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INDEPENDENT REGULATORY
REVIEW COMMISSION

#2520

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March 25, 2008

Kim Kaufman
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17126

Dear Mr. Kaufman:

Attached please find a "Comments and Responses" document prepared for the Department of Education's final-form amendments to Chapter 339. This document contains a more detailed explanation of each comment received and the Department's action taken in response to that comment than the explanation contained in the Preamble submitted to the Commission on March 6. This document supplements, but does not replace, the Preamble.

Thank you. If you have any questions, please contact me.

Sincerely,

Ernest N. Helling
Assistant Chief Counsel

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COMMENTS AND RESPONSES

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DEPARTMENT OF EDUCATION

INDEPENDENT REGULATORY
REVIEW COMMISSION**22 PA. CODE CH. 339 - Vocational Education Standards****Published at 36 Pa.B. 560 on February 4, 2006****A. *Organizations and individuals who offered comment on the proposed rulemaking***

The Department received comments from the Independent Regulatory Review Commission (IRRC); members and staff of the Education Committee of the House of Representatives; the Education Law Center (ELC); the Pennsylvania Association of Agricultural Educators (PAAE); the Pennsylvania Association of Vocational Administrators (now known as Pennsylvania Association of Career and Technical Administrators, or PACTA); the Pennsylvania State Grange; the Pennsylvania State Education Association (PSEA); Pennsylvania State Senators Jake Cornman, Lynn Herman, Gerald LaValle, Raphael Musto, Bob Regola, James Rhoades, Joe Scarnati, and Mike Waugh; Pennsylvania State Representatives Paul Semmel, Jess Stairs, and Noah Wenger; Bedford County Technical Center; Eastern Lebanon County High School; Erie County Technical School Professional Advisory Committee; Jersey Shore High School; Luzerne County Community College; Northwest Intermediate Unit; Sherry Bunting; and Robert Lauffer.

B. *Summary of comments received from IRRC and the Department's responses¹***1. Statutory authority to promulgate regulations (IRRC Comment 1)**

Comment: IRRC and Senator Musto question the Department's authority to amend Chapter 339 (related to vocational education standards).

Response: In preparing proposed amendments to Chapter 339, the Department followed the procedure set forth by the General Assembly in Articles 18, 25, and 26 of the Public School Code. Specifically, the Department exercised its duty to prepare rules that govern technical institutes and area vocational technical schools. See 24 P.S. §§ 18-1841 and 25-2502.8; see also 71 P.S. § 353. The Department then submitted the proposed amendments to both the State Board of Education and the State Board of Vocational Education for review and approval, as required in Articles 18 and 26 of the Public School Code. See 24 P.S. §§ 18-1841, 26-2603-B(k), and 26-2606-B. Both boards approved the proposed regulation prior to publication and also approved the final regulation.

¹ To assist IRRC in its review, the Department has placed each of IRRC's comments at the beginning of this document in the order in which those comments were expressed by IRRC. Comments by parties other than IRRC will follow.

The Department chose not to revise 22 Pa. Code § 339.41, relating to supervision of vocational programs. The State Board of Education approved a regulatory change that would allow an individual with a superintendent's letter of eligibility to supervise vocational education programs when this function constitutes 50% or more of an assignment. PACTA made a reasonable argument that this proposed regulatory change is contrary to law in that it would infringe upon the authority granted the Professional Standards and Practices Commission in 22 Pa. Code § 49.53. Section 49.53 requires, among other things, that the PSPC make a recommendation to the State Board with respect to the elimination or change of a type or category of certificate. Arguably, an expansion of the scope of work that may be performed under a superintendent's letter of eligibility may be considered such a change requiring PSPC input. The Department chose to accept this good faith argument. Therefore, the Department reverted to the original, unamended standard in the revised final-form standards that were submitted to IRRC on March 6, 2008.

2. Minimum time requirements and funding. – Economic or fiscal impact; reasonableness (IRRC Comment 2)

Comment: IRRC, Senators Waugh and Regola, Representative Hanna, the House Education Committee, Bedford County Technical Center, Eastern Lebanon County High School, Jersey Shore High School, Luzerne County Community College, PSEA, PAEE, PACTA, Sherry Bunting, and Robert Lauffer provided comment on the minimum time requirement set forth in 22 Pa. Code § 339.22(10).

