

Regulatory Analysis Form

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(1) Agency
State Board of Education

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

006-301

RECEIVED
 2006 OCT 17 PM 1:11
 INDEPENDENT REGULATORY
 REVIEW COMMISSION
 IRRC Number: 2543

(3) Short Title
Prekindergarten-
Academic Standards and Assessment, Student Attendance, and Students and Student Services

(4) PA Code Cite
22 Pa. Code Chapters 4, 11, and 12

(5) Agency Contacts & Telephone Numbers
 Primary Contact: Jim Buckheit
 (717) 787-3787
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 Secondary Contact: Linda Warren
 (717) 346-4036
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(6) Type of Rulemaking (check one)
 Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?
 No
 Yes: By the Attorney General
 Yes: By the Governor

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

Chapters 4, 11 and 12 address State academic standards and assessment, student attendance, and students and student services in the Commonwealth's public schools. The final form regulations add new provisions that address programming for three and four-year-olds through pre-kindergarten programs operated in public schools or in community agencies under contract from a school district. The regulations provide a structure and framework for these programs that are consistent with that provided for elementary and other levels of education offered in the public schools.

(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), 24 P.S. § 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?

This Commonwealth currently invests more than \$15.8 million in early childhood education prekindergarten programs in its public schools. There are currently no regulations in place that set standards for these programs. Prekindergarten programs are voluntary on the part of school districts and, if offered, parents are not required to enroll their children in the program. These regulations establish minimum standards based on research about best practices and the framework necessary to deliver high quality educational services to three and four year olds. The regulations are consistent with the existing policies and standards of the Board and Department of Education for elementary and secondary education. The regulations are intended to ensure that taxpayer investments in prekindergarten programs will return the best possible educational outcomes by instituting best practices and standards for these programs.

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

Research on early childhood programs clearly demonstrates that programs of high quality have a meaningful impact on school readiness and long-term academic success. Non-regulation could result in prekindergarten programs of uncertain quality. Such programs would not maximize opportunities for positive educational outcomes or use the best use of the investment of taxpayer dollars.

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

Currently, about 10,000 prekindergarten-age children participate in the Commonwealth's public school prekindergarten programs and will benefit from the instructional, support and administrative services provided by a framework based on best practices for high quality programming for young children. If fully implemented, over time there could be as many as 200,000 three and four-year-olds in the State benefiting from these programs. The Commonwealth as a whole will benefit fiscally as it derives long-term benefits and cost savings that accrue from ensuring that children are academically, socially, and emotionally ready for school when they begin kindergarten or first grade.

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

No adverse effects are anticipated. These regulations maintain the already existing appropriate high program standards that have guided implementation of programs through the Accountability Block Grant and, to some degree, kindergarten for 4-year-olds. The new requirement that teacher aides be highly qualified is consistent with federal requirements under the No Child Left Behind Act, which already pertain to the majority of existing programs and to schools that are expected to implement prekindergarten programs in the future. Survey research conducted by the Department of Education shows that over two-thirds of the teacher aides currently employed in pre-kindergarten classrooms already meet this standard.

One school district may need to modify its prekindergarten program or request a waiver in order to comply with these requirements. Increased requirements for teacher aides may result in the reassignment or need for additional training.

(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.)

These regulations directly effect the approximately 10,000 children in 71 school districts who are enrolled in prekindergarten programs, their families who will have the benefit of high quality education for their pre-school-age youngsters, approximately 1,000 school district employees who teach in prekindergarten classrooms, community providers of prekindergarten programs that currently or may in the future provide prekindergarten services under contract with a school district, and school district personnel who engage in strategic and program planning in the school districts that offer prekindergarten.

(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.

The Early Childhood Committee of the Council of Basic Education held three regional public roundtable meetings where interested parties were invited to identify issues and to make recommendations to the committee. The committee also held regional public hearings at two different stages in the development of the proposed changes to the regulations where interested parties delivered formal testimony. The committee's regular meetings over a period of close to two years were open to the public where interested parties provided additional comments throughout the development of the proposed regulations. Meetings with various stakeholders were also held throughout the development of the regulations. Various drafts of the regulations were provided upon request to interested parties and were posted on the State Board of Education web page. Key stakeholders providing input to the State Board include: Pennsylvania Association of School Administrators; Pennsylvania School Boards Association; Pennsylvania State Education Association; Pennsylvania Federation of Teachers; Pennsylvania Association of Colleges; Teacher Educators, the Education Law Center; the

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Pennsylvania Partnerships for Children; the Pennsylvania Head Start Association; the Please Touch Museum; the Governor's Commission on Children and the Family; Elywan, Inc.; Children's Village; Philadelphia Citizens for Children and Youth; Special People in Northeast, Inc.; the Harrisburg School District; the Philadelphia School District; the PA Child Care Association; Community Services for Children; the YWCA of Greater Erie; Intermediate Unit # 5; the Barber Institute; the Erie Family Center; the Allegheny Conference on Community Development; Tyrone Area School District; Bellefonte School District; Conemaugh Valley School District; Altoona IU # 8; Beaver County Early Care & Education Council; Early Care and Education Consortium; and representatives of nearly 10 different colleges and universities in the State.

(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.

Prekindergarten is a voluntary offering on the part of school districts and is not required. Since these regulations are consistent with existing program grant standards for the Accountability Block Grant programs already funded through that program, those schools should already be in compliance with the regulations. Therefore, the incurrence of any operating program costs would be at the discretion of the school district and its elected Board of School Directors. Complying with these final form regulations would not add costs beyond those necessary to regular program operation.

(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 existing practices for programs that are voluntary through the Accountability Block Grant costs, the costs of compliance for school districts participating in this program should be negligible. Over time, compliance with these requirements will create cost savings to both school districts and the Commonwealth in general, as demonstrated by the cost benefit analysis conducted by Dr. Clive R. Belfield for the Department of Education showing that high quality prekindergarten programs can provide a return of \$1.12 for every \$1 invested in prekindergarten in Pennsylvania, with reduced special education placements. Additional dollars will be saved as retentions go down and remediation needs are diminished. These are the anticipated benefits as more students enter kindergarten well prepared and do not fall behind in academic achievement.

(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.

State government will not incur additional costs since the program standards for prekindergarten programs already exist as program application guidelines for the Accountability Block Grant program.

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

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

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

The Accountability Block Grant supports the cost of pre-kindergarten programs. It is currently funded at \$250 million. Approximately \$15.8 million of the \$250 million is currently being used by school districts to support prekindergarten programs. Since these programs already meet the requirements contained in the final form regulations, they are not expected to incur additional costs, savings or revenue loss to the regulated community, local government or State government.

