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INDEPENDENT REGULATORY  
REVIEW COMMISSION

July 12, 2006

Mr. Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Dear Mr. Kaufman:

The Pennsylvania School Boards Association would like to take this opportunity to comment on proposed 22 Pa. Code, Chapters 4, 11 and 12 as published in the June 17, 2006 issue of the *Pennsylvania Bulletin*. The proposal establishes provisions for prekindergarten programs that are operated voluntarily by school districts or contracted by districts with community providers.

PSBA supports the efforts taken by the Department of Education and the State Board of Education to establish and improve prekindergarten programs. PSBA believes that it is appropriate for the state to provide guidance for school districts with the goal of creating a framework for schools to develop high-quality early childhood education. As schools step into this area, it is important that the state provide clear guidance, without becoming too restrictive, through this set of rules. These regulations can serve either to be the key to inspiring districts to move forward with prekindergarten programs, or serve as a disincentive to implement or continue programs.

As proposed, these regulations do not create a universal mandate for school districts – rather, they create the parameters from which districts may voluntarily establish their own prekindergarten programs. Because this is a voluntary program, it is imperative that these regulations not be too burdensome, while allowing for the creation of effective programs. PSBA certainly does not want districts to abandon existing programs or turn away from implementing them. Every school district that considers when, or whether, to begin a prekindergarten will have to weigh its desire to do so against that practical matter of how to do it. Aside from the educational considerations, the district must be able to provide and pay for the classroom space, the materials and supplies, the teachers and required aides, professional development, and other important matters.

**Cost Considerations** -- Interestingly, the Preamble to the proposal as published in the *Bulletin* states that there is no fiscal impact and that “complying with this proposed rulemaking will not add costs beyond those necessary to regular program operation.” It additionally implies that since the proposal is consistent with existing standards for the Accountability Block Grant program, the “incurrence of any additional operating program costs beyond those specified in the regulations will be at the discretion of the school district and its elected board of directors.” PSBA believes that this is a simplistic and unrealistic determination of the fiscal impact of implementing a pre-kindergarten program. The ABG program began in the 2004-05 school year as an initiative of Gov. Rendell to provide schools with additional funds for early childhood education and other proven academic programs. This successful program has allowed many schools to implement prekindergarten, full day kindergarten or reduce class

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sizes in K-3<sup>rd</sup> grade, among many other worthwhile projects benefiting older students. However, the ABG grant program must be renewed each year under the new state budget at an amount that must be negotiated between the governor and the General Assembly. There is no guarantee that this program will continue to exist in the future, the amount that would be allocated, or that districts will receive sufficient funds to sustain a program, particularly when the administration changes. Unless the General Assembly enacts some type of permanent subsidy system for all school district-operated prekindergarten programs, funding will continue to be at the will of the current administration and members of the Legislature. A lack of legislative support could lead to a lack of ability of school districts to provide or maintain prekindergarten programs.

Additionally, districts may be less likely to initiate or even to continue various programs as they comply with the budgeting requirements and fiscal restraints of the tax reform legislation under Act 1 of Special Session 2006.

**Following are our comments related to specific sections of the proposal:**

**Section 4.13 – Strategic Planning**

We realize that the State Board may completely revisit the entire issue of strategic planning as part of its continuing work on Chapter 4; however, we will speak to the language as published with this proposal.

**Section 4.13 (c)** – This comprehensive subsection contains the provisions for the heart of the strategic planning process, the focus for the plans and a listing of elements that the plans must include. While we are generally supportive of the language, we do have some concerns.

Our first concern is with the proposed addition in (c) of the following sentence: “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.”

First, what does it mean for a strategic plan to become an extension of Chapter 4? What is the purpose/impact of this language on school districts? Would a strategic plan then fall under the jurisdiction of the Department of Education? Second, the latter part of the sentence states that the plan can only be changed by the strategic planning committee approved by the local school board. It is unrealistic to assume that the original membership of a planning committee will not change over a six-year period. People come and go for many reasons, and those vacancies are filled as necessary.

Of more critical concern is the implication that only the committee can change the plan. The role of the strategic planning committee is to develop a proposed plan for the school board, not to revise or to approve the document. As it is clearly stated in the existing subsection (e) that is not published as part of this proposal, only the school board has the authority to approve the strategic plan, and it is not required to accept the recommendations of the committee in their entirety. If the board alters a proposed plan, it must try to reach the greatest possible consensus, but the final decision rests with the board. The school board is the governing body of the school district, and has the best understanding of the needs and resources available. Therefore, if the board wishes to change the plan, it has the authority to do so without the permission of the committee.

With these two concerns in mind, PSBA urges the State Board to delete this entire sentence

under subsection (c). This language also appears in the State Board's separate revision to other sections of Chapter 4 under Regulation #6-295 (IRRC #2499). We understand the Board plans to delete it under Regulation#6-295 in favor of moving it to the proposal here. In comments to the State Board dated Jan. 4, 2006, IRRC also recommended the deletion of this sentence.