PACTA supports the minimum time requirement and recommends retaining the language as proposed. The other commentators asked the Department to reconsider the proposal. For example, PSEA noted that the 9th grade is used as exploratory and a two hour per day requirement defeats the purpose of career exploration. Another commentator asserted that Tech Prep programs should not be included in the requirement that vocational students spend 360 instructional hours in career and technical education. Tech Prep allows students to explore careers while taking rigorous academics for postsecondary success. It was suggested that Tech Prep programs operate and be approved as 240 hour programs.

Response: Chapter 339 was revised to emphasize the accountability standards required of secondary approved career and technical education (CTE) programs and to expand vocational training opportunities for adults. Although minimum hour requirements already exist as part of current Chapter 339, the proposed amendments would strengthen those requirements. The existing minimum instructional hour requirement has not been reduced. The Public School Code defines vocational education as education "to fit an individual to pursue effectively a recognized profitable employment." See 24 P.S. § 18-1801. The Department recognizes the value of Tech Prep in the Commonwealth and provides over \$3 million in support of these programs. The related rigorous academic preparation is supported by the Basic Education subsidy, which assists school districts with the instructional costs associated with academic courses. The vocational subsidy assists school districts and CTCs (operated by a group of districts) with instructional costs associated with career and technical courses. The Department also recognizes the importance of career exploration. However, the Department must remain true to the intent of vocational education as set forth by the General Assembly in the Public

School Code. Schools can establish and offer career exploration programs, but these programs are not subject to the vocational subsidy.

Rather than reduce the existing minimum instructional hour requirement, the Department has introduced language that provides school entities with the discretion to determine the percentage of the minimum total hours offered in each year of a program, so long as the resulting sequence meets the minimum total hour requirement.

Hour requirements are valid quality standards, the precedent for which was established by higher education and basic education. Higher education institutions undergo accreditation processes to ensure the educational system and the programs are of quality. To be accredited means an institution of higher education must meet standards, which include hours and program content. Postsecondary vocational institutions also must meet minimum eligibility requirements, which include an occupation preparedness exit point, instructional hour requirement and program content. Postsecondary vocational institutions must prepare students for gainful employment in a specific recognized occupation and must provide at least 600 clock hours of instruction.

Basic education and CTE are no different from higher education in this aspect of requiring instructional hours as part of program standards. An instructional hour requirement establishes a minimal expectation for course content and results in a quality educational experience that leads to students graduating prepared for further education and employment.

The hour requirement provided in the proposed amendments serves two purposes: (1) to ensure adequate time for training and education; and (2) to serve as a basis for funding CTE programs. The Public School Code requires that approved CTE programs have established courses of study that lead to "profitable employment." 24 P.S. § 18-1801(2). The state law governing CTE follows federal law in that CTE consists of a sequence of courses that prepare students for further education and careers, and the courses must be competency-based and include specific technical and occupational skills training. Brustein & Mahler, 1998.

For CTE, the determination of an adequate course of study is based on the Classification of Industrial Programs (CIP). All programs that fall under the CIP "must consist of more than one isolated course or learning experience and must not be a haphazard collection of unrelated courses or experiences." See ncs.ed.gov. Thus, the course of study that fits a CIP must include a combination of courses and experiences that prepares students for advanced study and provides students with qualifications for an occupation.

The Department has adopted the CIP classification system for approved CTE programs. For example, the Department publishes minimum program content for 47.0604 Auto Technician and instructional certification requirements. This description is based on the nationally developed description, but has been adapted to address Pennsylvania workforce needs. In Department approved Auto Technology programs, the course of study must include:

... instruction in the diagnosis and testing, including computer analysis, of malfunctions in and repair of engines, fuel, electrical, cooling and brake systems and drive train and suspension systems. Instruction is also given in the

adjustment and repair of individual components and systems such as cooling systems, drive trains, fuel system components and air conditioning and includes the use of technical repair information and the state inspection procedures.