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

Program	FY -3	FY -2	FY -1	Current FY
Accountability Block Grant	0	\$200 million	\$200 million	\$250 million

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

The new regulations will help ensure that programs are of high quality and that the potential benefits of a prekindergarten experience will be provided to children in the Commonwealth. They will be better prepared for academic achievement in school and consequently benefit the taxpayers of the Commonwealth.

(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 non-regulatory alternatives to address many of the requirements proposed in these regulations. The Department has issued guidance to schools on implementation of prekindergarten program supported by the Accountability Block Grants. These same guidelines are included in criteria for applicants seeking low interest loans from the Early Childhood Capital Investment Fund. Since the Department's guidance does not have binding legal authority, the regulations are needed to ensure that all pre-kindergarten programs operated by school districts use the broadly accepted standards for high quality and best practices reflected in these new regulations.

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

The continuation of reliance on non-regulatory guidance creates an uncoordinated and uneven system of early education and care at a time of needed program expansion to insure that all children are ready for success in school. A growing investment of fiscal resources in early childhood education requires additional efforts to ensure that those resources are spent in ways that will maximize program success for the children enrolled. Providing clarity for school districts that want to offer prekindergarten programming will assist them in the planning process and giving consideration to the range of program options appropriate for high quality prekindergarten.

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(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 federal No Child Left Behind Act of 2001 requires that teachers in Title I schools meet the highly qualified teacher requirements and that para-professionals (teacher aides) meet the highly qualified para-professional requirements in schools receiving Title I funds. The final regulations are aligned with these requirements.

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

These final form regulations align with the laws, regulations, policies and practices of the other states that support early childhood education and will not put the Commonwealth at a competitive disadvantage. Rather, the benefits resulting from these programs will enhance the Commonwealth's competitive position.

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

These new regulations are aligned with existing and proposed regulations for education programs at the kindergarten through 12th grade levels. The amendments to Chapter 4 were previously published by the Board in the *Pennsylvania Bulletin* on November 5, 2005. These new regulations supplement those proposed revisions by adding regulations that address prekindergarten programs. The final form regulations build upon the current regulations already in place for elementary and other levels of education in the public schools.

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

The Early Childhood Committee of the State Board of Education held several public meetings over nearly a two-year period to seek stakeholder input in developing these regulations. Committee meetings were held in: July, 2004; September, 2004; November, 2004; January, 2005; March, 2005; May 2005; June, 2005; September, 2005; November, 2005; January, 2006; and March 2006. Round table discussions were held with interested members of the public in Erie, Altoona, and Philadelphia in October, 2005. Public hearings were held in Harrisburg, Allentown, and Pittsburgh in October, 2005. Additional hearings were held in January 2006 in Harrisburg and Norristown. Opportunities for stakeholders to provide comment was also available during the public comment period at the Council of Basic Education meeting held on March 15, 2006, and the State Board of Education meeting held on March 16, 2006, prior to either body taking action on the final form regulation. The Early Childhood Committee also held public meetings in May, 2006; June, 2006; and, September, 2006.

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

These final form regulations will add new prekindergarten components to the strategic planning requirements and implementation plan requirements for districts that offer or plan to offer prekindergarten. These components will be incorporated as revisions already being made to documents and electronically available tools developed and provided by the Department of Education using existing resources.

(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.

The entire set of final form regulations was developed to address the unique learning needs of children 3 and 4 years of age. The provisions contained in §§ 4.13(13), 4.13(14), and 4.20(3) specifically address program requirements for children who are ages 3 and 4 who have disabilities. In addition, § 4.20(3) specifically addresses program requirements for children who are ages 3 and 4 who are at risk of school failure due to limited English proficiency, community factors or economic disadvantage.

(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.

It is the policy and practice of the State Board of Education to review its regulations every four years.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

2543

INDEPENDENT REGULATORY
REVIEW COMMISSION

2006 OCT 17 PM 1:01

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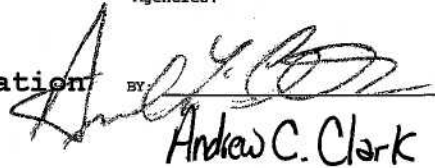
Copy below is hereby approved as to form and legality. Attorney General

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

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

PA State Board of Education
(AGENCY)

BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. #006-301


September 20, 2006

OCT 13 2006

DATE OF APPROVAL

DATE OF ADOPTION:

DATE OF APPROVAL

BY: 

Deputy General Counsel
~~(Chief Counsel,
Independent Agency)~~
(~~strike inapplicable title~~)

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

[] Check if applicable
Copy not approved.
Objections attached.

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

FINAL FORM REGULATION
COMMONWEALTH OF PENNSYLVANIA

22 Pa Code
Chapter 4 (Academic Standards and Assessment)
Chapter 11 (Student Attendance)
Chapter 12 (Students and Student Services)

Prekindergarten

FINAL RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 4, 11 AND 12]

Prekindergarten

The State Board of Education (Board) amends Chapters 4, 11 and 12 (relating to academic standards and assessment; student attendance; and students and student services) to read as set forth in Annex A. Notice of proposed rulemaking was published at 36 Pa.B. 2981 (June 17, 2006), with an invitation to submit written comments.

Statutory Authority

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

Background

The amendments to Chapters 4, 11 and 12 establish standards for prekindergarten programs that are operated by school districts or contracted by school districts with community providers. Prekindergarten programs are voluntary programs operated by many school districts for children between 3 and 4 years of age. School districts are not required to offer prekindergarten and when they do parents are not required to enroll their children in prekindergarten programs.

The Commonwealth and its school districts invest millions of taxpayer dollars each year to operate prekindergarten programs. It is critical that as this investment grows that these resources be used in such a way as to maximize student achievement and fully prepare children for school enrollment through high quality educational experiences. This rulemaking, together with other rulemakings being considered by the Board, including Chapter 49, would assure that these investments would have maximum educational benefit.

Summary of Public Comments and Responses to Proposed Rulemaking

The proposed rulemaking was published at 36 Pa.B. 2981 on June 17, 2006. The proposed rulemaking was also available on the Department of Education website at www.pde.state.pa.us. The Board accepted formal written comments during a 30-day public comment period that began upon publication of the proposed rulemaking.

The Board received comments from the Pennsylvania School Boards Association (PSBA); Pennsylvania Head Start Association; Early Care and Education Consortium; Beaver County Early Care & Education Council; Pennsylvania Partnerships for Children; Education Law Center; and Independent Regulatory Review Commission (IRRC).

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

§ 4.13. Strategic plans.

The Board received numerous comments regarding the proposed amendments to § 4.13. It also received many comments when it proposed similar regulations to revise Chapter 4 that were published in the *Pennsylvania Bulletin* on November 5, 2005 (35 Pa.B. 6107). The Board has yet to submit final form regulations respecting that regulatory package.

