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INDEPENDENT REGULATORY  
REVIEW COMMISSION  
2012 JUL 27 AM 9:48

# Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Education

(2) Agency Number:

Identification Number: 6-324

IRRC Number: 2961

(3) PA Code Cite: 22 Pa. Code Chapter 73

(4) Short Title: State Board of Private Licensed Schools

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

Primary Contact: Patricia A. Landis  
(717) 783-8228  
[plandis@pa.gov](mailto:plandis@pa.gov)

Secondary Contact: John Galganovicz  
(717) 783-8228  
[jgalganovi@pa.gov](mailto:jgalganovi@pa.gov)

(6) Type of Rulemaking (check applicable box):

- Proposed Regulation  
 Final Regulation  
 Final Omitted Regulation

- Emergency Certification Regulation;  
 Certification by the Governor  
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The regulations govern the operation of private licensed schools, including the licensing and enforcement procedures of the Board of Private Licensed Schools. Several amendments are proposed to clarify certain provisions. The main substantive changes are an increase in the minimum surety coverage, a change in the acceptable methods for documenting instructor qualifications, clarification that a violation of the ethics statement is a violation of the regulations, clarification for the purpose of calculating and issuing student tuition refunds, enlargement of the time for the issuance of refunds to students, and the elimination of the tiered fine structure.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 4(a) of the Private Licensed Schools Act, Act No. 174 of 1986 (24 P.S. §§6504(a)).

(9) 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.

Yes. Section 4(a) of the Private Licensed Schools Act (24 P.S. §6504(a)) requires the Board to establish standards, rules and regulations.

(10) 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.

The Private Licensed Schools Act empowers the Board to promulgate rules and regulations for licensing and administrative procedures.

Approximately 250,000 Pennsylvania students and approximately 300 private licensed schools are the primary beneficiaries of these regulations. Secondary beneficiaries are the employers who hire private licensed school graduates. The resources these students provide are vital to a skilled workforce in a wide variety of skilled trades, business, and industrial positions in the Commonwealth.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

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

The regulation will require private licensed schools to pay for increased surety, which would cost approximately \$200 - \$500 per year.

(13) 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.

New applicants for licensure and approximately 300 existing private licensed schools will be required to comply with these regulations.

(14) 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.

Those schools which are not currently covered by the proposed new minimum surety levels will incur increased surety premiums. These costs are estimated to be less than \$500 per school per year. This estimate is based on the average cost of surety. Costs vary based on the institution's credit rating, but the average cost ranges from 1% to 2%.

(15) 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.

There will be no cost or savings to local government associated with compliance.

(16) 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.

There will be no cost or savings to state government associated with compliance.

(17) 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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated Community</b>	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000	\$120,000
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000
<b>Total Revenue Losses</b>						

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>

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

N/A

(19) 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 Board's Executive Committee and Regulations and Policy Review Committee consisting of three (3) public representatives and two (2) school representatives discussed and developed these proposed regulatory changes. The Board has voted its intention to adopt these regulations. The proposed language was distributed to all existing private licensed schools for comment. Four comments were received. One supported the changes completely. Two indicated that the increased surety would be a burden. Two indicated that the proposed instructor qualifications are too rigorous.

(20) 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.

No other regulatory approaches were considered.

(21) 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 applicable federal standards. This is an area solely governed by state law and these regulations were specifically drafted under the authority of the Private Licensed Schools Act.

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

Pennsylvania will not be placed at a disadvantage with other states. The increased surety level correlates with the requirements in other states. Comparison of the other changes to this regulation with other states would be ineffective because these changes relate specifically to Pennsylvania statutes.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No. The regulations will not affect existing or proposed regulations.

(24) 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 changes will be incurred in reporting, record keeping or paperwork requirements.

(25) 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.

The regulation change does not require special provisions to meet the particular needs of affected groups.

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

- |   |                       |
|---|-----------------------|
| A. The date by which the agency must receive public comments:                               | <u>March 31, 2012</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>n/a</u>            |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>April 30, 2012</u> |
| D. The expected effective date of the final-form regulation:                                | <u>July 1, 2012</u>   |
| E. The date by which compliance with the final-form regulation will be required:            | <u>July 31, 2012</u>  |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>n/a</u>            |

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

The State Board of Private Licensed Schools is required by law to monitor its revenues and costs on a biennial basis and revise its regulations as necessary. No sunset date has been assigned.

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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

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

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

*Angela M. Elliott*  
By: \_\_\_\_\_  
(Deputy Attorney General)

Department of Education  
(Agency)

*Megan L. Considine*  
By: \_\_\_\_\_  
Megan L. Considine

DOCUMENT/FISCAL NOTE NO. #006-324

JUL 23 2012

MAY 12 2012

DATE OF ADOPTION: \_\_\_\_\_

DATE OF APPROVAL

DATE OF APPROVAL

BY: *Sandra R. Edmunds*  
Sandra Edmunds

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

TITLE: Deputy Secretary  
Office of Postsecondary and Higher Education

( ) Check if applicable  
Copy not approved.

