## SECTION I: PROFILE

(1) Agency: Pennsylvania Department of Education

(2) Agency Number: NA

Identification Number: 006-319

(3) Short Title:
Chapter 405 Pennsylvania Pre-K Counts Requirements, Standards, and Procedures

(4) PA Code Cite:
22 Pa. Code Chapter 405

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

<table>
<thead>
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<th>Primary Contact</th>
<th>Harriet Dichter</th>
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<tr>
<td></td>
<td>(717) 346-9322</td>
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<tr>
<td></td>
<td>333 Market Street</td>
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<tr>
<td></td>
<td>Harrisburg, PA 17126-0333</td>
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<td></td>
<td>FAX: (717) 346-9330</td>
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<td></td>
<td><a href="mailto:hdichter@state.pa.us">hdichter@state.pa.us</a></td>
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</tbody>
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<thead>
<tr>
<th>Secondary Contact</th>
<th>Linda Brown Warren</th>
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<tr>
<td></td>
<td>(717)346-4036</td>
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<td></td>
<td>333 Market Street</td>
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<td>Harrisburg, PA 17126-0333</td>
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<td>FAX: (717)346-9330</td>
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<td></td>
<td><a href="mailto:liwarren@state.pa.us">liwarren@state.pa.us</a></td>
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</tbody>
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(7) Type of Rulemaking (check applicable box):

- [ ] Proposed Regulation
- [ ] Final Regulation
- [X] Final Omitted Regulation
(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Chapter 405 establishes a structure, framework, standards and procedures for the Pennsylvania Pre-K Counts grant program and for the provision of high quality pre-K programs for three and four-year-olds by recipients of these competitive grants. The regulation describes the application process, how programs are to be planned and coordinated, reporting requirements, operational criteria and fiscal responsibilities.

(9) Include a schedule for review of the regulation including:

| A. The date by which the agency must receive public comments: | N/A |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | July, 2010 |
| D. The expected effective date of the final-form regulation: | July, 2010 |
| E. The date by which compliance with the final-form regulation will be required: | July, 2010 |
| F. The date by which required permits, licenses or other approvals must be obtained: | July, 2010 |

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

Department of Education policy is to review its regulations every 5 years.
(11) State the statutory authority for the regulation. Include specific statutory citation.


(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This regulation is authorized by Act 45 of July 20, 2007, P.L. 278, No. 45, 24 P.S. §15-1513-D(1).

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

This regulation is needed to establish minimum standards for the operation of the grant program. The Commonwealth currently invests $86.4 million in the Pennsylvania Pre-K Counts program. There are currently no regulations in place that provide standards and operational requirements for this program. Chapter 405 establishes minimum standards based on research about best practices and the framework necessary to deliver high quality educational services to three and four year olds. The regulation is consistent with existing regulations governing pre-kindergarten programs established by school districts and operating under Chapters 4, 11, and 12 of the State Board of Education regulations in Title 22 of the Pa. Code and existing policies and standards of the Department. They are intended to ensure that taxpayer investments in pre-kindergarten programs will return the best possible educational outcomes by instituting best practices, standards and procedures for these programs. Currently, 11,841 three and four year-olds in the Commonwealth are benefiting from this program. The Commonwealth as a whole will benefit fiscally at it derives long term benefits and cost savings that accrue from ensuring that children are academically, socially, and emotionally ready for school when they begin kindergarten or first grade.
Regulatory Analysis Form

and as the need for remediation, grade retention and special education services diminishes.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.


http://www.portal.state.pa.us/portal/server.pt?open=18&objID=381891&mode=2

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No adverse affects of these regulations are anticipated. The requirements in these regulations maintain the already existing standards developed through guidelines that assist applicants in applying for the competitive grant funds appropriated for the program and guide funding decisions made by the Department to ensure that programs are of high quality and based on well researched best practices.

(16) 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.

The grant recipients and their partner providers will be required to comply with these regulations. For the 2008-09 program year, that includes 155 Lead Agencies. When including provider partners in the tally, there are 318 PA Pre-K Counts recipients of grant funds through which Pre-K services are provided to 3 and 4 year-olds.

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

Compliance does not impose any costs on eligible applicants for this competitive grant program and the program is designed and administered by the Department so the costs of providing the program are paid through grant funding. Any operating program costs not paid for under the program grants are at the discretion of the grant recipients and their provider partners as the size of the grant is intended to cover all program costs.
(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. Explain how the dollar estimates were derived.