See www.pde.state.pa.us, keyword search "CIP codes." This listing serves as the minimum standard for all Department approved Auto Technology programs, and is based on the nationally developed CIP.

To receive Department program approval, the school must meet the required course of study identified in the CIP. In addition, the school must complete an occupational analysis of each program for which the school is seeking program approval. The occupational analysis at the school level will evidence specific industry identified and validated knowledge and skills standards that students will attain while enrolled in the approved program. There are different methods of occupational analysis, but the most commonly used method is the Developing a Curriculum (DACUM).

In Pennsylvania, an hour standard for CTC originally was established at 540 instructional hours and was later decreased to the current standard of 360 instructional hours to accommodate increased academic requirements. The hour requirement was established to ensure that adequate time has been allotted to school districts and CTCs to address the minimum program content standards outlined in the CIPs. Under the Job Ready initiative, the Department has accepted the direction to ensure all CTE programs are aligned with national industry standards that lead to certifications. To accomplish this, the Department needs to ensure adequate time exists for the school districts and CTCs to adequately address applicable national industry standards.

The need for a given number of instructional hours for technical education is recognized by national accrediting and certifying agencies, which have established minimum program content standards and instructional hours. To derive the required instructional hours, the certifying agency has conducted an occupational analysis, which examines each performance task associated with a given occupation and the amount of time on task, then connects that information to instructional time. The requirement in this regulation is consistent with the minimums.

An hour requirement both assists in defining minimum program standards and serves as a means of establishing a basis for reimbursement. In order for postsecondary institutions to be eligible to administer federal student aid (FSA) funds, programs must be accredited. The accreditation standards address hours and program content. For example, at the national level, students applying for FSA can only receive aid if an institution and program have met eligibility requirements. The eligibility requirements include occupational preparation, number of hours, and program content.

At the state level, a similar framework exists for secondary schools. Basic education subsidy is a complicated formula with numerous components. At times, part of the formula can address a time factor such as when districts are reimbursed for students attending other districts as required under 24 P.S. § 25-2562, where "the sending district shall pay the vocational or other

extension tuition charge per pupil hour of instruction for each hour of attendance of each such pupil." 24 P.S. § 25-2562 (emphasis added).

Several commentators asserted that the minimum instructional hour requirement contradicts the General Assembly's goal of encouraging young people, including college preparatory students, to pursue agriculture as a career. They contend that the end result of the minimum hour requirement will be a closure of Agriculture Education programs in the Commonwealth.

Although the Department agrees that college preparatory students should be encouraged to participate in CTE, the Department must remain true to the intent of vocational education as set forth by the General Assembly, *i.e.*, to prepare an individual to pursue effectively a recognized profitable employment. See 24 P.S. § 18-1801. Approved vocational education programs must have: (a) planned instruction; (b) a series of courses based on occupational analysis; (c) employment related performance standards; (d) administration of occupational assessment; (e) student prepared educational and occupational objectives based on occupational performance; (f) advisory committees; (g) safety education; and (h) admissions policies. College preparatory students have the opportunity to take one of the planned courses or to take a selection of the planned courses offered in an approved program. The required admissions policies cannot prohibit any student from enrolling in one, some or all of the courses. Therefore, students seeking to pursue agriculture as a career can enroll in one or more Agriculture courses associated with an approved Agriculture program. The concern expressed by some commentators that an hour requirement will lead to the closure of approved Agriculture programs is not valid. Rather, to encourage students to study Agriculture, schools should offer a sequence of career and technical courses that meets the requirements and also schedule those courses in a manner that will allow students to take them in addition to their academic courses.

Other commentators addressed what courses and activities should be included in the required 360 instructional hours. For example, one commentator observed that the 360 hours should include time spent in academic courses, and that school district-approved career and technical education programs should be 240 hours in length and receive partial funding. Another recommended that the time requirement include early college or dual enrollment courses, experiential learning opportunities, and any science and math courses that are directly related to the student's career goal. It was also recommended that science courses be eligible for the vocational subsidy because many school district agriculture education programs are comprised predominantly of science courses.