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

PROPOSED RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA

22 PA. CODE, CH. 73  
STATE BOARD OF PRIVATE LICENSED SCHOOLS



NOTICE OF PROPOSED RULEMAKING

PREAMBLE

DEPARTMENT OF EDUCATION  
STATE BOARD OF PRIVATE LICENSED SCHOOLS

[22 PA. CODE CH. 73]

The State Board of Private Licensed Schools (Board), under the authority granted by the Private Licensed Schools Act (24 P.S. §§ 6501-6518), proposes to amend Title 22 of the Pennsylvania Code, Chapter 73, General Provisions, as set forth in Annex A.

*Description of Proposed Amendments and Reasoning*

The proposed amendment of §73.54(b) raises the minimum surety from \$10,000 to \$25,000 with the maximum surety raised from \$100,000 to \$250,000. Rising tuition costs and school closure rates require higher surety levels to protect students when schools close without delivering the instruction for which the students have paid.

The proposed amendment of §73.104(b) eliminates "Demonstrated competency in the specific field for which training is offered" as a basis to determine that an instructor is qualified. This qualification has enabled a school to subjectively determine that any instructor is qualified to teach any course, which has resulted in substantiated student complaints regarding instructor quality. The proposed revision also updates and tightens the instructor qualification language by

substituting "program" for "field" and changing "journeyman's license" to "industry-recognized certification".

The proposed amendment of §73.112 clarifies that failure to abide by the ethics agreement is a violation of the regulations.

The proposed amendment of §73.135 clarifies options for a school to use to determine a students' last date of recorded attendance.

The proposed amendment of §73.136 clarifies that the date to be used for purposes of calculating the refund due to a student is the same date to be used to determine the beginning of the time period during which the refund must be made. The amendment also extends the length of time that a school has to make a refund from 30 days to a more reasonable time frame of 45 days, thereby allowing for greater compliance.

The proposed amendment of §73.173(k) changes the word "endorsements" to "inducements", which is a correction of a mistake in the original language.

The proposed amendment of §73.189(b) eliminates tiered fines for first, second, and third violations and establishes all fines at the statutory limit of \$1000 per violation, thereby bringing the regulations into line with the maximum fine allowed under the Board's statutory authority.

### *Fiscal Impact*

There is minimal fiscal impact from the proposed changes. The schools that currently maintain surety at a level below the proposed new levels will be required to pay the additional costs associated with increasing the coverage.

Minimal additional revenues may be generated by the elimination of the tiered fine structure depending on the number of successful enforcement actions brought before the Board. These additional revenues are estimated to be approximately \$4000, again depending on the number of actual violations. The increased fines are designed as a deterrent to statutory and regulatory violations, rather than a revenue enhancement.

### *Paperwork Requirement*

No changes are anticipated in paperwork requirements. No additional forms or reporting are required by the regulated schools or the State.

### *Effective Date*

These proposed amendments take effect upon final publication in the Pennsylvania Bulletin. The Board's objective is to have the changes to the regulations in effect by July 1, 2012.

*Sunset Date*

The Private Licensed Schools Act requires that the Board monitor its revenues and costs on a biennial basis, and revise its regulations as necessary. Therefore, no sunset date has been assigned.

*Regulatory Review*

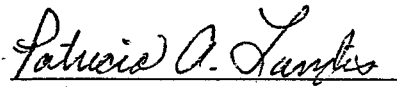
Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on July 27, 2012, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. 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 regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comments and Contact Person*

Interested persons are invited to submit to the State Board of Private Licensed Schools their written comments, suggestions or objections regarding these proposed amendments within 30 days following publication in the Pennsylvania Bulletin. Written comments, suggestions or objections for Board consideration should be sent to Ms. Patricia Landis, Coordinating Secretary, State Board of Private Licensed Schools, 333 Market Street, Harrisburg, PA 17126-0333, and (717) 783-8228, TTY#: (717) 783-8445.

By the State Board of Private Licensed Schools

  
Patricia A. Landis  
Coordinating Secretary

ANNEX A

Title 22. EDUCATION

PART 111. STATE BOARD OF PRIVATE LICENSED SCHOOLS

CHAPTER 73. GENERAL PROVISIONS

§73.54. Surety.

\* \* \*

- (b) *Levels of Surety.* Regardless of the form of surety selected by the school, surety shall be demonstrated to exist at the following levels:
- (1) For a prospective licensee applying for an original license, the required minimum surety level is [~~\$10,000~~] \$25,000.
  - (2) For a licensee applying for a renewal license, the required minimum surety level is [~~\$10,000~~] \$25,000 for licensees with gross tuition collected during the previous fiscal year of \$500,000 or less. For licensees with gross tuition collected during the previous fiscal year in excess of \$500,000, the minimum surety level is [~~\$10,000~~]\$25,000 plus \$25,000 for each \$500,000 or portion thereof of gross tuition in excess of \$500,000 collected during the previous fiscal year. Licensees licensed prior to January 1, 2012 with tuition revenue of \$500,000 per year or less may remain licensed with a minimum surety level of \$10,000.
  - (3) For a licensee applying for a renewal license, the maximum surety level is [~~\$100,000~~] \$250,000.
  - (4) For a registered school, the minimum surety level is [~~\$10,000~~] \$25,000, with subsequent surety levels to be based on tuition generated by residents of this Commonwealth in accordance with the formula in 73.54 (b) (2). The maximum required amount is [~~\$100,000~~] \$250,000.