Over time, compliance with these requirements will create cost savings to school districts, as demonstrated by the cost benefit analysis conducted by Dr. Clive R. Belfield for the Department showing that high quality pre-kindergarten programs can derive a return of $1.12 for every $1 invested in pre-kindergarten in Pennsylvania, with reduced special education placements. Additional dollars will be saved as student retentions decrease and remediation needs are diminished. These are the anticipated benefits as more students enter kindergarten well prepared and do not fall behind in academic achievement.

(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 which may be required. Explain how the dollar estimates were derived.

The cost of education can be expected to be reduced as more children enroll in high quality pre-kindergarten programs, Pennsylvania Pre-K Counts chief among them, and enter kindergarten and first grade ready for a challenging academic educational experience. The Commonwealth will share in the cost benefits of reductions in special education, remedial, and retention program costs.

(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.

<table>
<thead>
<tr>
<th></th>
<th>Current FY Year</th>
<th>FY +1 Year</th>
<th>FY +2 Year</th>
<th>FY +3 Year</th>
<th>FY +4 Year</th>
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<td><strong>SAVINGS:</strong></td>
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<td>Local Government</td>
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(20a) Provide the past three year expenditure history for programs affected by the regulation.

<table>
<thead>
<tr>
<th>Program</th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
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</thead>
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<td>Pre-K Counts</td>
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<td>$75,000,000</td>
<td>$86,412,000</td>
<td>$86,412,000</td>
</tr>
</tbody>
</table>

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

These regulations add no additional costs, nor are there any adverse effects of the program and these regulations. The regulations will benefit the program by helping to ensure maintenance of the program’s high quality standards and implementing practices that will help ensure that future benefits and cost savings to the Commonwealth and the public schools will occur.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The development of this regulation was aided by consultation with the Advisory Committee for the Pennsylvania Pre-K Counts program. This committee was consulted during the initial drafting process and as the regulation was being reviewed and refined for final submission to IRRC. In addition, a group of stakeholders received an early copy of the draft and was invited to comment both in writing and to participate in a meeting with department staff developing the draft regulation. This group was comprised of representatives of the following groups:

Early Intervention Providers Association
Education Law Center
(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department has already used non-regulatory alternatives to address many of the requirements proposed in this regulation. The Department has issued guidelines to potential applicants for grant funds and a series of implementing announcements to those awarded with grants. Since the Department’s guidance and announcements do not have binding legal authority, the regulations are needed to ensure that all Grantee and providers of Pennsylvania Pre-K Counts use the same broadly accepted standards for high quality and best practices reflected in this new regulation. The Department’s efforts to responsibly monitor the program and measure outcomes for children require a coherent and consistent scheme for program implementation and measurement of results. This proposed regulation is the least burdensome acceptable approach to administration and oversight of the program.

(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 regulations.

There are no current federal standards for pre-kindergarten. The most comparable program is the federal Head Start program, which has standards that are at least as stringent as those proposed for Pennsylvania Pre-K Counts.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania’s ability to compete with other states?

While Pennsylvania has been looked to by other states as a leader in creating a coherent framework for high quality early childhood programming, this regulation is similar in scope and detail to the regulating framework used by other states. The array of early childhood programs in Pennsylvania, of which Pennsylvania Pre-K Counts with this regulation is a large part, enhance the Commonwealth’s competitive position.
(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This new regulation is aligned with existing regulations for education programs at the kindergarten through grade 12 levels. It will have no direct impact on other regulations of the department or any other state agency.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No additional procedures or reporting are required by this regulation.

(28) 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.

These regulations and the program they help implement are developed to address the unique learning needs of children aged three and four. The program targets resources to children who are at risk of school failure and defines that population to include children with developmental delay and disabilities, children who are economically disadvantaged, English language learners and other children whose educational prospects are circumscribed by community and environmental factors that limit their likely success. The regulations and entire framework of the program are designed to help ensure that these children have a better opportunity to succeed in school and in their lives as a whole.
FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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

By: ____________________________
(Deputy Attorney General)

Department of Education
(Agency)

DOCUMENT/FISCAL NOTE NO. #006-319

DATE OF ADOPTION: ____________________________

Gerald L. Zahorchak D.Ed.

DATE OF APPROVAL

Deputy General Counsel
(Chief Counsel),
(Independent Agency)

(Strike inapplicable title)

TITLE: Secretary of Education

( ) Check if applicable
Copy not approved.

( ) Check if applicable.
No Attorney General approval
Or objection within 30 days
After submission.

FINAL OMITTED REGULATION
COMMONWEALTH OF PENNSYLVANIA

22 PA. CODE, CH. 405
PENNSYLVANIA PRE-K COUNTS REQUIREMENTS, STANDARDS, AND PROCEDURES
PREAMBLE

Title 22 – EDUCATION

Pennsylvania Department of Education

[22 PA. CODE CHAPTER 405]

Pennsylvania Pre-K Counts

The Pennsylvania Department of Education (Department) amends Title 22 of the code by adding Chapter 405, relating to the Pennsylvania Pre-K Counts program, to read as set forth in Annex A.