The Board decided to add new prekindergarten strategic planning requirements to the previously proposed Chapter 4 regulations originally published in November 2005. The Board combined the new and previously proposed revisions together in the proposed prekindergarten regulations published on June 17, 2006 (36 Pa.B. 2981). New three new paragraphs, (12) through (14), were added to § 4.13(c).

Since the concerns raised by commentators relate primarily to the previously published Chapter 4 revisions, and not to those dealing with prekindergarten strategic planning requirements, the Board decided to revert back to the strategic planning requirements that were originally published in January 1999 and to add the new prekindergarten strategic planning requirement to those requirements.

Specific comments made by commentators relative to § 4.13 include:

Comment: Both PSBA and IRRC expressed concerns about language that would make school entity strategic plans an extension of Chapter 4.

Response: This language has been deleted.

Comment: PSBA expressed concerns that the regulation would only allow the strategic planning committee to make changes to the strategic plan, believing that this would diminish the authority of elected school boards.

Response: This language has been deleted.

Comment: IRRC expressed concerns about the clarity of subsection (c)(6)(i)(C) (relating to measurable annual improvement targets); subsection (c)(7) (relating to assessments and public reporting); subsection (c)(8) (relating to targeted assistance for struggling students); and subsection (c)(13) (relating to support for struggling schools).

Response: This language has been deleted.

Comment: The Education Law Center expressed support for the provisions that require prekindergarten programs to address how programs would coordinate with programs that serve children with disabilities.

Response: The Board has retained these provisions, which can now be found in subsections (c)(12) and (c)(14).

Comment: PSBA suggested that strategic planning committees in districts that offer prekindergarten be the only ones that are required to include participation from the early childhood community.

Response: The Board has deleted the proposed revisions.

Comment: PSBA expressed concerns about language in § 4.13(d) that specifies representation on the strategic planning committee. It believes this requirement will lead to further prescriptive membership on the committee, which could improperly take responsibilities from the locally elected school board.

Response: The Board has deleted the proposed revisions.

Comment: The Pennsylvania Head Start Association expressed support for the requirements that all stakeholders be involved in assessing community needs and resources through the strategic planning requirements. The Early Care and Education Consortium also expressed a concern that planning requirements for prekindergarten programs does not require school districts to coordinate with community childcare providers, parents and others.

Response: The Board has retained provisions that would require school districts to offer prekindergarten to include in their plan how they will coordinate with agencies that serve preschool children with disabilities and also address how the district will provide for a smooth transition from the home setting and early childhood care. In addition, the Board has added a requirement in § 4.20(10) that school districts consult with parents, community agencies and organizations, and childcare, early intervention and Head Start representatives when developing the prekindergarten implementation plan.

§ 4.20. Prekindergarten education.

Comment: PSBA supports language stating that school districts are not required to offer prekindergarten and, if offered, parents are not required to enroll their children in the program.

Comment: PSBA recommends that language be included that would make clear school districts are not obligated to provide transportation of students to prekindergarten programs.

Response: The Board believes it is well understood by school districts that prekindergarten students are not required to be transported to or from the program. However the Board will address this concern in the future when it reviews its Chapter 23 regulations that address pupil transportation.

Comment: PSBA requested that language in § 4.20 be clarified to indicate that programs are to be designed for the age and varying developmental levels of the students so that the regulation is clear that not all prekindergarten students are required to have Individualized Education Plans.

Response: The regulation has been revised to clarify the intent of the Board.

Comment: IRRC suggested that the term attendance area be defined to improve clarity. PSBA suggested substituting “must” for “shall” in § 4.20(3).

Response: A definition of attendance area has been added to § 4.20(3). The Board also replaced *shall* with *must*.

Comment: The Education Law Center expressed its support for the requirement that prohibits prekindergarten programs restricted only to children with disabilities.

Comment: IRRC suggested that the statement in § 4.20(6), that programs of high quality ordinarily have a student/teacher ratio of 17 students for one teacher and one teacher aide in a classroom, is nonregulatory language and should be deleted. PSBA suggested that the recommended class size language be included in a guideline not included in this regulation. The Pennsylvania Head Start Association expressed that class size and supervision are critical elements of effective pre-k programs. They further recommended ratios as low as 15 to 2, but indicated that the 20 to 2 minimum is a vital requirement. The Pennsylvania Partnerships for Children supports the regulation that prekindergarten classes have at least two adults for every 20 children.

Response: Educational research demonstrates that class size in early childhood education matters. The Board believes that having well accepted guidance in the regulation together with a maximum ratio of staff to students assists the regulated community in understanding that 17 is optimal but 20 is the minimally acceptable ratio.

Comment: IRRC suggested that the term *rigorous standard of quality* is unclear and therefore should be defined.

Response: The Board has defined the term rigorous standard of quality in § 4.20(7)(iii).

Comment: PSBA suggested that language be added to allow a school district to request approval of a class size that varies from the requirements for a specific, limited period of time.

Response: Exceptions to this and other regulatory requirements are allowed in § 4.20(8).

Comment: PSBA expressed opposition to the requirement that classroom aides in prekindergarten classrooms have the same qualifications as aides in Title I schools. The Pennsylvania Head Start Association expressed support for the minimum qualifications for teacher assistants. The Pennsylvania Partnerships for Children supports the requirements for teacher assistants.

Response: The Board believes that research supports that a central tenet of high quality prekindergarten programs is staff/student ratio and staff quality. Since the federal No Child Left Behind Act of 2001 already places similar requirements on schools that receive federal funds, which a overwhelming majority do, the Board views this requirement as addressing a critical element essential to high quality programming that does not present a significant new burden on school districts.

Comment: PSBA supports the provision that allows the Secretary to approve alternative programs. However, PSBA asks why there is a requirement that school districts must complete a timeline for bringing their programs in full compliance with the program standards. PSBA expressed that the one-year limitation on waivers is sufficient to protect students from programs of less-than high quality.

Response: The Board has deleted the requirement that meritorious programs include a timeline to become fully compliant with the regulations.

Comment: The Pennsylvania Head Start Association and Pennsylvania Partnership for Children both recommended that a requirement be added that school district officials
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develop their prekindergarten implementation plans in consultation with parents, including children with disabilities, and representatives of early intervention and community preschool programs.

Response: The Board has added this language to § 4.20(10).

§ 4.41(e). Scheduling.

Comment: The Early Care and Education Consortium expressed a concern that consideration is not provided for appropriate wrap-around care for the full day needs of working parents. They suggest requiring school districts to offer only 2½ hours of instruction to coordinate with community-based private early care and education programs to meet this need.