It is the program of study that determines if a school district and CTC (operated by a number of school districts) can apply for the vocational subsidy. The Department, in consultation with the regulated community, has identified academic courses that are integral to the Agriculture Education programs of study. The vocational subsidy is based on average daily membership of students enrolled in the approved Agriculture Education programs of study. If these approved programs include the identified academic courses, these courses are considered to be CTE courses and are eligible for the vocational subsidy.

Another suggestion was that the Department modify the reimbursement formula to reflect a sliding scale. The Department does not have authority to modify the subsidy formula used for payments on account of pupils enrolled in vocational curriculums. See 24 P.S. § 25-2502.8. Therefore, this modification was not made.

Several commentators stated that the use of supervised occupational experiences and cooperative and clinical experiences for vocational education credits, which is permitted under the current regulations, would be removed under the amendments. It was noted that, because of the diversity of agriculture, the instruction cannot be limited to classroom time alone. In addition, some commentators asserted that the proposed amendments to Chapter 339 would not permit time documented in the Supervised Agricultural Experience (SAE) system to count toward meeting minimum time requirements.

The current language of Chapter 339 allows vocational education credits to be given for hours spent in supervised occupational experience and cooperative and clinical experiences. The Department is retaining this language, which allows the local entities to determine if they want to provide vocational credits to students participating in SAE projects, and has redrafted this section to reference corresponding Public School Code provisions. The Department is limited by Article 15 of the Public School Code and Chapter 11 of the regulations, which state that instruction must occur within the school day. See 24 P.S. § 15-1504; 22 Pa. Code § 11.2. Therefore, even under the current regulations, time spent in activities occurring after the school day cannot count toward meeting minimum time requirements. Because the school districts determine the school day, however, SAE experience may count toward the minimum time requirements as long as SAE occurs within the school day as determined by the school district.

3. Section 339.1a. Definitions. – Clarity (IRRC Comment 3)

a. Concentrator

Comment: IRRC recommended that the last sentence in the definition of “concentrator,” “Only concentrator students are counted for vocational subsidies,” be placed in the body of the regulation.

Response: The Department has moved the language to a new section titled State Vocational Funding, Section 339.54.

b. Diversified Occupations Program

Comment: IRRC recommended that the last sentence in the definition of “diversified occupations program,” “A cooperative education certified teacher is required for such a program,” be placed in the body of the regulation. In addition, IRRC recommended that the Diversified Occupations Program be redrafted with subparagraphs that list each of the characteristics of the diversified occupations program.

Response: The Department has deleted the last sentence from the definition. In addition, the Department has established guidelines that outline the characteristics of the

diversified occupations program, including course competencies. These characteristics will be retained in the guidelines document. Further detail can also be found in Section 339.22(b).

c. Participant

Comment: IRRC recommended that the term “participant” be deleted or, if the term is retained, that its definition be redrafted and moved to the body of the regulation.

Response: The Department has deleted the term and definition.

d. SBVE – Standards-Based Vocational Education

Comment IRRC recommended that the term “standards-based vocational education” be used consistently throughout the regulation or that the definition of “standards-based” be amended. In addition, IRRC recommended that the last two sentences in the definition of “standards-based vocational education” be moved to the body of the regulation.

Response The Department has applied the term “standards-based vocational education” consistently throughout the regulation. In addition, the Department moved the last two sentences of the definition to the body of the regulation at Section 339.22(a)(1), related to program content.

e. School Entity

Comment: IRRC recommended that the definition of the term “school entity” list “technical institute” among the examples.

Response: The Department has deleted the term “school entity” and its definition. This term is found and defined in other regulations.

f. Technical Institute

Comment: IRRC commented that the definition of “technical institute” as drafted is regulatory and recommended that this language be moved to the body of the regulation. Further, IRRC recommended that the last sentence in the definition be placed in the body of the regulation and that the optional phrase “are encouraged” be changed to shall.

Response: The Department has redrafted the definition for technical institute, utilizing the description of the term set forth in Section 18-1841 of the School Code. In addition, the Department has moved the last sentence of the definition to Section 339.56(e) and has changed “encouraged” to “shall.”