\* \* \*

§73.104. Instructor.

\* \* \*

(b) *Qualifications.* An instructor shall have one of the following:

- (1) A baccalaureate degree with a major in the specific [field] program of instruction.
- (2) At least 2 years' relevant work experience in the specific [field] program of instruction [which is acceptable to the Director].
- (3) Two years' teaching experience in the specific [field] program of instruction.
- (4) An [journeyman's] industry-recognized certification or license relevant to the specific [field] program of instruction.
- (5) Competency in the specific program of instruction and the ability to teach the program in accordance with Board policy.  
[Demonstrated competency in the specific field for which training is offered.]
- (6) Vocational education certification in the specific [field] program of instruction.

\* \* \*

§73.111. Statement requirement.

(a) An applicant, licensee or registrant shall be required to certify compliance with the Board's statement on reasonable service and business ethics. One of the following shall certify compliance on behalf of the school:

- (1) Owner
- (2) Partner
- (3) Chief Executive Officer
- (4) Director

§73.112. Statement of reasonable service and business ethics.

(a) A school shall sign and submit the following statement:

“Recognizing that a strong private school system is an important part of the educational continuum and that a unique relationship is established between student and school, I/we agree to the following:

In addition to my/our compliance in all respects with the provisions of Act 174, Private Licensed Schools Act and the regulations of the State Board of Private Licensed Schools, I/we will:

Develop and present an educational program which affords students the opportunity to develop program competencies.

Provide a place of instruction, equipment adequate to the number of students enrolled and other facilities which will support the educational objectives of the school.

Maintain school facility in compliance with all applicable health and safety regulations.

Recruit and support a faculty and staff which is committed to student development and learning and supply this faculty and staff with the resources necessary to satisfy student learning objectives.

Honestly promote the school and its programs by ensuring that all student publications, advertising and printed materials contain full and accurate information and that all admissions representatives are completely trained and familiar with the school and its programs.

[Monitor] Ensure that the activities of admissions representatives [on a regular basis] comply with all requirements of the regulations and accurately and honestly represent the school and its programs.

Adhere to all legal requirements concerning the student’s education.

Ensure the delivery of the educational program contracted for as long as students fulfill their contracted obligations to the school.

Cooperate with the State Board of Private Licensed Schools and the Pennsylvania Department of Education to promote and advance the quality of education offered by all schools.

\* \* \*

(b) Failure to comply with the terms of the ethics statement shall constitute a violation of the Board’s regulations.

\* \* \*



§73.135. Termination date.

The termination date for refund computation purposes is the last date of recorded attendance of the resident student or the date the nonresident student requests cancellation. Recorded attendance may be documented by attendance records or a test, quiz, homework or lab assignment, tutoring session or other academic record. If a resident student fails to enter the program, the termination date shall be the date the program begins.

§73.136. Period of refund.

Refunds shall be made within [30] 45 -calendar days of the [date the student fails to enter, leaves the program or fails to return from a leave of absence.] termination date.

\* \* \*

§73.173. Advertisements and Representations.

(k) A school may not offer premiums, special [endorsements] inducements or discounts to prospective students.

\* \* \*

§73.189. Guidelines for civil penalties.

\* \* \*

(b) [For a first violation, a penalty of not more than \$500 may be assessed. For a second violation within 3 years, a penalty of not more than \$750 may be assessed. For a third violation within 3 years, a penalty of not more than \$1,000 may be assessed.] The Board may levy a fine up to \$1000 per student per day for each instance of a violation.



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 27, 2012

Mr. David Sumner  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17126

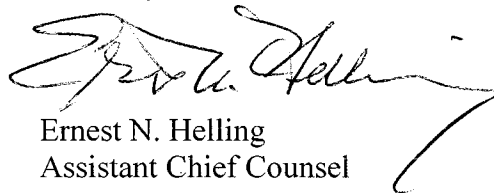
Dear Mr. Sumner:

Enclosed is a copy of a proposed regulation approved by the Department of Education (22 Pa. Code, Chapter 73, State Board of Private Licensed Schools, #006-324), 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 proposed regulation.

Thank you for your consideration.

Sincerely,



Ernest N. Helling  
Assistant Chief Counsel

Enclosure

cc: Ronald J. Tomalis, Secretary  
John H. Jewett, State Board of Education, Acting Executive Director  
Gregory Dunlap, Esquire  
Jordan Gouker