Public notice of the intention to adopt this final-omitted form rulemaking under the procedures specified in sections 210 and 202 of the Act of July 31, 1968, P.L. 769, No. 240, 45 P.S. §§1201-1202, has been omitted as authorized under section 1513-D (1) of Subarticle XV-D of the Public School Code, added by the Act of July 20, 2007 (P.L. 278, No. 45). Public comment is unnecessary because the authorizing statute for the program to which these regulations apply has given the Department authority to promulgate regulations and establish guidelines necessary to implement the Act.

Entities affected by this regulation have been notified of the intention of the Department to issue final-omitted form rulemaking and will receive electronic notice of the final promulgated regulations by means of an Announcement to all program Grantees. Individuals and stakeholder organizations will be notified of the final rule through the BUILD list serve which reaches over 7,300 recipients.

Statutory Authority


Background

The Act of July 20, 2007, P.L. 278, No. 45 established the Pennsylvania Pre-K Counts program as a competitive grant program to expand pre-kindergarten opportunities for eligible students throughout the Commonwealth. It directed the Department to promulgate regulations and establish guidelines and standards necessary to implement the program. The Act requires that regulations be promulgated in accordance with the procedures set forth in the Act of July 31, 1968, P.L. 769, No 240, as amended, 45 P.S. §§1102-1602, referred to as the Commonwealth Documents Law and the Act of June 25, 1982, P.L. 633, No 181, as amended, 71 P.S. §§ 745.1-745.15, known as the Regulatory Review Act, for promulgation and review of final omitted regulations. Subsequent
The Pennsylvania Pre-K Counts program serves children who are at least three years of age and younger than the entry age for kindergarten in their school district of residence and must be provided free of charge. However, families that can afford to pay some or all of the cost for the program may do so but they may not be solicited to pay. Grants are awarded through a competitive grant process to school districts, Head Start recipients, licensed nursery schools, child care centers and group child care homes that are at least a STAR 3 under the Keystone STARS quality rating system established by the Department of Public Welfare and third party entities that will carry out the administrative and fiduciary provisions of the program but not operate a classroom funded by the grant. The programs must target enrollment to children who are most at risk of school failure, which is defined as living in households below 300% of the federal poverty rate, are English language learners, or are at risk due to community factors, academic difficulties or economic disadvantage. Grant recipients must verify income and family size before enrolling students. Children with identifiable disabilities or developmental delays may be included in the program and must be served in inclusive environments in which they constitute no more that 20% of the initial enrollment at the start of the program year.

Grant funds may not be placed in a reserve account or used for administrative purposes. They may only fund programs that provide no fewer than 180 days of pre-kindergarten services, include a minimum of two and a half hours of instructional services in half-day programs and a minimum of five hours of instructional services for full-day programs. Program providers may have a delayed start-up in the first year of their participation in the program and offer fewer than 180 days of instructional services upon approval by the Department. Classroom size is restricted to no more that 20 students (with 17 students preferred as in the State Board of Education regulations in Chapter 4) with two adult staff—a teacher, who must be certified in early childhood education by December of 2011, and a teacher aide who is highly qualified. To be considered highly qualified a teacher aide must have completed two full years of post secondary study, hold a child development associate’s credential or an associate’s degree or higher, or pass a rigorous formal state or local assessment demonstrating knowledge. Continuing professional development must be provided to both teachers and teacher aides. In addition, teachers must complete a year-long teacher induction program, undergo evaluations and apply for Level II certification per Chapter 49 of the State Board of Education regulations.

In planning programs, providers must coordinate and collaborate with early intervention and Head Start agencies, school districts, community engagement groups and other area providers of pre-K services. In particular, grantees should coordinate the availability of services with other Office of Child Development and Early Learning programs which have waiting lists. Grantees operating in partnerships with other entities must have written partnership agreements explaining how they will operate. Providers must have plans for parental engagement, transition of students to kindergarten, immunizations, and emergency response.
The program's curriculum must be aligned with the early learning standards established by the Department and grantees and their provider partners must perform all other duties pursuant to applicable regulations and standards, including assessment of student progress and the classroom environment. Eligible students may not be included in school district calculations for average daily membership for the purpose of fund reimbursements under Article XXV of the Public School Code.