4. Section 339.2. Operation. – Clarity (IRRC Comment 3)

Comment: IRRC recommended defining the term “rigorous” in Section 339.2 or deleting and replacing it with a phrase that is definitive and measurable. IRRC also

recommended replacing the term rigorous in Section 339.4(d)(1)(i)(C)(I). In addition, IRRC recommended that either the term “career and technical education vocation programs” or the term “technical education programs” be used consistently throughout the regulation.

Response: The Department has deleted the term “rigorous” in Section 339.2 and redrafted Section 339.4(d)(3)(i)(C)(I) so that the term is no longer used. In addition, the Department has applied the terms “vocational education” and “vocational technical education” throughout the regulation in order to remain consistent with the definitions of these terms in 24 P.S. § 18-1801.

5. Section 339.4. Program approval. – Implementation procedures; Clarity (IRRC Comment 5)

a. Subsection (a) General rule

Comment: IRRC recommended deleting from subsection (a)(2) the date of June 30, 2010, because reapproval is on a five-year cycle.

Response: The Department has redrafted this language to add clarity.

b. Subsection (b) Application for approval or reapproval

Comment: IRRC recommended that this section include specific requirements for all paragraphs under subsection 9(b) that would allow the regulated entity to know if it is meeting its compliance requirements.

Response: The Department added compliance methods to Section 339.4(b)(2).

c. Subsection (b)(4)

Comment: IRRC recommended that the Department define the terms “industry-based standards” and “Pennsylvania Skills Certificate” or provide a cross-reference to where the meanings of these terms can be found.

Response: The Department defined these terms in Section 339.1.a.

d. Subsection (b)(8)

Comment: IRRC noted the concerns of disability advocates requesting assurances that disabled students would be provided with necessary support services to afford those students access to vocational education.

Response: The Department redrafted language in this section to ensure students are not excluded from vocational education based on academic abilities, to ensure the student’s Individualized Education Program (IEP) team is involved in the student’s placement, and to ensure that the sending school and area vocational-technical school (AVTS) will plan together to

meet the needs of special needs students. It was recommended that the Department add language identifying the alternative achievement standards and assessments for students with severe disabilities. In response, the section was revised to reflect an alternative academic assessment. The Department will not set alternative achievement standards and assessments for occupational testing, however. Accommodations have been identified in the occupational assessment handbook located on the Department's website, www.pde.state.pa.us.

e. Subsection (b)(13)

Comment: IRRC commented that the phrase "other needs" imposes a vague requirement and requested that the "other needs" be listed in the regulation.

Response: The Department redrafted this language.

f. Subsection (c) Documentation

Comment: IRRC recommended that the Department specify how long records should be kept after a compliance review is complete.

Response: The Department incorporated this recommendation into the proposed regulation and has required that records be kept for seven years after the compliance review is complete.

g. Subsection (d) Retain approval

Comment: IRRC recommended that the Department define or cross-reference the terms "industry assessment," "industry credentials," "certification," "State assessment," and "occupational competency evaluation." In addition, IRRC questioned who will determine which method will be used to measure competency.

Response: The Department has not defined these terms but rather has redrafted this section. In addition, the Department has redrafted the section to clarify accountability standards.

h. Subsection (d)(1)(i)(D)

Comment: IRRC questioned what is a local entity and how often studies must be conducted for purposes of section 339.4(d)(3)(i)(D).

Response: The Department has deleted this language.

i. Subsection (d)(2)

Comment: IRRC recommended that the Department delete the phrase "at least" in subsection 339.4(d)(2) as it is nonregulatory language. In addition, IRRC recommended that the Department include language in subsection 339.4(d)(2) that instructs school entities to submit programs for reapproval every five years and when changes to a program have occurred.

Response: The Department has deleted the phrase “at least” and has redrafted the language regarding submission of programs for approval.

j. Subsection (d)(3)

Comment: IRRC recommended that the Department delete the phrase “in addition” from subsection 339.4(d)(3). Also, the Department recommended including language in subsection 339.4(d)(3) that indicates a time frame for completion of duties imposed on the Department and the noncomplying school. Finally, IRRC recommended deleting the phrase “or exceed” in subsection 339.4(d)(3).

Response: The Department has redrafted this language, which is reflected in Section 339.4(d)(2).

