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

August 16, 2006

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

Re: Regulation #6-301 (IRRC #2543)
State Board of Education
Prekindergarten

Dear Mr. Buckheit: 

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

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,



Kim Kaufman
Executive Director

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Enclosure

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

Comments of the Independent Regulatory Review Commission

on

State Board of Education Regulation #6-301 (IRRC #2543)

Prekindergarten

August 16, 2006

We submit for your consideration the following comments on the proposed rulemaking published in the June 17, 2006 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Education (Board) to respond to all comments received from us or any other source.

1. General. – Clarity.

The term “school entity” is used in some sections of this rulemaking and the terms “school district” or “school district or area vocational technical school” are used in other sections. For consistency, one term should be used.

Chapter 4. Academic Standards and Assessment

2. Section 4.13. Strategic plans. – Implementation procedures; Clarity.

Subsection (c)

The following language is being added to this subsection: “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 Board has explained that the purpose of this new language is to reinforce the importance of strategic plans that are developed by local school boards. We recognize the value of the strategic plan. However, a strategic plan filed by a school entity cannot become an “extension of this chapter,” unless it is promulgated as a rulemaking in accordance with the Regulatory Review Act (71 P.S. §§ 745.2 – 745.15) and the Commonwealth Documents Law (45 P.S. §§ 1101-1602). Therefore, the sentence should be rewritten to delete this phrase.

Subsection (c)(4)

The last sentence of this subsection states the following: “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 assessment.” We have two concerns. First, the phrase “but not limited to” is unnecessary and should be deleted. Second, because all of § 4.12 does not apply to achievement goals, the Board should list the specific subsections that do apply.

Subsection (c)(6)(i)(C)

This subsection includes the phrase “significant student subgroups.” This phrase is unclear and should either be amended or defined.

Subsections (c)(7), (c)(8), and (c)(13)

The titles of these subsections contain adjectives such as “struggling,” “effective” and “capable.” These terms are vague. The Pennsylvania Code and Bulletin *Style Manual* discourages the use of indefinite terms (§ 6.16(b)(6)). These terms should be defined, deleted or replaced with terms that can be measured.

Subsection (c)(8)

The title of this subsection includes the phrase “instructional leaders” but the text references “school leaders.” The Board should use one term consistently and define it.

3. Section 4.20. Pre-kindergarten education. – Clarity.

Paragraph (3)

The last sentence of this paragraph states the following: “If a program is limited to an attendance area, children with disabilities shall live in that attendance area to participate in the program.” The phrase “attendance area” is unclear and should be defined in the final-form regulation.

Paragraph (6)

The second sentence of this paragraph states the following: “Programs of high quality ordinarily have a student/teacher ration of 17 students for one teacher and one teacher aide in classroom (2 adults for every 17 students).” This is non-regulatory language because it is not a binding norm and it should be deleted.

Paragraph (7)(iii)

This paragraph includes the phrase “rigorous standard of quality.” This phrase is unclear and should be defined.

4. Section 4.41. Scheduling. – Clarity.

Subsection (e) uses the term “alternative prekindergarten program” to indicate a program that obtains prior approval from the Department to have less than 2 ½ hours of instruction in a day. However, § 4.20(8) uses the term “meritorious prekindergarten program” to indicate a program that doesn’t meet all of the regulatory requirements, but receives approval from the Secretary to operate. One term should be used consistently throughout the regulation.

Also, the term “meritorious educational program” is defined in Section 11.8 of the Board’s existing regulations. The Board should define “meritorious prekindergarten program” in that section and cross-reference the definition in Section 4.3 of this proposed regulation. Or, if a “meritorious prekindergarten program” fits the definition of “meritorious educational program,” then that term should be used.

Chapter 11. Student Attendance

5. Section 11.1. School term. – Clarity.

This section requires “public prekindergartens, when offered, and kindergartens, elementary and secondary schools” to be kept open each school year for a minimum of 180 days of instruction for students. The last sentence of this section states the following:

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.

The Board has explained that the Department of Education may approve prekindergarten programs that operate only three or four days a week. We have two concerns. First, if such a program is approved, how could it meet the requirements of this section? Second, the sentence quoted above should be amended to include the phrase “prekindergarten, when offered.” This would make it consistent with the first sentence of this section.

6. Section 11.3. Minimum required hours. – Clarity.

Subsection (a) mandates 2 ½ hours of instruction time for students in a “preK” program. The mandated hour requirement of this subsection should include a reference to the exception provided under §4.41(e).

Chapter 12. Students and Student Services

7. Section 12.1. Free education and attendance. – Clarity.

Since prekindergarten is defined under §12.16, relating to definitions, the following text should be deleted from Subsection (c): “defined in § 12.16 (relating to definitions) as a program for children who are at least 3 years old and completed prior to the school district’s entry age for kindergarten.”

8. Section 12.41. Student services. – Clarity.

Subsection (b)(1) uses the phrase “nutritional services or referrals.” This phrase should be defined in the final-form regulation.

9. Miscellaneous clarity.

- The word “school” which appears after “and” and before “experiencing” under §4.13(c)(13) should be plural.
- The phrase “but not limited to” under §4.20(8) is not needed.

State Board of Education #6-301
Prekindergarten

James Buckheit, Executive Director



Date: 
