

ALVIN C. BUSH, CHAIRMAN
DAVID M. BARASCH, ESQ.
ARTHUR COCCODRILLI
DAVID J. DEVRIES, ESQ.
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
MARY S. WYATTE, CHIEF COUNSEL
LESLIE A. LEWIS JOHNSON, DEPUTY CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

January 25, 2007

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

Re: Regulation #6-303 (IRRC #2583)
State Board of Education
Certification of Professional Personnel

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
wbg
Enclosure

Comments of the Independent Regulatory Review Commission

on

State Board of Education Regulation #6-303 (IRRC #2583)

Certification of Professional Personnel

January 25, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the November 25, 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. Requirements related to instructional certificates issued on or after January 1, 2012. – Economic impact; Need; Reasonableness; Feasibility; Timetable for compliance.

Section 49.85(b) establishes grade level limitations for instructional certificates issued on or after January 1, 2012. These limitations relate to eight paragraphs of certifications listed in the regulation.

As described in the Preamble, the Board held extensive discussions in the course of developing this regulation. Despite this outreach, these provisions generated extensive public comment from professional associations, individual school districts, colleges and individuals. While there was favorable public comment, most of the commentators raised concerns with the amendments.

Their comments included statements that the regulation will:

- Result in less flexibility to staff elementary schools.
- Put Pennsylvania student education graduates at a distinct disadvantage with those from other states; discourage teacher candidates from enrolling in Pennsylvania teacher preparation programs; and make Pennsylvania graduates less employable in other states. Every state on the eastern seaboard (with the exception of Georgia) has a K-6 certification (or something comparable) along with early childhood and Middle School certifications.
- Force graduating teachers to obtain dual certification (K-3 and 4-8) in order to be appropriately prepared to teach children in their future classes.
- Require future teachers to choose a certificate before they have the opportunity to experience the realities of teaching a range of age groups.
- Increase costs for the 95 colleges and universities with teacher education programs. Additional costs would also be placed on students because of the extra course work required and on the state, which helps to fund public education.

- Inappropriately place grade 4 and grade 8 in the same certificate preparation program when children in these grades are developmentally different.
- Require compliance before teacher education programs can adjust their programs.
- Narrow the preparation of elementary certificate holders at a time when teachers are expected to work with a broader range of performance in their classes.
- Lead to over-specialization at lower grade levels at a time when many curriculum experts are suggesting a wider range of content in teacher preparation programs.
- Lead to shortages in upper-elementary certified and special education teachers.

The commentators have raised significant, valid concerns with the proposed amendments. We will evaluate the Board's response to these concerns to determine if the Regulatory Review Act's criteria of economic impact, need, reasonableness, feasibility and timetable for compliance have been met.

2. Requirements outside the regulation. – Reasonableness; Clarity.

Sections 49.16(b), 49.17(a), 49.83(3), 49.85(d) and 49.86(a) refer to guidelines, standards and criteria that will be established outside this regulation. A regulation has the full force and effect of law. It establishes binding norms on the regulated entity and the agency that promulgated the regulation. The vague provisions in question would allow requirements to be imposed at the Board's or Secretary's discretion without the opportunity for comment or review through the regulatory process. Without adequate notice as to what requirements the Board is imposing, it would be difficult, if not impossible, for regulated parties to discern what actions on their part would constitute compliance. We urge the Board to evaluate all of the vague phrases identified above. The Board should either delete the language or add the needed detail that would allow the regulated community to know how to comply with the regulation.

3. Section 49.13. Policies. – Reasonableness; Timetable for compliance.

Number of credits and hours

Several commentators suggested changes to the number of required credits and hours specified in Subparagraph (b)(4)(i). Their concerns are that the new requirements could interfere with national accreditations or take time away from core studies. The Board should explain why the numbers of credits and hours specified in Subparagraph (b)(4)(i) are appropriate.

Timetable for compliance

Commentators questioned whether there will be enough time to implement the changes in a final regulation by January 1, 2010. One commentator does not believe there will be enough special education faculty available to meet the requirements. The Board should explain why compliance is needed by January 1, 2010, and how teacher education programs can reasonably comply.

4. Section 49.17. Continuing professional education. – Reasonableness.

Ensure compliance

Paragraph (a)(7) requires the plan to "...include a description of how the school entity will ensure that all professional employees participate in continuing education focused on teaching diverse learners in inclusive settings." A commentator suggests that this is overly prescriptive and should only require the school entity to "offer opportunities" for professional employees to

participate. The Board should explain why it is necessary to require the plan to describe how the school entity will “ensure” professional employees participate. The Board should also explain how the school entity could comply with this requirement.

5. Section 49.85. Limitations. – Reasonableness; Clarity.

Subsection (b)

We have five concerns with this subsection.

First, the Board should explain why the January 1, 2012 implementation date for transitioning to the proposed breakdown of instructional certificates under this subsection is reasonable and appropriate. Because teacher education programs take at least four years to complete, commentators fear that they will have less than a year to adequately revise programs to reflect the proposed new certifications.

Second, why has the Board chosen to include an overlap at age 11 between Elementary/Middle and Secondary certifications, but not between Early Childhood and Elementary/Middle certifications?

Third, the breakdown of certifications as Special Education/Primary and Special Education/Middle is not clear. Why does Special Education/Primary include up to age 14? Why does Special Education/Middle include pre-kindergarten, kindergarten and grades one through three?

Fourth, we question whether the proposed plan to replace the K-12 special certification with one of three dual certifications can be done within a 120 credit hour framework. In what timeframe does the Board anticipate students in education programs will be able to complete a dual certificate?

Finally, will the Special Education/Primary certification qualify teachers to teach K-5 or will they also have to have certification for K-3 and 4-8?

Paragraphs (b)(5), (6) and (7)

A commentator expressed concern about the Board’s effort to split the special education certifications into different grade levels. The commentator also stated that the Council for Exceptional Children Standards does not group special needs children into grade levels. We also note that special needs students are not always functioning at the grade level in which they are currently placed. Therefore, the Board should explain why it is appropriate to create three different special education certifications that explicitly group students by grade level.

Subsection (f)

This subsection limits the exception to shortages of certified personnel “that apply Statewide.” Shortages could be local or could be caused by factors such as the pay or location of a school. Why did the Board restrict exceptions to a finding that a shortage is statewide?

Paragraph (f)(1)

Under this paragraph, the Secretary must provide a written notice to the Board that an exception has been granted. This notification must include “...relevant information and justification of the need for the exception.” Can the Board object to the Secretary’s decision to grant an exception?

Also, what criteria will the Secretary use in granting the exception? The Board should include these criteria in the final-form regulation.

Paragraph (f)(2)

Under this paragraph, exceptions are limited to 3 years. Can an exception be renewed? Is there a limitation to the number of times the same exception can be granted? If so, this information should be set forth in the final-form regulation.

6. Section 49.86. Accelerated program for Early Childhood and Elementary/Middle level certificateholders. – Reasonableness; Clarity.

Subsection (a) states that “The Department will establish standards for an accelerated program....” However, this section does not provide the details on how those standards will be developed. What process will the Department use to “establish standards”? How will the public have input?

7. Sections 49.142. Vocational Instructional I. and 49.143. Vocational Instructional II. – Reasonableness; Clarity.

These sections require applicants to have completed a minimum amount of credits or classroom hours in classes relating to “accommodations and adaptations for students with disabilities” and “English language learners in an inclusive setting.” Are courses readily available to meet these new subject requirements?

State Board of Education #6-303 (IRRC #2583)
Certification of Professional Personnel

James Buckheit, Executive Director

Barbara Baker

Date: 1/25/07