Response: The Board believes that by requiring school districts to consult with representatives of childcare, parents and others when developing the prekindergarten implementation plan, the needs of working parents can be addressed to the extent possible within the span of authority of the school district.

Comment: IRRC suggested that use of the term alternative prekindergarten program in § 4.41(e) and meritorious program in § 4.20(8) is confusing and that one term should be used. In addition, IRRC suggested that, if applicable, reference should be made to the term meritorious program as defined in § 11.8, or if that does not apply, that the term be defined in Chapter 4.

Response: The Board has revised the regulation to use the term *meritorious* throughout. The Board believes the provisions of § 4.20(8) adequately describe the conditions required to be considered a meritorious program.

§ 11.1. *School Term.*

Comment: IRRC questioned how a prekindergarten program that operates only three or four days a week would meet the requirement. IRRC also suggested that the sentence include the phrase *prekindergarten, when offered.*

Response: The Board has revised the language in §§ 11.1 and 11.3 to clarify that the days and hours of instruction may be waived for meritorious programs. The phrase, *prekindergarten, when offered,* has been added to § 11.1.

§ 12.1(c). *Free education and attendance.*

Comment: IRRC suggested that since prekindergarten is defined in § 12.16, the clause that includes a portion of the definition in subsection (c) should be deleted.

Response: The Board has deleted § 12.1(c).

§ 12.41. *Student services.*

Comment: IRRC suggested defining *nutritional services or referrals.*

Response: The Board has inserted a list of nutritional programs and services to be offered by the school district or referrals made by the school district.

Miscellaneous:

Comment: PSBA commented that, since the Accountability Block Grant funding, which currently provides school districts with resources to operate prekindergarten programs, is not a permanent appropriation, in the event that the appropriation were not continued, school districts would be left to cover the entire cost of prekindergarten programs. Thus, PSBA said, there is a potential for costs to be incurred by local school districts.

Response: The Governor's Budget for 2006-07 projects appropriations for the Accountability Block Grant to continue through at least 2010-11. The State Board must base its policies on facts, not conjecture, and must assume that these funds will continue through at least 2010-11 since no official documents have indicated otherwise.

Comment: IRRC suggested that one term for school organization (*e.g.*, school entity, school district, area vocational technical school) be used throughout this rulemaking for purposes of clarity and consistency.

Response: The terms for the various type of school organizations used in this rulemaking are carefully selected to assign specified provisions to selective types of schools. These terms are established by the Public School Code of 1949 (24 P.S. 1-101---27-2701). The Board intentionally applies selected provisions for reasons established by both statute and policy. Therefore, the Board will retain the use of terms as originally proposed.

Comment: The Pennsylvania Head Start Association and Pennsylvania Partnerships for Children suggested addressing in these regulations the phasing-in of minimum qualifications for teachers in prekindergarten programs operated by a community
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provider under contract from a school district since language included in proposed revisions to Chapter 49 was questioned by IRRC.

Response: Minimum qualifications for teachers in school district contracted community provider operated prekindergarten programs are included in § 4.20(11).

Comment: The Beaver County Early Care & Education Council expressed its support of the proposed regulations.

Comment: The Education Law Center expressed its support for the proposed regulations. It especially supports the provisions that ensure that children with disabilities have access to and learning support in prekindergarten programs.

Effective Date

The regulations are effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all regulations, the Board will review the effectiveness of these chapters 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 June 2, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36

Pa.B. 2981, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on _____, the final-form rulemaking was (**deemed**) approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____ and approved the final-form rulemaking.

Contact Person

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

Findings

The Board finds that:

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

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

(3) The final-form rulemaking is necessary and appropriate for the administration of the code.

Affected Parties

The proposed rulemaking will affect the students and professional employees of public schools in this Commonwealth.

Fiscal Impact and Paperwork Requirements

Since this proposed rulemaking is consistent with existing program grant standards for prekindergarten programs supported through the Accountability Block Grant program, schools should already be in compliance with this proposed rulemaking. Therefore, the incurrence of any additional operating program costs beyond those specified in the regulations would be at the discretion of the school district and its elected board of directors. Complying with this proposed rulemaking should not add costs beyond those necessary to regular program operation.

Effective Date

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

22 Pa Code Chapters 4, 11 & 12 (Prekindergarten)
#006-301

In accordance with the Board's policy and practice respecting all regulations, the Board will review the effectiveness of Chapters 4, 11 and 12 after four years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 2, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a 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, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Findings

The State Board of Education finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§

1201 and 1202), and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

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

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

Order

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

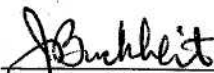
(a) The regulations of the Board, 22 Pa. Code Chapters 4, 11 and 12, are amended to read as set forth in Annex A.

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

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

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

By the State Board of Education:



Jim Buckheit
Executive Director

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 4. ACADEMIC STANDARDS AND ASSESSMENT

GENERAL PROVISIONS

§ 4.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Prekindergarten—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten.

ACADEMIC STANDARDS AND PLANNING

§ 4.13. Strategic plans.

(c) The strategic plan [shall] **must** be based upon an analysis of internal and external needs, leading to the specifications of priorities for action and action plans. ~~The analysis of needs and the specifications of priorities must address student achievement; the school entity's core purpose; the quality of teaching and learning; the quality of leadership; the use of infrastructure; and continuous professional learning and education.~~ The requirement in subsections (a) and (b) to develop plans every 6 years and revisions every 3 years does not limit a school [district's (including charter schools) or AVTS's] **entity's** ability to conduct a continuous strategic planning process. ~~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.~~ The plan [shall] **must** include the following components in addition to others the school [district (including charter schools) or AVTS] **entity** determines to include:

- (1) [A mission statement.
- (2) A listing of the school district's (including charter schools) or AVTS's educational and organizational goals as they relate to student achievement and high school graduation requirements.
- (3) A description of academic standards for student achievement which shall be consistent with those under § 4.12 (relating to academic standards).
- (4) The planned instruction to be offered and the instructional and assessment practices to be used to strive for the academic goals and attain academic standards under paragraph (3) and the high school graduation requirements under § 4.24 (relating to high school graduation requirements).
- (5) An assessment plan under § 4.52 (relating to local assessment system) designed to determine the degree to which students are achieving academic standards under paragraph (3) including descriptions of methods and measures used to determine achievement, how information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher and how information from the assessments shall be made available to the public.
- (6) A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals shall demonstrate a connection to the academic standards under § 4.12 including but not limited to annual improvement goals for student scores on State and local assessments.
- (7) The professional development plan under section 1205.1 of the School Code (24 P. S. § 12-1205.1) and § 49.17 (relating to continuing professional development) and the induction plan under § 49.16 (relating to approval of induction plans).
- (8) A description of the school district's (including charter schools) or AVTS's organization and organizational goals and their relationship to differing student needs within the school district's (including charter schools) or AVTS's goals under paragraph (2) and the attainment of academic standards under paragraph (3).
- (9) A description of the professional personnel, school library, classroom and other resources the school district (including charter schools) or AVTS plans to devote to the attainment of academic standards.