The Department has the responsibility under the statute to promulgate regulations and establish guidelines and standards that address the process through which eligible providers may apply for grant funds, allowable and required uses of the funds, per-student funding levels and the criteria for identifying approved providers. The Department must also identify student and program assessments to be used by approved providers, encourage the development and maintenance of community coordination and partnerships, and perform all other functions necessary to carry out the program, including the monitoring of approved providers.

Fiscal Impact and Paperwork Requirements

This program will have no fiscal impact on the Commonwealth or its political subdivisions because the cost of the program is fully paid for by funds appropriated by the General Assembly.

Effective Date

The final-omitted rulemaking will become effective upon publication in the Pennsylvania Bulletin.

Sunset Date

The Department will review the implementation of the program and the effectiveness of the regulation on a continuous basis. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), a copy of the final-omitted regulations has been submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Education on January 27, 2010 for review and comment. A copy of the final-omitted regulations will also be submitted on the same date to the Attorney General for review and comment under the Commonwealth Attorneys Act, Act of October 15, 1980, P.L. 950, as amended, 71 P.S. §§ 732-101-732-506.

Contact Person

The official responsible for information on this final-form rulemaking is Harriet Dichter, Deputy Secretary for the Office of Child Development and Early Learning of the
Findings

The Department of Education finds that:

(1) Public notice of the intention to promulgate a regulation for the Pennsylvania Pre-K Counts program has been omitted under the authority contained in section 1512-D (1) of the Public School Code, as amended, 24 P.S. § 15-1512-D.

Order

The Department, acting under authorizing statute, orders that:

(a) The regulations of the Department of Education, 22 Pa. Code are amended by adding § 405 as set forth in Annex A.

(b) The Secretary of Education will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Secretary of Education shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon publication in the Pennsylvania Bulletin.

Gerald Zahorchak
Secretary
CHAPTER 405.
PA PRE-K COUNTS

GENERAL PROVISIONS

Sec.

405.1 Purpose.
The purpose of these regulations is to establish rules and procedures for implementing the PA Pre-K Counts program created to provide expanded access to high quality pre-kindergarten experiences for eligible children.

405.2 Definitions.
The following words and terms, when used in these regulations have the following meanings, unless the context clearly indicates otherwise:

Act - Subarticle XV-D of the Public School Code, added by the Act of July 20, 2007 (P.L. 278, No. 45).

Approved provider - An eligible provider that has been approved by the Department of Education to offer pre-kindergarten under Act.

At-risk child - A child who is at risk of educational failure because of factors such as economic disadvantage, limited English proficiency, academic difficulties, or individual or community factors.

CDA - Child Development Associate credential.

Department - The Department of Education of the Commonwealth.

Eligible applicant - Any of the following entities:
(1) A school district
(2) A Head Start program
(3) A nursery school licensed under the Act of January 28, 1988 (P.L. 24, No.11), known as the Private Academic Schools Act
(4) A regulated child day care center or a group day care home that is designated a STAR 3, or higher under the Keystone STARS quality rating system established by the Department of Public Welfare, as of the beginning of the 2009-10 program year
(5) A third party entity that will carry out fiduciary and other Lead Agency responsibilities for entities eligible to operate program classrooms.
Eligible provider – Any of the following entities, if the entity complies with all quality program standards, guidance and Announcements established by the Department of Education:

(1) A school district
(2) A Head Start program
(3) A nursery school licensed under the Act of January 28, 1988 (P.L. 24, No.11), known as the Private Academic Schools Act
(4) A regulated child day care center or a group day care home that is designated a STAR 3, or higher under the Keystone STARS quality rating system established by the Department of Welfare, as of the beginning of the 2009-10 program year.

Eligible student – As defined in the Act.

Grant – An award of funds by the Department for the purposes of carrying out the PA Pre-K Counts program.

Identified developmental delay or disability - As used in these regulations, a child who has a written Individualized Education Program under Chapter 14 (relating to special education programs and services) and the federal Individuals with Disabilities Education Improvement Act.

Lead Agency – An entity that submits an application for funding and will undertake reporting, recordkeeping, compliance and fiduciary responsibilities for the members of a Partnership under the grant.

Location – The site, place, or address where classroom services are provided.

Partner – One, or more, entities that are in a formal relationship with a Lead Agency to provide program services using grant funds and that have signed a written Partnership Agreement.

Partnership Agreement – The written document that specifies the roles and responsibilities of all entities in the Partnership established to provide Pre-K program services using grant funds.

Program – The PA Pre-K Counts Program established under the Act.

Program year – The school–year during which PA Pre-K Counts program services are delivered to children enrolled in the program.

Teacher – The primary teacher in the classroom who is responsible for the instruction of children and meets the requirements of 405.44 (relating to staffing and professional development.

