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Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

October 5, 2009

The Honorable Paul I. Clymer
Republican Chair
House Education Committee
216 Speaker Matthew J. Ryan Building
Harrisburg, PA 17120

Dear Chairman Clymer:

Thank you for your October 1, 2009 correspondence in which you assert that there are material differences between the final-form regulation amending 22 Pa. Code Chapter 4 that was delivered on September 21 to the House and Senate Education Committees and the Independent Regulatory Review Commission (IRRC) and the document that was approved by the State Board at its August 13 meeting. You also suggest that the differences between the two documents result in less oversight by the State Board and the public over these educational reforms.

Respectfully, I disagree. As explained below, the minor differences you cite are not material and were made by staff of the State Board solely and properly to meet technical regulatory standards and requirements. Moreover, I believe that the immaterial technical and editorial changes made by State Board staff in consultation with IRRC staff do not in any way diminish the oversight functions established in the final-form regulations for the State Board, affected stakeholders and the public.

The motion to approve the final-form regulations approved by the State Board on August 13 expressly authorizes the State Board staff "to edit the regulation in order to make technical corrections that are necessary to comport with state regulatory requirements." As I am sure you know, several agencies (including IRRC, the Office of General Counsel, the Office of Attorney General and the Legislative Reference Bureau) have the statutory authority to impose technical requirements as part of their review of final-form regulations. The State Board always has authorized its staff to make editorial changes to its regulations to satisfy technical legal and form requirements.

I will first respond to your concern that the September 21 version of the regulation is silent on the State Board's role in "approving or disapproving both sets of criteria" for local assessment validation and the selection of approved validation entities. This language—including a clear reference to public posting on the Department of Education's website—can be found in § 4.52(h) on page 15 in the September 21 version:

LOCAL ASSESSMENT VALIDATION ADVISORY COMMITTEE. THE DEPARTMENT SHALL ESTABLISH A LOCAL ASSESSMENT VALIDATION ADVISORY COMMITTEE. THE COMMITTEE SHALL DEVELOP THE CRITERIA FOR THE LOCAL VALIDATION PROCESS AND CRITERIA FOR SELECTION OF APPROVED VALIDATION ENTITIES AS PROVIDED IN § 4.24(B)(1)(IV)(B). THE DEPARTMENT, IN CONSULTATION WITH THE COMMITTEE, SHALL ESTABLISH A LIST OF ENTITIES APPROVED TO PERFORM INDEPENDENT VALIDATIONS OF LOCAL ASSESSMENTS. THE COMMITTEE SHALL SUBMIT ITS RECOMMENDATIONS FOR APPROVAL OR DISAPPROVAL TO THE BOARD. THE DEPARTMENT SHALL POST THE APPROVED CRITERIA, SELECTION CRITERIA AND LIST OF APPROVED ENTITIES ON ITS WEB SITE.

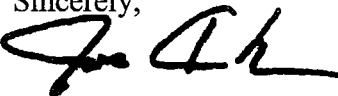
Your letter also suggests that a reference to "specific criteria for advanced, proficient, basic and below basic skill levels of performance" was eliminated from the regulation. That is not accurate. I encourage you to review § 4.51(f)(9) on pages 11 and 12 in the September 21 version, which provides:

LEVELS OF PROFICIENCY ON KEYSTONE EXAMS SHALL BE SET AT THE ADVANCED, PROFICIENT, BASIC AND BELOW BASIC LEVELS. IN CONSULTATION WITH THE PERFORMANCE LEVEL ADVISORY COMMITTEE, THE DEPARTMENT SHALL DEVELOP AND RECOMMEND TO THE BOARD FOR ITS APPROVAL, PERFORMANCE LEVEL DESCRIPTORS AND PERFORMANCE LEVEL CUT SCORES FOR THE KEYSTONE EXAMS...

Finally, following the State Board's approval of the regulation, State Board staff met with IRRC analysts to review the regulation for both clarity and form. During that meeting, IRRC staff made a number of suggestions to improve the structure of the regulation. For example, IRRC staff asked whether the "educators, students, parents, and citizens" identified in the first sentence of § 4.51(f)(9) was a reference to the more detailed breakout of advisory committee members contained in the subsequent sentence (i.e., "teachers, principals, school administrators, school board members, higher education officials, representatives of the U.S. Armed Forces, employers and others"). When State Board staff acknowledged the redundancy in the language, IRRC staff suggested moving the second—and more exhaustive—membership list to the definition section (§ 4.3) to improve clarity.

This technical change was in no way an effort to exclude students, parents and citizens from the Performance Level Advisory Committee: both the Department of Education and the State Board are committed to full representation for all stakeholder groups. In fact, the reference to "others" in the final version of the regulation will provide the Department with important flexibility toward meeting this requirement.

On the merits of this regulation, I believe we need to agree to disagree. But I hope my response resolves your concerns about revisions to the document itself and provisions for oversight. Thank you again for your letter and please contact me with any questions or concerns.

Sincerely,

Joseph Torsella
Chairperson

cc: The Honorable Gerald Zahorchak
Secretary of Education
State Board of Education members
Independent Regulatory Review Commission Commissioners
The Honorable Samuel Smith, House Republican Leader
The Honorable Stanley Saylor, House Republican Policy Committee Chair
House Education Committee members
The Honorable Jeffrey Piccola, Majority Chairman
Senate Education Committee
The Honorable Andrew Dinniman, Democratic Chairman
Senate Education Committee