(10) A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(11) A plan for additional instructional opportunities for students not achieving at the proficient level including identification procedures, alternate instructional strategies, monitoring of assessment procedures and opportunities for extended learning time.]

~~Core purpose. A summary of the school entity's mission statement, educational vision and shared values.~~

~~(2) Results for students. A listing of the school entity's educational and organizational goals as they relate to student achievement including high school graduation requirements and for having students meet or exceed proficiency levels established for State academic standards in § 4.12 (relating to academic standards).~~

~~(3) Academic standards. A description of academic standards for student achievement, which must be consistent with those under § 4.12.~~

~~(4) Measurable annual improvement targets. A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals must demonstrate a connection to the academic standards under § 4.12, including, but not limited to, annual improvement goals for student scores on State and local assessments.~~

~~(5) Curriculum, instruction and instructional materials. A plan for providing all students access to a rigorous education program, including:~~

~~(i) The Curriculum that is aligned to the academic standards.~~

~~(ii) The planned instruction to be offered and the instructional practices and instructional materials to be used to strive for the academic goals and attain academic standards under paragraph (3).~~

~~(iii) The high school graduation requirements under § 4.24 (relating to high school graduation requirements).~~

~~(6) Assessments and public reporting. An assessment plan that describes the local assessment system as required under § 4.52 (relating to local assessment system), including methods and measures used to determine the degree to which students are achieving academic standards under paragraph (3).~~

~~(i) The plan must include the following:~~

(A) Descriptions of methods and measures used to determine achievement.

(B) How information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher.

(C) How all students as well as significant student subgroups are achieving as compared to the standards and annual improvement targets.

(D) How information from the assessments shall be made available to the public and the parents or guardians of each student.

(ii) This plan must address how assessment data, including value-added assessment data provided under § 403.3(d)(1)(iii) (relating to assessments), is shared with and used by district-level administrators, school administrators and professional educators to change instructional practice in order to address the learning needs of students.

(7) Targeted assistance for struggling students. A plan for additional instructional opportunities for students not achieving at the proficient level, including identification procedures, alternative instructional strategies, monitoring of assessment procedures and opportunities for extended learning time (including tutoring). This plan must describe how grade-level learning plans for students who have not achieved proficiency in reading and mathematics during their primary grades (K-3) under § 4.21(i) (relating to elementary education: primary and intermediate levels) have been implemented and specify the instructional opportunities for students who have not achieved proficiency in reading and mathematics by the end of grade 5 under § 4.21(k).

(8) Qualified, effective teachers and capable instructional leaders. A description of the school entity's goals, strategies and performance measures regarding provision of teachers and school leaders designed to ensure that all students attain the academic standards at a proficient level or higher. This description must specifically address how the school entity deploys its most effective and highly qualified teachers to meet the learning needs of students who are below proficiency or are at risk of not graduating.

(9) Continuous professional education. A professional education plan, including:

(i) Requirements under section 1205.1 of the School Code (24 P. S. § 12-1205.1) and § 49.17 (relating to continuing professional education).

(ii) The induction plan under § 49.16 (relating to approval of induction plans).

(iii) Professional education programs linked to the academic standards under § 49.12.

(iv) How to promote professional collaboration regarding continuous improvement of instruction and student achievement.

(10) Organization and goals. A description of the school entity's organization and organizational goals and their relationship to differing student needs within the school entity's goals under paragraph (2) and the attainment of academic standards under paragraph (3).

(11) Utilization of resources. A description of the resources the school entity plans to devote to the attainment of academic standards, including professional personnel, school library, classroom materials, educational technology, school facilities, budget and other resources available to the school entity.

(12) Parent and community participation. A description of the school entity's approaches for involving:

(i) Parents or guardians, including those of children with disabilities.

(ii) Community groups.

(iii) Representatives of infants and toddlers, early intervention preschool programs and early childhood representatives (for example community providers of early childhood education, prekindergarten programs and early childhood researchers).

(iv) Business.

(v) Institutions of higher education.

(vi) Other parent and community representatives as appropriate.

(13) Support for struggling schools. A description of the school district's or AVTS with multiple campuses' process for assisting schools that do not meet the annual student achievement improvement targets and school experiencing other challenges that deter student attainment of the academic standards at a proficient level or higher.

(14) Milestones of progress. A listing of the specific goals, tasks and initiatives that must be accomplished by a specified date within each year of the planning cycle. The goals, tasks and initiatives must be derived from the priorities described in the strategic plan, as locally appropriate benchmarks that ensure consistent monitoring and midcourse correction.

(15) Planning process. A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(16) Coordination with other programs. A description of how the school district will accomplish coordination with community operated infant and toddlers and preschool early intervention programs and the following before or after school programs and services for all grade levels, including prekindergarten, if offered, through 12:

(i) Child care.

(ii) After school programs.

(iii) Youth workforce development programs.

(iv) Tutoring.

(17) Prekindergarten program. A school district that offers prekindergarten shall describe the prekindergarten program and explain how the district will coordinate with agencies that serve preschool age children with disabilities. The plan must address coordination activities designed to identify and serve children with disabilities and the supports and accommodations available to ensure both physical and programmatic access. The plan must address prekindergarten programs operated directly by the school district and those operated by community agencies under contract from the school district.

(18) Transition to prekindergarten and from prekindergarten to school aged programs. A brief description of how the school district will provide for a smooth transition for prekindergarten students, when prekindergarten is offered, from the home setting and any early childhood care or education setting the students attend, to the school setting. This description must include how the district will coordinate with the infants and toddlers and preschool early intervention agencies that serve children with disabilities to ensure a smooth transition for those children to the school district's prekindergarten program.

A MISSION STATEMENT.

(2) A LISTING OF THE SCHOOL DISTRICT'S (INCLUDING A CHARTER SCHOOL) OR AVTS'S EDUCATIONAL AND ORGANIZATIONAL GOALS AS THEY RELATE TO STUDENT ACHIEVEMENT AND HIGH SCHOOL GRADUATION REQUIREMENTS.

(3) A DESCRIPTION OF ACADEMIC STANDARDS FOR STUDENT ACHIEVEMENT, WHICH SHALL BE CONSISTENT WITH THOSE UNDER § 4.12 (RELATING TO ACADEMIC STANDARDS).

