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DEPARTMENT OF EDUCATION
333 MARKET STREET
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INDEPENDENT REGULATORY
REVIEW COMMISSION

#2550

OFFICE OF CHIEF COUNSEL

August 19, 2008

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Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: Keystone Educational Accountability Regulation (IRRC#2250)

Dear Mr. Kaufman:

I write regarding the above-noted regulation, which is scheduled for action at the Commission's meeting this Thursday, August 21. Specifically, I ask that the Commission agree to toll the time for review of the regulation by the Commission and by the Education Committees of the General Assembly.

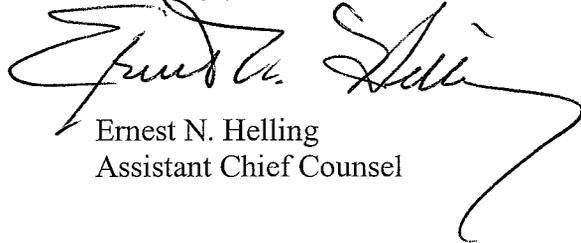
On August 7, 2008, and again this morning, representatives of the Department of Education and I met with Commission staff to discuss this final form regulation and specifically the comments and recommendations of your staff. Some of the comments on this regulation involve recommended changes that are editorial in nature. These changes will and can be made in conjunction with the Legislative Reference Bureau upon submission of the regulation for publication. However, other changes are more substantive in nature and your staff members indicated that, under other circumstances, they would be asking the Department to withdraw the regulation, consider the comments and then resubmit with those changes in which the Department concurs. However, this particular final form regulation was submitted to the Commission shortly before the expiration of the two-year window after close of the public comment period on the proposed rulemaking. Thus, withdrawal would require the department to begin the regulatory process anew. Because the Department wishes to seriously consider your comments and make most, if not all of the changes being recommended, we do not wish to reinitiate the regulatory process and delay implementation of this program any longer.

Thus, the Department wishes, consistent with section 745.5a(g)(1) of the Regulatory Review Act, to toll the period for review of this final form regulation in order to allow time for the Department to consider the revisions to this final form regulation that have been recommended by your staff and to make those changes that the

Department agrees are necessary to conform with the intention of the General Assembly. Although it is our understanding that the Commission has construed this tolling provision as only applying to recommendations for technical non-substantive changes to regulations, the Department does not read such a limitation into the language of section 745.5a(g)(1). The provision clearly and simply states that an agency may “toll the time for the commission’s and the committee’s review of the final form ... regulation in order to allow time for the agency to consider revisions ... recommended by the commission ...” 71 P.S. §745.5a(g)(1). Thus, tolling would also appear to be applicable in the case of substantive recommendations from the commission, particularly when those recommendations, as in the case of the Department’s regulation, are specifically directed at conforming the regulation to the language of the authorizing statute.

I thank you for your attention to this request and anticipate that the Commission will not object to the tolling of its review time. Pursuant to section 745.5a(g)(2), the Department will return this regulation to you with revisions on or before September 18, 2008.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Ernest N. Helling". The signature is fluid and cursive, with a long, sweeping tail that extends to the right.

Ernest N. Helling
Assistant Chief Counsel

cc: Judy Shopp, Esq.
Heather Emery, Esq.
Tom Gluck
Michael Walsh
John Godlewski