Teacher Aide – A Paraprofessional who provides instructional support to students, including those who (1) provide one-on-one tutoring if such tutoring is scheduled at a
time when a student would not otherwise receive instruction from a teacher, (2) assist with classroom management, by organizing instructional materials, (3) provide instructional assistance in a computer laboratory, (4) conduct parental involvement activities, (5) provide instructional support in a library or media center, (6) act as a translator, or (7) provide instructional support services under the direct supervision of a the lead teacher.

405.3 General Rules.
(a) All program services shall be provided free of charge.
(b) Nothing in this section shall be construed to prevent families with children who participate in PA Pre-K Counts and are willing and able to pay part or all of the cost of such participation, from doing so. Approved and eligible providers and Lead Agencies are prohibited from soliciting costs from families.
(c) A student participating in the program shall not be included in the average daily membership or adjusted average daily membership of an approved provider school district for the purpose of reimbursement under Article XXV of the Public School Code.
(d) All programs must be open to children with identified developmental delays and/or disabilities and must provide inclusive environments for these children.
(e) Approved providers may enroll eligible children who reside outside of the providers’ usual attendance area but all eligible children must be residents of Pennsylvania.
(f) PA Pre-K Counts grant funds are to be used for providing services and programs to age-eligible children as described in 405.21 (relating to targeting children to be served), however, PA Pre-K Counts classes may include children supported by alternative funding sources, including Early Intervention, Head Start, school district or other public funds. In addition, those other funding sources may be used to support a student in a PA Pre-K Counts program outside the age requirements or the two year time limitation.
(g) Approved providers must verify the income and family size of all children participating in the program prior to enrollment pursuant to program announcements issued by the Department.
(h) Program providers must comply with program announcements issued by the Department.
(h) The Department shall administer the program consistent with the statutory authorization.

COMPETITIVE APPLICATION PROCEDURES

405.11 Eligible provider.
An eligible provider may apply for a grant alone or in combination with other eligible providers as a joint applicant, in which case the entity that applies for the grant shall be the Lead Agency in a Partnership, as defined in 405.2 (relating to definitions).

405.12 Proposal submission.
(a) The Department shall announce through its website that competitive grant applications are to be submitted to the Department, specifying the submission deadline.
(b) In order to be considered for a grant award an applicant must meet the deadline for submission of all information by the dates announced in the request for applications.

405.13 Grant agreements.
(a) After an eligible provider has been approved, the provider or Lead Agency must enter into a grant agreement with the Department. Grant agreements must contain, at a minimum, a work statement and budget.
(b) Grantees shall contact the Department for guidance if a change needs to be made to the scope of work or the budget contained in the grant agreement.

405.14 Annual Community needs assessment.
All applicants for program funding must conduct an annual assessment of community needs for Pre-K services as part of the application process for continuation, expansion or new grant funds.

PROGRAM PLANNING

405.21 Targeting children to be served.
The Department shall instruct applicants to target their program enrollment to children who are most at risk, consistent with the description in the program guidance of targeting services to children most at risk, if it is likely that the funds appropriated for the upcoming program year will be less than the funds required to serve all eligible children in the Commonwealth. The Department shall also instruct approved providers to engage in outreach and partnership with Child Care Works, Head Start, and other appropriate programs of the Office of Child Development and Early Learning to inform programs and families that they serve about the availability of PA Pre-K Counts and to coordinate with these programs, particularly when there are waiting lists.

405.22 Maximizing resources.
Approved providers shall use PA Pre-K Counts grant funds to supplement, not to supplant, public funds from any other source that are used to serve otherwise eligible students, including but not limited to Accountability Block Grant funds, local funds, or federal or state Head Start funds for programs provided in the same geographic area. However, this requirement does not prohibit combining funding sources for support of a single program as long as additional eligible students are served and all of the PA Pre-K Counts program standards are met by the program supported with combined resources.

405.23 Disallowance of duplicate funding.
Program funds may not be used to provide the same service for a child already receiving that service funded by another resource.

405.24 Enrollment.
Each approved provider must develop and implement a plan for securing full enrollment on the first day of class for the program year and maintaining full enrollment throughout the program year, except as described below:
(a) When a student leaves the program after the start of the program year, the provider shall have up to 20 instructional days to fill the vacancy, after which time the Department may request the return of funds or reduce future payments for the vacated and unfilled slot in the amount of funds relative to the remaining instructional days of the program for that program year, unless the vacancy occurs within 21 instructional days of the last day of class.

(b) If an enrolled child has 10 or more unexcused absences the provider must take appropriate steps to address attendance, up to and including dismissal of such child from the program. The Department may request the return of funds or reduce future payments to programs that have not taken appropriate steps to overcome unexcused absences.

