Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

3:01 pm

IRRC Number: ~~NA~~ #2693

(1) Agency

Education

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

006-305

(3) Short Title

Standards for Approved Private Schools and Chartered Schools for Deaf or Blind Children

(4) PA Code Cite

22 Pa. Code Chapter 171, Subchapter C

(5) Agency Contacts & Telephone Numbers

Richard E. Frown
Bureau of Special Education
(717) 783-6906

(6) Type of Rulemaking (check one)

__X__ Proposed Rulemaking
__ __Final Order Adopting Regulation
_ ___ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

__X__No
____ Yes: By the Attorney General
____ Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

These proposed standards amend the Interim Audit Standards in subchapter C of Chapter 171. The proposed standards adopt with minor changes the interim standards and provide audit guidelines to ensure that revenues provided by the Commonwealth to the Approved Private Schools and Chartered Schools are used for special education services for approved students and to ensure that the expenses of the schools have been presented appropriately in accordance with generally accepted accounting principles (GAAP).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Sections 13-1376(c.8) and 13-1376.1(f.5) of the Public School Code of 1949, 24 P.S. §§13-1376(c.8) and §§13-1376.1(f.5), which were added by Section 5 of Act 46 of 2005.

Regulatory Analysis Form

(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.

Yes. Act 46 of 2005 amending the Pa. Public School Code of 1949 and adding sections 13-1376(c.8)

and 13-1376.1(f.5) required that these standards be developed and proposed.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The standards will provide audit guidance to Approved Private Schools and Chartered Schools for Deaf or Blind Children and their auditors.

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

None.

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

The amended, standards will ensure compliance with Act 46 of 2005 . This will result in ensuring that more than 4000 students with disabilities in 30 Approved Private Schools and Four Chartered Schools continue to receive highly specialized special education services

(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 one person or group of people; no entity or group of entities will be adversely affected.

(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.)

Thirty Approved Private Schools, four Chartered School for Deaf or Blind Children and PDE.

(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 Department held several meetings for the purpose of consultation and planning with representatives from the Approved Private Schools, Chartered Schools and school districts. It also presented the options to the IU Special Education Directors and the Special Education Advisory Panel. The groups involved in the planning were: Governor's Office, Labor, Education, and Community Services (LECS) Comptroller's Office, Approved Private Schools, Chartered Schools, Local Education Agencies (LEA) and Parents.

(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.

Under the proposed standards, the schools would continue to pay the cost of the independent audit by a certified public accountant. Based on a random sample of schools, costs for the private, independent audit increased in 2006-2007 but no further increase is anticipated.

(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.

None

(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 that may be required.

There will be no cost savings to the Commonwealth.

Regulatory Analysis Form

(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	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Local Government	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
State Government	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Total Savings	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

COSTS:						
Regulated Community	-0-	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Local Government	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
State Government	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Total Costs	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE LOSSES:						
Regulated Community	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Local Government	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
State Government	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Total Revenue Losses	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

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

See Item 17 through 19 above.

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

Program	FY -3	FY -2	FY -1	Current FY
Approved Private Schools *	$67,617,000 (FY 2003-04)	$80,651,000 (FY 2004-05)	$82,442,000 (FY 2005-06)	$86,461,000 (FY 2006-07)
Chartered Schools*	$27,882,000 (FY 2003-04)	$29,949,000 (FY 2004-05)	$31,919,000 (FY 2005-06)	$32,944,000 (FY 2006-07)

*The above appropriation figures do not include the 40% in tuition recovered from the school districts as their statuary share of the costs.

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

There are no apparent adverse effects or costs.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Non-regulatory alternatives were not considered.

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

See Number 22.

Regulatory Analysis Form

(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.

No.

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

These standards are consistent with those of other states in that the audit process is less restrictive and the funding will be more predictable. The standards will not place Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state

agencies? If yes, explain and provide specific citations.

Yes. 22 Pa. Code, § 171, Part C will be amended.

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

No additional hearings will be held.