(4) THE PLANNED INSTRUCTION TO BE OFFERED AND THE INSTRUCTIONAL AND ASSESSMENT PRACTICES TO BE USED TO STRIVE FOR THE ACADEMIC GOALS AND ATTAIN ACADEMIC STANDARDS UNDER PARAGRAPH (3) AND THE HIGH SCHOOL GRADUATION REQUIREMENTS UNDER § 4.24 (RELATING TO HIGH SCHOOL GRADUATION REQUIREMENTS).

(5) AN ASSESSMENT PLAN UNDER § 4.52 (RELATING TO LOCAL ASSESSMENT SYSTEM) DESIGNED TO DETERMINE THE DEGREE TO WHICH STUDENTS ARE ACHIEVING ACADEMIC STANDARDS UNDER PARAGRAPH (3), INCLUDING DESCRIPTIONS OF METHODS AND MEASURES USED TO DETERMINE ACHIEVEMENT, HOW INFORMATION FROM THE ASSESSMENTS SHALL BE USED TO ASSIST STUDENTS WHO HAVE NOT DEMONSTRATED ATTAINMENT OF THE ACADEMIC STANDARDS AT A PROFICIENT LEVEL OR HIGHER AND HOW INFORMATION FROM THE ASSESSMENTS SHALL BE MADE AVAILABLE TO THE PUBLIC.

(6) A PLAN FOR IMPROVING STUDENTS' ACHIEVEMENT, INCLUDING SPECIFIC, MEASURABLE GOALS FOR STUDENT GROWTH AND PLANS (INCLUDING THOSE LISTED IN THIS SECTION) THAT ARE DESIGNED TO ATTAIN STUDENTS' ACHIEVEMENT GOALS. ACHIEVEMENT GOALS SHALL DEMONSTRATE A CONNECTION TO THE ACADEMIC STANDARDS UNDER § 4.12, INCLUDING ANNUAL IMPROVEMENT GOALS FOR STUDENT SCORES ON STATE AND LOCAL ASSESSMENTS.

(7) THE PROFESSIONAL DEVELOPMENT PLAN UNDER SECTION 1205.1 OF THE SCHOOL CODE (24 P. S. § 12-1205.1) AND § 49.17 (RELATING TO CONTINUING PROFESSIONAL DEVELOPMENT) AND THE INDUCTION PLAN UNDER § 49.16 (RELATING TO APPROVAL OF INDUCTION PLANS).

(8) A DESCRIPTION OF THE SCHOOL DISTRICT'S (INCLUDING A CHARTER SCHOOL) OR AVTS'S ORGANIZATION AND ORGANIZATIONAL GOALS AND THEIR RELATIONSHIP TO DIFFERING STUDENT NEEDS WITHIN THE SCHOOL DISTRICT'S (INCLUDING A CHARTER SCHOOL) OR AVTS'S GOALS UNDER PARAGRAPH (2) AND THE ATTAINMENT OF ACADEMIC STANDARDS UNDER PARAGRAPH (3).

(9) A DESCRIPTION OF THE PROFESSIONAL PERSONNEL, SCHOOL LIBRARY, CLASSROOM AND OTHER RESOURCES THE SCHOOL DISTRICT (INCLUDING A CHARTER SCHOOL) OR AVTS PLANS TO DEVOTE TO THE ATTAINMENT OF ACADEMIC STANDARDS.

(10) A BRIEF DESCRIPTION OF THE PROCESS USED TO DEVELOP THE STRATEGIC PLAN, INCLUDING A LIST OF PERSONS INVOLVED IN ITS DEVELOPMENT.

(11) A PLAN FOR ADDITIONAL INSTRUCTIONAL OPPORTUNITIES FOR STUDENTS NOT ACHIEVING AT THE PROFICIENT LEVEL, INCLUDING IDENTIFICATION PROCEDURES, ALTERNATE INSTRUCTIONAL STRATEGIES, MONITORING OF ASSESSMENT PROCEDURES AND OPPORTUNITIES FOR EXTENDED LEARNING TIME.

(12) A DESCRIPTION OF HOW THE SCHOOL DISTRICT WILL ACCOMPLISH COORDINATION WITH COMMUNITY OPERATED INFANT AND TODDLERS AND PRESCHOOL EARLY INTERVENTION PROGRAMS AND THE FOLLOWING BEFORE OR AFTER SCHOOL PROGRAMS AND SERVICES FOR ALL GRADE LEVELS, INCLUDING PREKINDERGARTEN, IF OFFERED, THROUGH GRADE 12:

(I) CHILD CARE.

(II) AFTER SCHOOL PROGRAMS.

(III) YOUTH WORKFORCE DEVELOPMENT PROGRAMS.

(IV) TUTORING.

(13) A SCHOOL DISTRICT THAT OFFERS PREKINDERGARTEN SHALL DESCRIBE THE PREKINDERGARTEN PROGRAM AND EXPLAIN HOW THE DISTRICT WILL COORDINATE WITH AGENCIES THAT SERVE PRESCHOOL AGE CHILDREN WITH DISABILITIES. THE PLAN MUST ADDRESS COORDINATION ACTIVITIES DESIGNED TO IDENTIFY AND SERVE CHILDREN WITH DISABILITIES AND THE SUPPORTS AND ACCOMMODATIONS AVAILABLE TO ENSURE BOTH PHYSICAL AND PROGRAMMATIC ACCESS. THE PLAN MUST ADDRESS PREKINDERGARTEN PROGRAMS OPERATED DIRECTLY BY THE SCHOOL DISTRICT AND THOSE OPERATED BY COMMUNITY AGENCIES UNDER CONTRACT FROM THE SCHOOL DISTRICT.

(14) A BRIEF DESCRIPTION OF HOW THE SCHOOL DISTRICT WILL PROVIDE FOR A SMOOTH TRANSITION FOR PREKINDERGARTEN STUDENTS, WHEN PREKINDERGARTEN IS OFFERED, FROM THE HOME SETTING AND ANY EARLY CHILDHOOD CARE OR EDUCATION SETTING THE STUDENTS ATTEND, TO THE SCHOOL SETTING. THIS DESCRIPTION MUST INCLUDE HOW THE DISTRICT WILL COORDINATE WITH THE INFANTS AND TODDLERS AND PRESCHOOL EARLY INTERVENTION AGENCIES THAT SERVE CHILDREN WITH DISABILITIES TO ENSURE A

SMOOTH TRANSITION FOR THOSE CHILDREN TO THE SCHOOL DISTRICT'S PREKINDERGARTEN PROGRAM.

