? Can corrective action be taken or will the PSSA be automatically required? How can the Department's decision be appealed? Which assessment must a school entity use during the appeal?
- In regard to Subsection (c)(3), what are "significant numbers of students"? This trigger point provision is vague and must be amended to a clear standard. For the trigger point added to the regulation, the Board also needs to explain in the Preamble why the standard chosen is appropriate and how many school entities currently do not meet the standard.
- Subsection (c)(3) also requires an "annual report on a form and in a manner determined by the Department...and providing data specified by the Department..." In the final-form regulation, the Board should provide a full description of the report, the data that will be required and at what point in the year a school entity will have to file this information.
- Subsection (c)(4) states that if the requirements are not met satisfactorily, the Secretary "will" withhold State appropriations. Given the extraordinary magnitude of this action, why did the Board chose the word "will" rather than the word "may" that would allow the Secretary some discretion?

We will evaluate the Board's response to determine if the Regulatory Review Act criteria of economic and fiscal impact; reasonableness; feasibility and clarity have been met.

2. Section 4.3. Definitions. – Clarity.

Definitions of Prekindergarten and School entity

The use of the term "school entity" within the definition of "prekindergarten" would allow several types of schools to operate prekindergarten programs including cyber schools. A

commentator believes distance learning tools would be inappropriate for prekindergarten children. The Board should explain how all of the education providers included in the definition of “school entity” can adequately operate prekindergarten programs.

Substantive provisions in definitions

Substantive provisions in a definition are not enforceable. We note that Paragraph (ii) of the definition of “prekindergarten” is substantive. This provision should be moved to the body of the regulation.

Also, in the definition of “school entity” the phrase “provided, that this chapter applies to school entities only to the extent provided by law” is substantive and unnecessary. The phrase should be deleted from the definition.

3. Section 4.13. Strategic plans. – Need; Clarity.

Subsection (a)

The reference to Section 4.83 is being deleted since that section is now obsolete. The Board is adding the statement “The plan shall be developed by a schedule to be determined by the Department.” The proposed amendments should provide guidance to when and where strategic plans must be filed.

Subsection (c)

The following sentence is being added:

Each plan, as received and filed by the Department, becomes an extension of this chapter uniquely adapted to each school entity and can only be changed by the strategic planning committee approved by the local school board.

There are two concerns with this sentence. First, it is not clear what is meant by the phrase “becomes an extension of this chapter” and why this phrase is needed. Second, the phrase “can only be changed by the strategic planning committee” conflicts with the descriptions in existing Subsections (d) and (e) of how a plan can be altered. For these reasons we recommend deleting this sentence. Alternatively, the Board should explain why it is needed.

Subsection (g)

This subsection begins with the phrase “as an extension of this chapter.” Similar to the preceding comment on Subsection (c), the meaning of this phrase is not clear. This phrase should be deleted. If it is retained, further support for its need should be provided.

4. Section 4.25. Languages. – Clarity.

Subsections (a) and (c) mention “World Language Standards issued by the Department.” The regulation should include a cross reference to, or explanation of, where these can be found.

5. Section 4.29. HIV/AIDS and other life-threatening and communicable diseases. – Clarity.

Subsection (c) states “It is recommended that the school district’s age appropriate planned curriculum conform to the ‘Guidelines for Effective School Health Education to Prevent the Spread of AIDS,’ issued by the United State Centers for Disease Control and Prevention or other science-based guideline.” Since this is phrased as a recommendation, it is not enforceable. The Board should either make this a requirement or delete it.

6. Miscellaneous Clarity.

- The definition of “world language” appears to be only relevant to Section 4.25. If so, it could be moved to that section. Also, the phrase “in this Commonwealth” is not needed.
- The word “school” should be added before the word “entity” in Section 4.13(e).
- In Sections 4.21(c)(6) and (8), what are “basic movement skills and concepts” and “principles and strategies of movement”? Also, how do they differ?
- A commentator believes the grade levels specified in Subsections 4.51(b) and (d) are inconsistent with actual practice. The Board should review these grade levels and update them as necessary.
- Subsection 4.61(a) has a vague citation to “Federal and State law.” Citations to the applicable laws should be added.

IRRC #2499 #6-295
State Board of Education
Academic Standards and Assessment

James Buckheit, Executive Director

James Buckheit

Date: 1/4/06