Regulatory Analysis Form

(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.

No.

(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.

Not applicable.

(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?

These standards will be effective upon publication in the *"Pennsylvania Bulletin"*.

(31) Provide the schedule for continual review of the regulation.

The standards will be reviewed annually.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

#2693

RECEIVED

APR 24 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

3:01 pm

DO NOT WRITE IN THIS SPACE

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

MAR 26 2008
DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

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

Department of Education
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 006-305

DATE OF ADOPTION: _____

BY: _____
Gerald L. Zahorchak, D.Ed.

TITLE: Secretary of Education
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: _____
Andrew C. Clark

MAR 5 2008
DATE OF APPROVAL

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

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

NOTICE OF PROPOSED RULEMAKING

TITLE 22, EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 171]

Standards for Auditing of Approved Private Schools and Chartered Schools for the Education of Deaf and Blind Children

PROPOSED REGULATION

PREAMBLE

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 171]

Standards for Auditing of Approved Private Schools and Chartered Schools for the Education of Deaf and Blind Children

The Secretary of Education (Secretary) proposes to amend Chapter 171 (relating to standards for approved private schools) to read as set forth in Annex A.

Statutory Authority

The Secretary acts under the authority of sections 1376(c.8) and 1376.1(f.5) of the Public School Code of 1949 (code) (24 P. S. §§ 13-1376(c.8) and 13-1376.1(f.5)), which were added by § 5 of the act of July 13, 2005 (P. L. 226,No. 46). Sections 1376(c.8) and 1376.1(f.5) of the Public School Code empower the Department of Education (Department) to promulgate standards for auditing of approved private schools and the four chartered schools for the education of the deaf and the blind (hereinafter collectively referred to as schools).

Purpose

The objective of these proposed audit standards is to ensure that revenues provided by the Commonwealth for approved students and the expenses of the schools have been presented appropriately in accordance with Generally Accepted Accounting Principles (GAAP). Interim standards were adopted on April 7, 2006. After a year under these interim standards the Department was to prepare and propose final standards, which are the standards set forth in Annex A. The changes proposed to the interim standards are described below.

Section 171.202 (relating to general guidelines) is amended to limit the content of the independent auditors report to the approved private school

program. This is because some approved private schools are components of larger organizations and the audits and reports governed by these standards do not encompass the entire corporate organization.

In Sections 171.206 (relating to administrative costs) and Section 171.207 (relating to payments in excess of expenditures) the references to "the PDE 4010 process" have been replaced with the title of the form – the "Application for Educational Assignment to Approved Private School" – in order to promote clarity of language. Also, paragraph (a) of the interim standard has been deleted because it applies to prior fiscal years and is no longer relevant.

Fiscal Impact and Paperwork Requirements

The standards are necessary to ensure that the approved private schools and the chartered schools for deaf or blind children continue to receive predictable funding and to reform the audit structure, thereby enhancing each school's ability to focus on students and programs. The standards will neither increase costs to the schools, nor to the Commonwealth. These standards do not impose additional paperwork requirements.

Affected Parties

The standards affect the approved private schools and the chartered schools for deaf or blind children in this Commonwealth.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 24, 2008, 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.

Effective Date

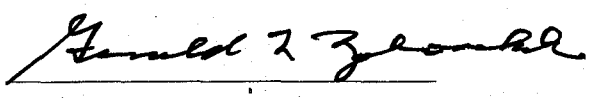
The proposed rulemaking will become effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Sunset Date

The Department will review the effectiveness of Chapter 171 after five years. Thus, no sunset date is necessary.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to Richard E. Brown, Director's Office, Bureau of Special Education, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333
(717) 783-6906 within 30 days following publication in the *Pennsylvania Bulletin*.



GERALD L. ZAHORCHAK, D.Ed.,

Secretary

Annex A

TITLE 22. EDUCATION

PART XII. BASIC EDUCATION

CHAPTER 171. STANDARDS FOR APPROVED PRIVATE SCHOOLS

Subchapter C. [Interim] AUDIT STANDARDS

Sec.