(d) Strategic plans, ~~the 6-year plan, mid-term review report, annual updates and all other revisions to the plan,~~ shall be developed through active participation by parents, students, school directors, teachers ~~from prekindergarten and preschool early intervention programs, elementary schools, middle/junior high schools, senior high schools and AVTSs, educational specialists (for example, school nurses and guidance counselors),~~ school administrators, other school personnel, and business and community representatives. Teacher representatives shall be chosen by teachers[, and] ~~educational specialists shall be chosen by educational specialists;~~ administrative representatives shall be chosen by the administrative personnel[,]; and school director representatives shall be chosen by the board of the school district or AVTS.

CURRICULUM AND INSTRUCTION

§ 4.20. Prekindergarten education.

School districts are not required to offer a prekindergarten program, and parents are not required to enroll their children in those programs if offered. Prekindergarten programs shall be designed so that students complete the program prior to their reaching the school district's entry age for kindergarten. The program, when offered, must provide a comprehensive program appropriate for the age, AND VARYING developmental level LEVELS OF THE STUDENTS, and individual needs of each child; BE based on how young children develop and learn; and include instruction to support each child's development in the following areas: OF approaches to learning; creative expression; language and literacy; math, logic and science; social-personal development; and physical development and health; AND The programs must be open to children with disabilities.

(1) The Secretary will provide academic standards, appropriate for early learning at the prekindergarten level, as guidance for the use of school districts that offer prekindergarten programs.

(2) Curriculum and instruction in the prekindergarten program must be standards-based.

(3) Prekindergarten programs may be offered to all 3 and 4 year olds or may be targeted to children who are most in need of prekindergarten services who reside in the district. Targeted programs may serve children who are at risk of school failure because of limited English proficiency, community factors, economic disadvantage, but may not exclude or be limited exclusively to children with disabilities. If a program is limited to an attendance area, children with disabilities shall MUST live

in that attendance area to participate in the program. AN ATTENDANCE AREA IS THE GEOGRAPHIC AREA WITHIN A SCHOOL DISTRICT DESIGNATED BY THE SCHOOL BOARD FOR THE PURPOSE OF ASSIGNING STUDENTS TO A SCHOOL.

(4) The Secretary will issue guidance to school districts on developmentally appropriate curriculum, instruction and assessments for prekindergarten.

(5) Each school district that provides prekindergarten shall design an assessment system that includes prekindergarten and uses a variety of assessment strategies, which may include those listed in § 4.52(d) (relating to local assessment system), as appropriate.

(6) Prekindergarten programs must have a student/teacher ratio of no more than 20 students for one teacher and one teacher aide in a classroom (2 adults in a classroom for every 20 students). Programs of high quality ordinarily have a student/teacher ratio of 17 students for one teacher and one teacher aide in a classroom (2 adults for every 17 students). Programs operating under contract with community providers shall comply with staffing qualifications as required by § 49.85(c) (relating to limitations).

(7) Beginning in the 2009-2010 school year, a teacher aide in a prekindergarten program shall meet one of the following criteria:

(i) Completion of a least 2 years of postsecondary study.

(ii) Possession of an associate's degree or higher.

(iii) Ability to meet a rigorous standard of quality and demonstration through a formal State or local academic assessment of knowledge in and ability to assist in instructing reading, writing and mathematics. A RIGOROUS STANDARD OF QUALITY INCLUDES A DEMONSTRATION OF COMPETENCE IN BASIC LITERACY SKILLS, INCLUDING THE ABLITY TO SPEAK AND WRITE STANDARD ENGLISH AND INSTRUCTION OF PREKINDERGARTEN STUDENTS IN THE ACQUISITION OF THE KNOWLEDGE, SKILLS AND ABILITIES DESCRIBED IN THE EARLY LEARNING STANDARDS ISSUED UNDER PARAGRAPH (1).

(8) The Secretary may approve a meritorious prekindergarten program that does not meet all regulatory requirements for the programs PROGRAM ~~including, but not limited to, days and hours of operation,~~ when, in the Secretary's judgment, the program provides high quality learning opportunities for students and meets the following conditions:

(i) The school district has submitted to the Secretary a written request that provides justification for the waiver or waivers and includes a description of how the meritorious program will provide high quality learning opportunities for students.

~~(ii) The written request includes a timeline for bringing the program into full compliance with prekindergarten program requirements.~~

~~(iii)~~ (ii) The approval of the meritorious prekindergarten program is valid only for 1 school year.

~~(iv)~~ (iii) Requests for renewals include evidence of positive student outcomes.

(9) A school district may make individual exceptions to the age of prekindergarten students based upon local policy in order to permit the enrollment of children under age 3 and over age 5.

(10) A school district planning to offer or contract with a community agency to offer a prekindergarten program shall develop an implementation plan that describes the program and its target population consistent with paragraph (c). The plan must identify the facilities, staffing needs and other resources that it will use to deliver the program. THE SCHOOL DISTRICT SHALL CONSULT WITH PARENTS, COMMUNITY AGENCIES AND ORGANIZATIONS, AND CHILD CARE, EARLY INTERVENTION, AND HEAD START REPRESENTATIVES WHEN DEVELOPING THE IMPLEMENTATION PLAN. In years subsequent to the initial year of the program, the implementation plan must become part of the strategic plan described in § 4.13 (relating to strategic plans) and included in the mid-term review and annual updates described in § 4.13.

(11) SCHOOL DISTRICT CONTRACTED PREKINDERGARTEN PROGRAMS OPERATED BY A COMMUNITY PROVIDER SHALL PROVIDE A LEAD TEACHER FOR EACH CLASSROOM WHO MEETS THE FOLLOWING MINIMUM QUALIFICATIONS:

- (I) AN ASSOCIATE'S DEGREE OR GREATER IN EARLY CHILDHOOD EDUCATION OR CHILD DEVELOPMENT.**
- (II) FOR PROGRAMS OPERATING BEFORE (LRB TO INSERT DATE OF PUBLICATION IN *PA BULLETIN*), LEAD TEACHERS SHALL POSSESS A BACHELOR'S DEGREE AND EARLY CHILDHOOD CERTIFICATE AS PROVIDED IN § 49.85(A) (RELATING TO LIMITATIONS) ON OR BEFORE (LRB TO INSERT DATE FIVE YEARS AFTER DATE OF PUBLICATION).**
- (III) FOR PROGRAMS CONTRACTED AFTER (LRB TO INSERT DATE OF PUBLICATION IN *PA BULLETIN*), LEAD TEACHERS SHALL POSSESS A BACHELOR'S DEGREE AND EARLY CHILDHOOD**

CERTIFICATE AS PROVIDED IN § 49.85(A) WITHIN FIVE YEARS FROM THE DATE STUDENTS FIRST ATTEND THE PREKINDERGARTEN PROGRAM.

