

Comments of the Independent Regulatory Review Commission



State Board of Private Licensed Schools Regulation #6-324 (IRRC #2961)

General Provisions

November 14, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the September 15, 2012 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Private Licensed Schools (Board) to respond to all comments received from us or any other source.

1. Fiscal impact.

The Preamble to this rulemaking states that the proposed changes related to civil penalties could generate an additional \$4,000 for the Board. The Board's response to Question #17 of the Regulatory Analysis Form states that the rulemaking will impose a revenue loss of \$4,000 for state government, but does not explain the basis for the loss. When the Board submits the final regulatory package, we ask for a more detailed explanation of the fiscal impact the rulemaking will have on state government as it pertains to lost revenue.

2. Section 73.104. Instructor. – Reasonableness; Clarity.

Under Subsection (b), instructors at private licensed schools must meet one of six criteria. We have two concerns. First, a commentator has noted that there are no baccalaureate programs for fields of study such as automotive repair or heating, ventilation and air conditioning. The commentator has suggested that an Associates Degree in Specialized Technology be added to the list of criteria that would qualify an individual as an instructor. Would this type of degree provide an individual with the necessary knowledge and skill to be an instructor? If so, we ask the Board to consider including this degree in the criteria of this subsection.

Second, the proposed criterion found at Subsection (b)(5) states that an instructor must have: "Competency in the specific program of instruction and the ability to teach the program in accordance with Board policy." This requirement is vague and lacks clarity. We recommend that the final-form rulemaking specify what the Board's policy is regarding competency and ability to teach for instructors. In the alternative, we recommend that the final-form regulation identify the specific policy document that outlines how these types of decisions will be made and where that document can be found.

3. Section 73.189. Guidelines for civil penalties. – Statutory authority; Whether the regulation is consistent with the intent of the General Assembly; Reasonableness; Fiscal impact.

The proposed amendments to this section of the regulation delete the tiered fee structure for first, second and third violations and replace it with the following language: “The Board may levy a fine up to \$1,000 per student per day for each instance of a violation.” We have two concerns with the new language. First, we question if the new language is consistent with Section 15(b) of the Private Licensed Schools Act (Act). (24 P.S. § 6515(b)). Section 15(b) of the Act allows the Board to, “levy a civil penalty of up to \$1,000 on any licensee who violates any provision of this act or any person who operates a private licensed school without being properly licensed under this act.” In the Preamble, the Board explains that the proposed regulatory language brings the regulations “into line with the maximum fine allowed under the Board’s statutory authority.” We fail to see how the proposed regulation is consistent with Act and the intent of the General Assembly. We ask the Board to explain how potential fines of \$1,000 per student per day are consistent with “a civil penalty of up to \$1,000 on any licensee.”

Second, we question the reasonableness of the proposed fees. As an example, if a school with 100 students fails to display its license for month in violation of Section 6512(b) of the Act, it could be penalized \$3,000,000. A penalty of this magnitude could force many of Pennsylvania’s private licensed schools to close. We do not believe this approach to deterring violations of the Act and these regulations is reasonable and ask the Board revise it.