6. Section 339.15. Minutes. – Clarity (IRRC Comment 6)

Comment: IRRC recommended that retention of minutes be addressed in Chapter 4 and that reference to administrative committees be deleted from Section 339.15.

Response: The Department has deleted this language as it is referenced in Section 339.4(b)(3).

7. Section 339.22. Program content. – Possible conflict with existing regulations; clarity (IRRC Comment 7)

Comment: IRRC recommended clarifying the term “language arts” in subsection 339.22(a)(2).

Response: The Department has redrafted this language.

Comment: IRRC recommended with respect to subsection 339.22(b)(6) that the Department define the term “industry-standards” or cross-reference where the meaning of this term can be found.

Response: The Department has defined the term in Section 339.1.a.

Comment: IRRC recommended with respect to subsection 339.22(d) that the optional phrase “encourages” be deleted or rewritten to impose a mandate.

Response: The Department has changed “encourages” to “shall occur.”

8. Section 339.29. Cooperative vocational education. – Implementation procedures (IRRC Comment 8)

Comment: IRRC recommended that the Department include guidelines for cooperative vocational education or delete this provision.

Response: The Department has reinstated the original Section 339.29 language, which sets forth the guidelines for operating cooperative education programs. Cooperative education includes both diversified occupations and capstone cooperative education. The language is copied directly from the guidelines found on the Department's website.

9. Section 339.51. Learning environment. – Clarity (IRRC Comment 9)

Comment: IRRC recommended that the Department list all board, accreditation provider, and certification standards that shop laboratories are expected to meet.

Response: The Department has not listed all board, accreditation provider, and certification standards as such a list would become outdated over time. New career opportunities and associated certifying agencies will arise as the workplace changes.

10. Section 339.53. Contemporary equipment. – Clarity (IRRC Comment 10)

Comment: IRRC recommended that the Department identify all industry standards that will be applied and replace the term "comparable" as this term is vague and unenforceable. IRRC suggested that the first sentence be amended to state, "The equipment and facilities must meet industry standards."

Response: The Department has redrafted the language. However, inclusion in the regulation of a list of industry standards that will become outdated over time is not feasible; therefore, the Department has not done so.

11. Section 339.56. Technical institutes. – Clarity (IRRC Comment 11)

Comment: IRRC recommended that the Department break subject areas into separate sections: scope, authority, definitions, eligibility and reimbursement.

Response: The Department has reviewed the subject areas and provided titles for each.

Comment: IRRC recommended that the Department identify the standards for compliance under subsection (e)(8).

Response: The Department has redrafted language that identifies standards for compliance.

Comment: With respect to subsection (e)(9), IRRC recommended a more definitive standard than “contemporary equipment.”

Response: The Department has deleted this language.

Comment: IRRC questioned how a technical institute could be accredited prior to receiving funding.

Response: The Department has deleted this language.

Comment: In subsection (f), IRRC recommended replacing the term “favorable” with “majority” to be consistent and to provide a definite term.

Response: The Department has deleted this language.

Comment: IRRC recommended that the Department define “out-of-school youth,” “approved budget,” and “current expense per student,” as addressed in subsection (j).

Response: The Department refers to Article 18 and has defined “out-of-school youth” in Section 339.1a. Due to redrafting language, the reference is now Section 339.56(a).

Comment: With respect to subsection (k), IRRC recommended that the Department delete the nonregulatory language “TIs are not degree-granting institutions, but can offer technical certificates.”

Response: The Department has redrafted language, which is now found in Section 339.56(e).

Comment: IRRC recommended that the Department define the term “TI board.”

Response: The “TI board” is now discussed in Section 339.58(a) due to redrafting of language. The Department has copied related language from Section 18-1841 of the School Code and defined TI board in Section 339.1(a).

12. Miscellaneous clarity (IRRC Comment 12)

Comment: IRRC recommended that the Department delete the definition of “cluster vocational education” in Section 339.1a.

Response: The Department deleted this definition.

Comment: IRRC recommended that the Department delete the phrase “but not limited to” in Sections 339.4(b) and 339.32(2).

Response: The Department deleted this phrase.

Comment: IRRC corrected the citation contained in Section 339.4(b)(5) to Section 339.22(a)(10)(i).