SCHEDULING AND LEARNING OPTIONS

§ 4.41. Scheduling.

(b) A school district, including charter schools, shall obtain approval of the Department prior to scheduling 1/2-day sessions other than in kindergarten under subsection (a). A school district is not required to obtain approval of the Department prior to scheduling 1/2 day sessions for prekindergarten under subsection (e).

(e) School districts with prekindergarten programs shall provide prekindergarten students with at least 2 1/2 hours of instruction each day for the full school term unless the school district obtains prior Department approval for an alternative prekindergarten program.

CHAPTER 11. STUDENT ATTENDANCE

GENERAL PROVISIONS

§ 11.1. School term.

Public prekindertentens, when offered, and kindertentens, elementary and secondary schools shall be kept open each school year for a minimum of 180 days of instruction for students. Days may not be counted as days taught on which the schools are closed, and time may not be counted as a student session for an activity to which admission is charged. However, when a meritorious educational program warrants, the Secretary may, upon request, approve a school term containing a minimum of 990 secondary or 900 elementary and 450 kindergarten hours of instruction as the equivalent of 180 school days. **A PREKINDERGARTEN PROGAM MAY BE EXEMPTED FROM THIS REQUIREMENT WHEN APPROVAL AS A MERITORIOUS PREKINDERGARTEN IS GRANTED AS PROVIDED IN § 4.20(8) (RELATING TO PREKINDERGARTEN EDUCATION).**

§ 11.3. Minimum required hours.

(a) Minimum hours of instruction time for students shall be as follows:

Grade	Hours
PreK—	2 hours, 30 minutes, each day of the school term, UNLESS EXEMPTED
K	FROM THE MINIMUM HOURS OF INSTRUCTIONAL TIME UNDER § 11.1 (RELATING TO SCHOOL TERM)

§ 11.8. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Instructional activities—The term includes the following:

(x) **[Kindergarten] Prekindergarten or kindergarten** orientation, snack-time and play-time if they are an integral part of the curriculum.

Prekindergarten—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten.

§ 11.9 Prekindergarten exception.

A school district may make individual exceptions to the age of prekindergarten students based upon local policy to permit the enrollment of children under age 3 and over age 5.

CHAPTER 12. STUDENTS AND STUDENT SERVICES

STUDENT RIGHTS AND RESPONSIBILITIES

§ 12.1. Free education and attendance.

~~(c) For a prekindergarten program defined in § 12.16 (relating to definitions) as a program for children who are at least 3 year olds and completed prior to the school district's entry age for kindergarten, a school district may make individual exceptions to the age of prekindergarten students based upon local policy to permit the enrollment of children under age 3 and over age 5.~~

§ 12.16. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Prekindergarten—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten, UNLESS INDIVIDUAL EXCEPTIONS TO THE AGE REQUIREMENTS ARE MADE BY THE SCHOOL DISTRICT.

SERVICES TO STUDENTS

§ 12.41. Student services.

(a) Each school entity shall prepare a written plan for the implementation of a comprehensive and integrated K-12 program of the student services based on the needs of its students. The plan shall be prepared and revised in accordance with the time frames and procedures described in §§ 4.13(a), (b), (d), (e) and (f) (relating to strategic plans). Services offered by community agencies in public schools shall be coordinated by and under the general direction of the school entity. The plan **[shall] must** include policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101--780-144) and guidelines issued by the Department of Health. The Department of Health guidelines are available from the Division of School Health, Department of Health, P. O. Box 90, Harrisburg, Pennsylvania 17108. **A school district that operates a prekindergarten program shall address its prekindergarten program in its strategic plan.**

(b) Though the variety of student services offered will differ from school to school depending upon its size and the needs of its students, the following categories of services shall be provided by each school entity in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school. Developmental services include guidance counseling, psychological services, health services, home and school visitor services and social work services that support students in addressing their academic, behavioral, health, personal and social development issues. **For WHEN prekindergarten students IS OFFERED, these services must include nutritional services or referrals. NUTRITIONAL SERVICES INCLUDE FEDERAL AND STATE FUNDED SCHOOL MEAL PROGRAMS; SPECIAL SUPPLEMENTAL FEEDING PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC); FOOD STAMP PROGRAM; PENNSYLVANIA FRESH FOODS PROGRAM; AND LOCAL FOOD AND NUTRITION SERVICES FOR CHILDREN AND FAMILIES.**

§ 12.42. Student assistance program.

School entities shall plan and provide for a student assistance program under **[the Early Intervention Services System Act (11 P. S. §§ 875-101--875-503)] section 1547(g) of the Public School Code of 1949 (24 P. S. § 15-1547(g)) regarding alcohol, chemical and tobacco abuse program.**

**Comments Received
Final Form
Regulation #006-301
22 Pa Code Chapters 4, 11 & 12
Prekindergarten**

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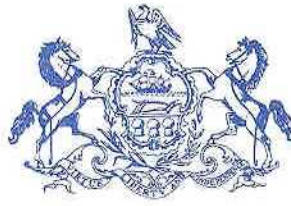
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Director of Education Initiatives
PA Partnerships for Children
20 North Market Square, Suite 300
Harrisburg, PA 17101-1632

Ms. Darcy Stiteler
Project Coordinator
Beaver County Early Care
& Education Council
2020 Beaver Avenue, Suite 206
Monaca, PA 15061

Dr. Eric J. Karolak
Executive Director
Early Care & Education Consortium
805 15th Street NW, Suite 700
Washington, D.C. 20005

Ms. Blair Hyatt
Executive Director
PA Head Start Association
3700 Vartan Way
Harrisburg, PA 17110



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

October 17, 2006

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

Dear Mr. Kaufman:

Enclosed is a copy of final-form State Board of Education regulation 22 Pa. Code, Chapter 31, Higher Education General Provisions (#006-297) for consideration and action by the Commission pursuant to the provisions of section 5(c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The State Board of Education will provide your Commission with any assistance it requires to facilitate a thorough review of these proposed regulations.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jim Buckheit".

Jim Buckheit
Executive Director

Enclosure

cc: Dr. Gerald Zahorchak
Gregory Dunlap, Esq.
Deborah Wynn

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

I.D. NUMBER: 6-301
 SUBJECT: PREKINDERGARTEN
 AGENCY: STATE BOARD 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

RECEIVED
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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/17/06	<i>[Signature]</i>	HOUSE COMMITTEE ON EDUCATION
10/17/06	<i>[Signature]</i>	
10/17/06	<i>[Signature]</i>	SENATE COMMITTEE ON EDUCATION
10-17-06	<i>[Signature]</i>	
10/17/06	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)