(c) Provider policies regarding unexcused absences and the number allowed must be written and provided to parents, families, or guardians of enrolled children, and to the Department.

PROGRAM COORDINATION AND COLLABORATION

405.31 Coordination and collaboration with agencies providing services to young children.

(a) Approved providers must coordinate and collaborate with the local agencies providing Early Intervention services to Infants and Toddlers in order to ensure a smooth transition for children and families that have been receiving services from Early Intervention.

(b) Approved providers must coordinate and collaborate with the local agencies providing Early Intervention services to Preschool age children in order to ensure the following:

(1) A smooth transition for children and families that have been receiving services from Early Intervention,

(2) Coordination of any continued Early Intervention services the child will receive while enrolled in PA Pre-K Counts,

(3) Awareness of the available Early Intervention services for children enrolled in PA Pre-K Counts who have not been identified as in need of Early Intervention services but who may be eligible for such services, and the capacity to provide appropriate information to parents and make appropriate referrals for Early Intervention evaluations and services.

(c) Approved providers must coordinate and collaborate with the Child Care Information Services agency in their area to coordinate services and benefits received by families and to achieve enrollment in the PA Pre-K Counts program of children who are most at risk and in need of services.

(d) Approved providers must coordinate and collaborate with programs that provide the before and after Pre-K program child care for participating children so that transportation arrangements, emergency contacts and other necessary information are shared and so that the needs of families whose children are enrolled in PA Pre-K Counts are met.

(e) Approved providers must coordinate and collaborate with Head Start agencies in a manner that reduces any possibility of lessening Head Start enrollment and funding, and consolidate activities, such as professional development, to the extent practicable, to the advantage of both programs and creation of greater efficiencies.
(f) Approved providers must coordinate and collaborate with school districts in those areas from which they are enrolling children in the program to develop and implement plans for a smooth transition for children who will leave the program to be enrolled in the school districts' K-12 program; to ensure alignment of curriculum and standards between the program and the K-12 school district program; and to consolidate activities, such as professional development, to the extent practicable, to the advantage of both programs and creation of greater efficiencies.

(g) Approved providers must coordinate and collaborate with the local community groups that engage the public in issues related to early childhood education.

(h) Approved providers must coordinate and collaborate with other PA Pre-K Counts sites in their county on activities such as professional development, family outreach and child enrollment strategies, to the extent practicable to the advantage of all of the programs and creation of greater efficiencies.

405.32 Partnerships
Partnerships of eligible providers must have a signed Partnership Agreement which Agreement must be submitted to and approved by the Department. The Partnership Agreement must delineate how the entities that comprise the Partnership will carry out their roles and responsibilities within the program, including: communication, decision-making, reporting, monitoring of program requirements, record keeping, and fiduciary matters.

PROGRAM AND CLASSROOM REQUIREMENTS

405.41 School term
(a) Programs shall offer a minimum of 180 days of developmentally appropriate instructional practices and activities for students;

(1) In the first year of operation as a provider, if the provider is unable to start up immediately at the beginning of the program year, the provider may serve children for fewer than 180 days, but in no case fewer than 160 days.

(2) Days may not be counted as days of developmentally appropriate practices and activities when the program is closed, and time may not be counted as time spent on developmentally appropriate practices and activities for an activity to which admission is charged.

405.42 Program day and developmentally appropriate instructional practices and activities.
Instructional time for students shall be time in the program devoted to developmentally appropriate instructional practices and activities provided as an integral part of the program under the direction of qualified employees.
(a) The following practices and activities, as described in the Early Learning Standards, count towards instructional time:

(1) Classroom instruction;

(2) Orientation of children during regular school hours to the program, program setting, and program routines conducted;
(3) Meals and snack-time, as long as they are integral parts of the curriculum, facilitated by the lead teacher and used for student learning experiences;
(4) Play-time, including outdoor and indoor play or child directed activities as long as they are an integral part of the instructional day, facilitated by the lead teacher and used for student learning;
(5) Time spent at the library, and in art, music or physical education;
(6) Opening exercises that engage children, including opening circle time, in preparation for the day;
(7) School, group, or class educational trips to which admission is not charged to students or parents and provided that a teacher accompanies the students;
(8) Student services, such as guidance and counseling services, psychological services, speech pathology and audiology services, and student health services;
(9) Civil defense, fire, bus evacuation and similar drills;
(10) Early dismissal and delayed opening only when due to inclement weather.
(b) Time spent in transportation, professional development, and parent/teacher conferences does not count as instructional time.
(c) In addition to the activities described in subparagraph (a), home visiting may be counted toward required instructional time, provided that the home visits are of sufficient frequency and duration for each child so as to constitute the equivalent of classroom hours missed and that this activity has been approved by the Department in advance of implementation.