Response: The Department corrected the citation in the proposed regulation. Due to redrafting of language, the citation is now Section 339.22(a)(9)(i).

Comment: IRRC noted that section 339.22(c)(i)(A) is duplicative of Section 339.22(a)(2).

Response: The Department acknowledges that language in both sections is the same. However, the sections pertain to different types of career and technical education: occupational and non-occupational. The Department supports the State Board of Education in the expectation that both types of career and technical education integrate academic standards into career and technical education content.

Comment: IRRC notes that the reference to Section 4.3 under Section 339.29 is incorrect and should be Section 4.33.

Response: The Department acknowledges that the reference to Section 4.3 is incorrect. The Department has redrafted the proposed language and the citation is no longer referenced.

Comment: IRRC notes that the reference in Section 339.23(6) should not be to "Industrial Board" but rather to the "Department of Labor and Industry."

Response: The Department has corrected the reference in Section 339.23(6).

Comment: IRRC recommends that the phrase "as required" be inserted between the word "Commonwealth" and Section 40.2 in subsection 339.56(e)(1).

Response: The Department has redrafted this language, which is now found in Section 339.57(a)(1).

C. Summary of comments received from commentators other than IRRC and the Department's responses

1. Section 339.1a. Definitions

Comment: ELC recommended adding the phrase "commensurate with their ability" to the definition of "action plan" found in Section 339.1.a.

Response: The Department has deleted the term "action plan" as it is not used in the regulation.

Comment: ELC recommended the inclusion of a definition of “employment” in Section 339.1.a. Employment includes competitive employment and, if appropriate for students with disabilities, supported employment.

Response: The Department relies on the definition of “vocational education” as defined in 24 P.S. § 18-1801. Vocational education is to fit an individual to pursue effectively a recognized profitable employment. This adequately addresses the request to consider supported employment, because profitable employment includes supported employment.

Comment: ELC corrected the code citation found in the definition of “IEP.”

Response: The Department has made the correction.

2. Section 339.2. Operation

Comment: ELC recommended adding clarification that vocational programs must admit students with disabilities and must provide students with support and modification as appropriate.

Response: The Department agrees that students with disabilities are to be provided free and appropriate education and provided with appropriate accommodations and services. This section of code refers to the responsibility of school boards. Free and appropriate education is addressed in other applicable laws and is relevant to all school districts and each law presents the responsibilities of all parties. The Department has not added the recommended language.

3. Section 339.4. Program approval

Comment: ELC recommended adding the phrase “for employment in” to Section 339.4(b)(2).

Response: The phrase has been added to Section 339.4(b)(2).

Comment: The House Education Committee has questioned the need for the Pennsylvania Skills Certificate.

Response: Pursuant to the Public School Code, the purpose of vocational education is to fit an individual to pursue effectively a recognized profitable employment. 24 P.S. § 18-1801(2). Further, current regulations provide that “[v]ocational-technical education courses shall include content based upon occupational analysis, clearly stated performance objectives deemed critical to successful employment and assessment of student competencies based upon performance standards.” 22 Pa. Code § 4.31(d). The Pennsylvania Skills Certificate is a means to assess whether a secondary school student is fit to pursue profitable employment and provides the student with recognition for having met the standard of “job ready.”

Comment: ELC recommended adding legal authority relating to LEP students to Section 339.4(b)(8).

Response: The Department has redrafted Section 339.4(b)(8) and has made general reference to laws related to special education.

Comment: ELC recommended adding language to Section 39.4(b)(9) to ensure students are not excluded from vocational education based on academic abilities and the IEP team is involved in the placement.

Response: The Department has redrafted language to reference Chapter 4 and the students' IEPs, which has been renumbered as Section 339.4(b)(8).

Comment: The House Education Committee has questioned the need for dual enrollment as a standard.

Response: The Department has retained this language but changed the term "and" to "or" to reflect that dual enrollment is an option, not a requirement.

Comment: ELC recommended adding language to Section 339.4(b)(13) that ensures the sending school and AVTS plan to meet the needs of special needs students.

Response: The Department has redrafted language, which is now in Section 339.4(b)(12).