**Subsection 4.13(c) (12) (iii) – PSBA suggests that the language in this subsection be revised to clarify that participation from representatives of infants and toddlers, early childhood representatives or researchers, is required **only** for school districts that offer pre-kindergarten.** While participation from these representatives would be beneficial to and appropriate for a district that provides pre-K programs, a district that does not provide pre-kindergarten should not be required to include these people. Other language in Subsection (12) requires participation from community groups, parents, businesses and “other parent and community groups as appropriate.” PSBA believes that these broad provisions will allow school boards to determine who they wish to be involved with the district's planning efforts.

**Subsection 4.13 (d) –** This subsection has been revised to greatly expand the membership of the strategic planning committee to include more teachers and educational specialists. It also requires the committee to participate in the development of “the 6-year plan, mid-term review report, annual updates and all other revisions to the plan.”

Currently, the regulations already require teachers, along with parents, students, school directors, teachers, school administrators, other school personnel and business and community representatives, to participate on the committee. As proposed, Subsection (d) specifies the addition of teachers from prekindergarten and preschool early intervention programs, elementary, middle/junior and senior high schools and AVTS, and educational specialists on the committee.

While this addition may be well intentioned, the language as drafted unnecessarily delineates the specific composition of one group of representatives to the strategic planning committee – teachers. If this language is approved, could the same rationale be used to require numerous principals and parents from each academic level as well? Eventually, the efficiency of the committee would suffer. Further, if school boards are not entitled to change the plan without committee approval, the committee, primarily made up of school employees, could become a “superboard,” taking from elected board members key responsibilities in the oversight of school policy. However, PSBA could accept a less lengthy list of required participants on the strategic planning committee.

PSBA recommends that the required membership of the committee be kept at a manageable number that provides representation from appropriate stakeholders without causing the committee to become too unwieldy and cumbersome. Ultimately, it is the school board that must approve a strategic plan that is appropriate and also realistic and attainable within the budget constraints.

With this in mind, PSBA recommends that the language in Subsection (d) be tightened in a manner similar to this suggested language:

(d) Strategic plans, the 6-year plan, mid-term review report and annual updates shall be developed through active participation by school directors, school administrators, other school personnel, parents and business and community representatives. In addition, the committee must include representation from one teacher from each of the following educational levels: elementary, middle/junior, and senior high schools. Districts that offer prekindergarten programs must include a

teacher from that level. Teacher representatives shall be chosen by teachers; administrative representatives shall be chosen by the administrative personnel. School director representatives and other representatives to the committee shall be chosen by the board of the school district. The school board will determine the minimum number of members on the committee and may expand the membership of the panel based on its needs.

#### **Section 4.20 – Prekindergarten Education.**

PSBA supports the clarifying language in the first sentence stating that school districts are not required to offer pre-K and that if offered, parents are not required to enroll their children in the program. The inclusion of this sentence answers the question of whether the state is attempting to mandate prekindergarten in all school districts.

In the same spirit of helping to avoid unnecessary debate, we recommend that the committee amend the first sentence as follows: “School districts are not required to offer a prekindergarten program or provide pupil transportation to such programs if offered, and parents are not required to enroll their children in such programs if offered.” The addition of such language will diffuse any misconception that may appear as districts decide how they will structure, and pay for, their programs and services for pre-kindergarten children.

Finally in this section, we recommend one other change for the sake of clarity. In testimony we gave to the State Board, we questioned language contained in an earlier draft that could be interpreted to require individualized educational programs for all pre-kindergarten students. PDE’s response was to not recommend a change in the language because that there is no intention embedded within the regulations for pre-K children to have formally adopted IEPs. Rather, the intent here was to emphasize that there are varied levels of development in young children of the same age.

While we understand and support the department’s response, we suggest that the language be amended so that this intent is very clear. We recommend deleting the words “and individual needs of each child” and replace with this or similar revision: “The program, when offered, shall provide a comprehensive program appropriate for the age and varying developmental levels of the students, based on how young children develop and learn...” This will maintain the intent of the proposal to recognize the varied levels of development of young children, with no misinterpretation of the language.

**Subsection 4.20 (3)** – In reading the last sentence, it appears that a technical correction is needed. We believe that the word “shall” should be “must.”

#### **Section 4.20 (6) – Class Size & Adult-to-Student Ratio.**

The proposal establishes a maximum class size for prekindergarten of 20 students, which seems reasonable compared with caps set by other states. However, we suggest that language be added that allows a school district to request approval of a class size that varies from these requirements for a specific, limited period of time. Such exceptions would be appropriate if they provide for effective and efficient administration of the program within a particular building for a specific school year. Such exceptions would be similar to those allowed for caseload requirements under the state regulations for special education. For example, in one particular school year, a school building may have 23 pre-kindergarten students enrolled, which exceeds the cap but not by an amount that would make adding another class a practical consideration. Another example would be if a few additional students enroll

during the year that tip the class size slightly over the maximum number allowed.