405.43 Class size and student/staffing ratio.
(a) PA Pre-K Counts class enrollments are limited to at most twenty (20) students with at least one teacher and one aide in the classroom, however, for high quality programming a maximum of seventeen (17) students is recommended.
(b) If a PA Pre-K Counts class has ten (10) or fewer students, then there must be one teacher in the classroom and an aide must be available on site to assist the teacher as needed.
(c) Whenever the enrollment in a class exceeds twenty (20), the class must be divided into two (2) classes so that each class individually does not exceed (20) students. Each class must be properly staffed and, if space is to be shared, that space must be divided by a barrier that adequately separates the spaces for instructional purposes.

405.44 Staffing and professional development
(a) Teachers of eligible students supported by PA Pre-K Counts funding must meet the requirements specified below:
(1) In school districts teachers must have early childhood education certification.
(2) In Head Start and child care programs teachers must possess a minimum of an associate's degree in early childhood education or child development.
(3) In licensed nursery school programs teachers must have a minimum of a bachelor's degree, 18 credits from an institution of higher education in early childhood education and a private academic teaching or temporary approval certificate.
(4) No later than December 31, 2011, all teachers in PA Pre-K Counts classrooms must have early childhood education certification.

(b) All teacher aides in any classroom of eligible students supported by PA Pre-K Counts funding must meet one of the following criteria:
   (1) Completion of at least two years of full-time postsecondary study or the equivalent
   (2) Possession of an associates degree or higher
   (3) Ability to meet a rigorous standard of quality and demonstration of knowledge through a formal state or local academic assessment or possession by the teacher aide of a Child Development Associate’s (CDA) certificate.
   (4) Teacher aides who work solely as translators must have a high school diploma or its equivalent, and do not have to meet any of the other requirements of (b)(1) through (3).

(c) A lead teacher in the program, including those in community-based settings, including outdoor and indoor play or child directed activities with an Instructional Level I certificate must convert the certificate to an Instructional Level II certificate within 6 years from the time of initial service as an Instructional Level I teacher in the program. Teachers holding an Instructional Level I early childhood certificate may count their time working in a PA Pre-K Counts community-based program toward the 3 years of required experience necessary before converting the certificate to an Instructional Level II certificate, in accordance with the requirements of the Department, including a year’s participation in a Department approved teacher induction plan, 6 bi-annual evaluations and the Department specified continuing professional development credits.
(d) All PA Pre-K Counts teachers must take-up continuous professional development as specified by the Department and, at a minimum, meet the requirements of the Act of November 23 of 1999 (P.L. 529 No. 48), as amended.
(e) All PA Pre-K Counts teacher aides must take a minimum of 24 hours of continuous professional development as specified by the Department, and in early childhood education and development, each year.

405.45 Curriculum.
(a) The curriculum used in any classroom that includes a child who is enrolled in the program must be standards-based.
(b) The curriculum used in the program must be determined by the Department to be aligned with the Early Learning Standards established by the Department.

405.46 Assessment.
(a) Approved providers must assess eligible students with a minimum frequency determined by the Department using an assessment tool approved by the Department.
(b) Program providers must participate in Department conducted training in the use of the assessment tool as prescribed by the Department.
(c) Approved providers must report aggregate assessment information to the Department for purposes of program monitoring, evaluation, reporting child outcomes and accountability in a manner and with a frequency and schedule determined by the Department.
(d) Program providers must participate in a Department conducted assessment of the PA Pre-K Counts learning environment and attend such training in the use of the environmental self-assessment tool as prescribed by the Department.

405.47 Parent involvement.
Providers must develop and implement a plan for involvement and input of parents, families and guardians of children enrolled in the program to inform them of program goals, instructional strategies, and the progress of their children and to involve them in supportive activities designed to help ensure their child’s success.

405.48 Program transition planning.
(a) Providers must develop and implement plans designed to ensure a smooth and supportive transition for children entering the program from the setting from which they are coming, including the home, Early Intervention services, Early Head Start, or child care.
(b) Providers must develop and implement plans to ensure a smooth and supportive transition for children leaving the program to enter kindergarten and the K-12 school environment.

405.49 Immunizations.
Providers must meet the immunization requirements that pertain to their provider type; for school districts and licensed nursery schools 28 Pa. Code §§ 23.81-87 (relating to immunization), for child care centers and group child care homes 28 Pa Code 27.77 (relating to immunization requirements for children in child care group settings), and for Head Start agencies 45 CFR §1304.20, the federal Head Start Performance Standards.