171.201. Purpose and applicability.
171.202. General guidelines.
171.203. Form of records.
171.204. Related party transactions.
171.205. Exceptions to Generally Accepted Accounting Principles.
171.206. Administrative costs.
171.207. Payments in excess of expenditures.

§ 171.201. Purpose and applicability.

[(a)] The purpose of these audit standards is to ensure that revenues provided by the Commonwealth for students whose placement in the approved private school has been approved by the Department have been spent on the provision of education services, including residential services in some cases, to children who are residents of this Commonwealth and who have been approved by the Department under § 171.16 (relating to assignment).

[(b) These interim standards apply to audits conducted after July 1, 2005, and will apply until final standards are promulgated.]

§ 171.202. General guidelines.

An approved private school shall maintain an accounting and bookkeeping system in accordance with the following standards:

***

(9) Reports of the independent auditors will be limited to the Approved Private School program.

***

§ 171.206. Administrative costs.

***

(b) Costs or expenses related to the following functions are considered as administrative and are subject to the 10% administrative cap except when and to the extent that the costs or expenditures are incurred as a result of providing educational services to children who are residents of this Commonwealth and who have been approved by the Department through [the PDE-4010 process] Application for Educational Assignment to Approved Private School. To the extent that the following costs are for educational services, they are not subject to the administrative cap and are reported in the schedule of operating expenses:

***

§ 171.207. Payments in excess of expenditures.

[(a) If the amount of reportable costs in 2004-05 is less than the amount of revenues received by the schools for 2004-05 from the Commonwealth for the provision of educational services to children who have been

approved through the PDE-4010 process, the difference may be retained by the school for use in 2005-06.

(b) Beginning in 2005-06,] If the amount of reportable costs in a year is less than the amount of revenues received in that year by the school from the Commonwealth for the provision of educational services to children who have been approved through [the PDE-4010 process] Application for Educational Assignment to Approved Private School, the difference will be remitted to the Commonwealth by December 1st of each year. Those funds shall be deposited in the Audit Resolution Fund for the resolution of previous audits.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
333 MARKET STREET
HARRISBURG, PA 17126-0333

OFFICE OF CHIEF COUNSEL

717-787-5500
FAX: 717-783-0347
TDD: 783-783-8445

April 24, 2008

Kim Kaufman
Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of proposed regulations, Title 22 – Education, Chapter 171 General Provisions, Annex A (regulatory package #006-305), for review by the Commission pursuant to the provisions of section 5 (c) of the Regulatory Review Act. The act provides that the Commission may, within thirty days after the close of the public comment period, convey to the Department of Education and committees any comments, recommendations, and objections to the proposed regulation. The comments, recommendations, and objections shall specify the regulatory review criterion which the proposed regulation has not met.

The Department of Education will provide the Commission with any assistance you may require to facilitate a thorough review of these proposed regulations.

I look forward to working with you, your staff, and members of the Commission in the review and consideration of these regulations that address the Standards for Auditing of Approved Private Schools for the Education of Deaf and Blind Children.

Sincerely,

Ernest N. Helling
Assistant Chief Counsel

cc: Gerald Zahorchak, Secretary of Education
John Tommasini, Director, Bureau of Special Education

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 6-305

SUBJECT: VOCATIONAL EDUCATION STANDARDS

AGENCY: DEPARTMENT OF EDUCATION

TYPE OF REGULATION

RECEIVED
APR 2 4 REC'D
INDEPENDENT REGULATORY REVIEW COMMISSION
3:01 pm

X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
4-24	Spencer	HOUSE COMMITTEE ON EDUCATION
4-24	A Edwards	MAJORITY CHAIRMAN James Roebuck
4-24	A. Rybarczyk	SENATE COMMITTEE ON EDUCATION
4/24	M Armstrong	MAJORITY CHAIRMAN James Rhoades
4/24/08	K. Cooper	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
4/29/08	C Lee	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 24, 2008