PSBA recommends that the State Board add language to this subsection that specifically addresses this issue. Such language may include: “A school district may request approval from the secretary of education for a variance from the required maximum of 20 students per class for prekindergarten programs. The district must provide justification for why the variance is necessary and must ensure that the assigned staff will provide an appropriate program.”

The proposal also takes a new step by requiring a teacher aide in each classroom. PSBA understands the educational benefits of small class sizes in the early grades, and also understands the benefits of having two adults for 20 three- and four-year-olds. Because these new requirements for a class size maximum with two adults in each classroom will be a new cost consideration for districts, we would again ask for some flexibility by suggesting that adequate time be provided between the final and effective date of the new regulations and the time that the requirements in this section must be implemented. Districts that currently operate programs or are in the midst of planning and budgeting a new prekindergarten program may need additional time, depending on the time of year that the rules become effective.

Our final comment regarding this section is concerning the language that states the “programs of high quality” ordinarily have a student/teacher ratio of two adults for every 17 children. Historically, state regulations do not contain recommendations, and PSBA believes that this language would be better placed in a guideline or other type of nonbinding communication from the department. Further, classrooms with 20 students also certainly can be “programs of high quality.” How is “high quality” defined in this regulation?

#### **Section 4.20 (7) Qualification of Aides –**

While PSBA does not question the rationale for having a teacher’s assistant to be in the pre-K classroom, we do not agree that these aides should be required to meet the same qualifications as aides in other Title I classrooms. The Title I requirements for aides were created under the No Child Left Behind Act, and we believe they are not intended to apply as a mandate for pre-kindergarten programs. These requirements are intended to provide a higher bar for those aides whose job it is to provide instruction to students, an activity that is much more clearly delineated in elementary, middle and high schools than in pre-K programs.

What is the job description of aides in a prekindergarten classroom? What percentage of their time will be spent on providing academic instruction in reading, math or writing? How much time will be spent assisting with the many important non-instructional duties that will be necessary with three and four-year-old children? This age group of children has different needs and behaviors from older elementary age students. Three and four old children often need help with basic care activities.

Teachers aides can provide clerical support for teachers, read to students, supervise children in the schoolyard and hallways and generally provide assistance to children under the direction and guidance of teachers.

#### **Section 4.20 (8) -- Provision for Waivers**

PSBA supports the language in the proposal that allows the secretary of education to approve alternative programs and methods of delivering them. The school districts that already have established prekindergarten programs have done so because these classes meet the needs of their local communities and the children they serve. They have done so because they currently have the ability to

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establish the programs in a way that matches their available funds, facilities, staff and other considerations. Most importantly, these districts have done so in good faith because they want to, not because they have to. The same will be true of those districts that decide to begin these programs.

Variations in these programs must be expected and must be allowed. There is no one definition of what constitutes a high-quality program. What programming or staffing model works well in one area of the state may be inappropriate or ineffective for another. While there should be a general framework for schools to follow, the regulations also should encourage schools to be creative and innovative in the development of their programs. This should not be a cookie-cutter approach.

With this in mind, PSBA must raise the question of why the proposal includes a requirement under (ii) that requires school districts to create a timeline for bringing their program into full compliance with the regulation. We believe this language in subsection (ii) is unnecessary, particularly when it is followed by subsection (iii) that prohibits any waiver granted by the secretary to be valid for more than one school year unless it is renewed.

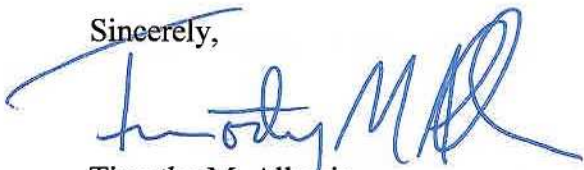
Consider the example of a district that receives a waiver because it operates a successful prekindergarten program for only four days a week at the school building and one day of at-home instruction. That district would like to continue that program and therefore would seek a renewal each year. The district would not want to include a timeline for bringing its program "into full compliance" with the regulation because it wants to maintain the way it conducts its classes.

Further, the provision under subsection (iii) for the waiver to be valid for only one school year creates enough of a safeguard against the continuation of any program that the secretary believes is not "meritorious" or does not provide "high quality learning opportunities" for students. These subjective words are not defined, but rather are left for the secretary to determine. If the secretary chooses not to approve a request for the renewal for a waiver, we believe it is at that point that a requirement for a timeline to bring a program into full compliance with the regulation should be made.

In closing, I would like to emphasize again our support for this proposal, and for this administration's focus on early childhood education. However, we urge you to remember that school boards will be facing many considerations as they decide whether they will establish (or maintain) a prekindergarten program. This proposal can be an incentive or an obstacle in the decisionmaking process.

Thank you for the opportunity to comment on the proposal.

Sincerely,



Timothy M. Allwein  
Assistant Executive Director  
Governmental and Member Relations

cc: Members, Senate Education Committee  
Members, House Education Committee  
Independent Regulatory Review Commission