405.50 Emergency response plans.
Providers must develop, implement, and review and revise annually, as necessary, a comprehensive disaster and emergency response plan that meets the guidelines of the Pennsylvania Emergency Management Agency. See, Practical Information on Crisis Planning: a Guide for Schools and Communities, at www.pema.state.pa.us.

405.51 Inclusive environments.
A PA Pre-K Counts classroom may not consist of more than 20% of the participants having been identified by the start of the program year as having a developmental delay or disability, with an allowance for a higher percentage as specified by the Department.

RECORD KEEPING, REPORTING AND ATTENDANCE AT DEPARTMENT SPONSORED MEETINGS AND TRAINING

405.61 Program reporting.
Approved providers shall provide such reports as requested by the Department and in the manner and at times as prescribed by the Department, including but not limited to expenditure reports, reconciliation of cash reports, enrollment, attendance, demographic information and child outcomes.
405.62 Record keeping. Approved providers shall maintain all records pertinent to the program, including but not limited to financial, statistical, property, changes in Keystone STARS status, child care certificate, nursery school license, teacher evaluations and recommendations, and any other supporting documentation, for a period of at least seven (7) years from the date of submission of their final closeout report, or until all audits are complete and findings have been completely resolved, whichever occurs last.

405.63 Attendance at Department sponsored meetings and training. Approved providers shall attend any mandatory meetings and training sessions arranged by the Department.

405.64 Teacher induction plans and evaluations. Approved providers shall facilitate activities that teachers must undertake in order to advance their certification from Instructional Level I to Instructional Level II. (a) Providers shall implement a teacher induction program that meets the requirements of Pa Code 22, Chapter 49, Sections 49.16 (relating to approval of induction plans) and 49.83 (relating to Instructional II) and implementing Department guidelines, and that has been approved by the Department and facilitates the involvement of teachers in the program. (b) Providers shall conduct or make available to teachers holding Level I teaching certificates bi-annual evaluations as are necessary for Level I certificate holders to be recommended for a Level II teaching certificate.

GRANTEE FISCAL RESPONSIBILITIES

405.71 Segregation of funds. An approved provider that receives grant funds under this program shall maintain a separate account in its budget to facilitate monitoring and auditing of the use of the grant funds. If the approved provider is a school district, the school district shall not place grant funds in a reserve account.

405.72 Grant awards. (a) Grants shall be awarded by the Department to approved providers on a per-child basis, in an amount set by the Department, for each eligible student served by an approved provider. (b) The amount of grant funds provided per-student shall not exceed the cost of administering the approved provider’s pre-kindergarten program.

405.73 Use of funds. (a) Funds may only be used for the costs associated with providing program services to eligible children enrolled in the program. (b) No funds may be used for administrative or indirect costs.
January 27, 2010

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

Dear Mr. Kaufman:

Enclosed is a copy of a final omitted regulation approved by the Department of Education (22 Pa. Code, Chapter 405, Pennsylvania Pre-K Counts Requirements, Standards, and Procedures, #006-319), for review and action by the Commission pursuant to the provisions of section 5.1(c) of the Regulatory Review Act.

The Department of Education will provide your Committee with any assistance you may require to facilitate a thorough review of this final-form regulation.

Thank you for your consideration.

Sincerely,

Ernest N. Helling
Assistant Chief Counsel

Enclosure

cc: Gerald L. Zahorchak, Secretary
Jim Buckheit, State Board of Education, Executive Director
Gregory Dunlap, Esq.
Teresa Colarusso
## TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

<table>
<thead>
<tr>
<th>I.D. NUMBER:</th>
<th>6-319</th>
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<tr>
<td>SUBJECT:</td>
<td>PENNSYLVANIA PRE-K COUNTS REQUIREMENTS, STANDARDS, AND PROCEDURES</td>
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<td>AGENCY:</td>
<td>DEPARTMENT OF EDUCATION</td>
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### TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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

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<td>1/27/10</td>
<td>Eileen Knick</td>
<td>HOUSE COMMITTEE ON EDUCATION Rep. Clymer</td>
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<td>D. Stoffa '17</td>
<td>SENATE COMMITTEE ON EDUCATION Sen. Andrew Arimian</td>
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<td>MAJORITY CHAIRMAN Sen. Jeffrey Piccola</td>
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<td>1/27/10</td>
<td>Kathy Cooper</td>
<td>INDEPENDENT REGULATORY REVIEW COMMISSION</td>
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<td>ATTORNEY GENERAL (for Final Omitted only)</td>
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January 19, 2010