Comment: ELC recommended adding language that identifies the alternative achievement standards and assessments for students with severe disabilities.

Response: The Department has redrafted language to indicate alternative academic assessment. The Department will not set alternative achievement standards and assessments for occupational testing. Accommodations have been identified in the occupational assessment handbook located on the Department's website, www.pde.state.pa.us.

4. Section 339.13. Local advisory committee

Comment: ELC recommends that the special education director from each sending school district should participate on the local advisory committee, in addition to parents and students.

Response: The Department has not made the change. It would be unrealistic and impractical in an AVTS serving numerous districts to include special education directors from all districts in addition to the other required representatives.

5. Section 339.21. Admissions

Comment: ELC recommended adding language that determines what constitutes success for a student with a disability.

Response: The Department has redrafted language.

Comment: ELC recommended adding the phrase “or is attending.”

Response: The phrase “or is attending” was not added because this section addresses admissions, not attendance.

6. Section 339.22. Program content

Comment: ELC recommended adding the phrase “commensurate with the student’s ability” to (a).

Response: The Department has not added the language because students are protected through the provisions in their IEPs and the laws related to special education.

Comment: ELC recommended adding an exceptional programs requirement. Such a program would be approved as a vocational education program.

Response: The Department is retaining the language regarding exceptional programs requirements found in Section 339.22(b) and has redrafted (b)(1) to reflect the recommendation.

Comment: The House Education Committee questioned why the classification of instructional programs is used.

Response: The Department, as well as all state education agencies providing vocational education, has adopted the CIP system for approved vocational education programs. For vocational education, the determination of an adequate course of study is based on the CIP, a taxonomic coding scheme that facilitates reporting of program completion data. All programs that fall under the CIP “must consist of more than one isolated course or learning experience and must not be a haphazard collection of unrelated courses or experiences” (ncs.ed.gov). The course of study that fits a CIP must include a combination of courses and experiences that prepares students for advanced study and provides students with qualifications for an occupation.

7. Section 339.32. Services

Comment: ELC recommended adding language that ensures students with disabilities make the right vocational choices and receive the support they need to succeed.

Response: The Department has redrafted language.

8. Section 339.61. Evaluation

Comment: ELC recommended language that enables the Department to collect data on vocational students with disabilities.

Response: The intent of (d) is to ensure schools are in compliance with Chapter 339 vocational standards. The report noted in this section is specific to the Chapter 339 regulation. The recommended language goes beyond the scope of this regulation. The Department/Bureau of Special Education collects data on students with disabilities. Therefore, the Department has not added language to Chapter 339.

Comment: PAAE recommended that SAE held outside of the school day count toward the instructional hours.

Response: The Department is not authorized to modify state law that defines the school year and instructional hours per school day (24 P.S. § 15-1504).

Comment: PAAE recommended that, because many of the agriculture education programs at school districts are comprised predominantly of science courses, science courses should be eligible for vocational subsidy.

Response: The Department, in consultation with PAAE, has identified academic courses that are integral to the Agriculture Education programs of study. It is the program of study that determines if a school district and CTC can apply for vocational subsidy. Vocational subsidy is based on average daily membership of students enrolled in the approved Agriculture Education programs of study. If the programs include the identified academics, the academics are considered as career and technical education courses and as part of the career and technical education minimum instructional hour requirement.

Comment: PAAE and Senator Waugh recommended modification to the reimbursement formula to reflect a sliding scale.

Response: The Department does not have authority to modify the formula used to determine payments with respect to pupils enrolled in vocational curricula (24 P.S. § 25-2502.8).

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

I.D. NUMBER: 6-298
SUBJECT: VOCATIONAL EDUCATION STANDARDS
AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

- 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

INDEPENDENT REGULATORY
REVIEW COMMISSION

2008 MAR 25 PM 1:42

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3-25	<u>Bob Stuck</u>	HOUSE COMMITTEE ON EDUCATION
3-25	<u>A Edwards</u>	MAJORITY CHAIRMAN <u>James R. Roebuck, Jr.</u>
		SENATE COMMITTEE ON EDUCATION
		MAJORITY CHAIRMAN <u>James J. Rhoades</u>
		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)