

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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

(1) Agency

State Board of Education

(2) Agency Number: 6

Identification Number: 6-329

IRRC Number: # 3064

(3) PA Code Cite: 22 Pa. Code Chapter 18

(4) Short Title: Financial Recovery

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

Primary Contact: Karen Molchanow, Executive Director, State Board of Education, (717) 787-3787, kamolchano@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 rulemaking identifies criteria that the Secretary of Education (Secretary) may consider in determining whether to place a school district in financial recovery status and provides guidance to the Secretary on whether a financial recovery district will be deemed in moderate or severe recovery status. The regulations include the 15 criteria established in the Public School Code and add three additional factors for the Secretary's consideration.

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

Section 621-A(a)(2)(i) of the Public School Code (24 P.S. § 6-621-A(a)(2)(i))

(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.

Act 141 of 2012 added to the Public School Code section 621-A(a)(2)(i) (24 P.S. § 6-621-A(a)(2)(i)), which directs the State Board of Education (Board) to promulgate regulations establishing additional criteria that the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status and whether a financial recovery school district is deemed in moderate or severe recovery status.

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(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.

As noted in item # 9, section 621-A(a)(2)(i) of the Public School Code directs the Board to promulgate these regulations.

(11) 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.

No.

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

In developing this rulemaking, an Advisory Committee convened by the Board reviewed criteria used by the following states to identify school districts exhibiting signs of financial challenges: Michigan, California, Texas, Florida, Arizona and Illinois. The criteria identified by each state serve different purposes and are acted upon in different ways.

California's standards are used to guide the development of school district budgets and monitor districts' fiscal stability through required interim reports. In Texas, the state has established criteria that allow a district's own Board of Trustees to declare that the district is in financial exigency, in addition to other criteria that are used by the state to rate districts' financial management practices and review districts for circumstances that could lead to financial insolvency. Florida requires its state Auditor General to alert a district's local governing body if an audit unveils certain emergency conditions outlined in the sunshine state's statutes, and districts that fail to resolve or prevent the conditions are subject to greater state oversight.

In Arizona (AZ), the General Assembly granted the AZ State Board of Education the authority to appoint a financial crisis team or receiver to oversee a school district that the AZ State Board determines is insolvent or has grossly mismanaged district finances based on criteria identified in AZ statute. An Illinois (IL) statute grants the IL State Board of Education the authority to establish a Financial Oversight Panel for a district the IL State Board deems in financial difficulty based on state-established criteria. In addition, a school district itself may opt to request that the IL State Board establish an oversight panel for the district. Finally, at the time the Board began its initial development phase of this rulemaking, Michigan had in place a Local Government and School District Financial Accountability Act that included a broad set of factors that would allow the state to review a school district for indications of probable financial stress and potentially appoint an emergency manager to assume governance authority of the district.

Many of the criteria set forth in these other state policies are duplicative of criteria already identified for consideration by the Secretary in Pennsylvania's Public School Code and included in the Board's regulations for completeness, including factors that account for missed employee payroll, missed bond payments, missed payments to other school districts, and various ways of assessing deficit spending.

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

Title 22 Pa. Code Chapter 731 contains a Statement of Policy issued by the Department of Education comprising the Department's Early Warning System. The Early Warning System is designed to identify school districts that are demonstrating early indications of financial challenges and to support them with technical assistance.

Chapter 731 states that the Department may take into advisement the factors considered in issuing a declaration of financial recovery status as part of the analysis conducted under the Department's Early Warning System. However, Chapter 731 does not require that those factors be itemized and, therefore, does not necessitate an amendment to the Chapter to align with these regulations.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

As required by section 621-A(a)(2)(ii)(A) of the Public School Code, the State Board of Education consulted with a stakeholders' Advisory Committee in the development of a draft proposed regulation. The Committee included representatives of school administrators, school directors, and school business officials, as well representatives from the Department of Education and the Governor's Office of the Budget. Further, the composition of the Committee was representative of urban, rural and suburban school districts across the Commonwealth. The Advisory Committee worked directly with a Standing Committee of the State Board of Education during the drafting phase of regulatory development.

Advisory Committee on Financial Recovery Members

Amy Morton, Executive Deputy Secretary, PA Department of Education

Christine Baldini, Division Manager, Governor's Office of the Budget

Mike Kuhn, School Director, Lebanon School District

Dr. Margaret Billings-Jones, Superintendent, Lakeland School District

Dr. Alan Vandrew, CFO, Mechanicsburg Area School District

Dr. Charles Hughey, Adjunct Professor, Waynesburg University*

**former Superintendent, West Allegheny School District*

Jeanine McCreary, former School Director, Erie City School District

The Advisory Committee convened four public meetings in 2012 – on September 6, October 18, November 14, and December 6. Opportunities for public comment were made available at each meeting. Additionally, updates on the development of the regulations were presented to the State Board at its public meetings on September 13 and November 15, 2012, and additional opportunity for public comment was made available at those meetings. Finally, the Board engaged in consideration of the proposed regulations at its public meetings on January 10, 2013, and November 14, 2013, and consideration of the final-form regulations at its public meeting on November 13, 2014; opportunity for public comment was a part of each meeting's agenda.

In recognition of the regulatory flexibility and economic impact provisions of the Regulatory Review Act specific to small businesses, the State Board on December 7, 2012, invited the National Federation of Independent Business (NFIB) to provide feedback on the draft proposed regulations' impact on small businesses. NFIB, which represents more than 15,000 small business owners in the Commonwealth, has expressed no concern with the proposed regulations. Further, the notice of proposed rulemaking

published at 44 Pa.B. 4514 specifically invited individuals affiliated with small businesses to provide comment on the regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations that will be affected by the regulation. How are they affected?

The regulations will affect the work of the Secretary and Department staff assigned to collect and analyze school district fiscal information and administer the appeal process.

While the rulemaking does not directly regulate school districts, up to nine districts at any time may be indirectly affected through the Secretary's utilization of the new criteria to issue declarations of financial recovery status. A district subject to such a declaration will operate under a new governance structure to develop and implement a financial recovery plan.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The statutory foundation for the regulations, section 621-A(a)(2)(i) of the Public School Code, provides discretion to the Secretary in issuing declarations of financial recovery status to school districts. These regulations will provide guidance for the Secretary in determining whether to issue such declarations.

While not directly regulated by the rulemaking, up to nine school districts at any time may be required to comply with declarations of financial recovery status that may be issued by the Secretary based on criteria identified in the rulemaking.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulations will provide greater transparency to school districts and the public in how determinations of financial recovery status are executed by the Secretary.

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

Implementation costs to state government are required by statute insofar as section 621-A of the School Code establishes a process by which the Secretary may place up to nine school districts in financial recovery status and directs the Board to promulgate regulations identifying additional criteria to guide the Secretary in making such determinations.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures that may be required. Explain how the dollar estimates were derived.

The requirements of Chapter 18 are rooted in Section 621-A(a)(2)(i) of the Public School Code. The Board consulted with the Department to identify the needs of the Secretary in implementing the regulations and that underlying provision of the School Code. The Department estimates it will incur

costs related to staffing for the analysis of information related to the criteria identified in the rulemaking, as well as costs related to staffing for legal procedures at an annual cost of \$738,950. Based on the Governor's proposed General Government Operations appropriation, the agency will redirect current resources in order to absorb these costs and carry out its statutory obligations with no additional funds.

The Department previously incurred one-time costs of \$75,000 to develop, populate and reconcile models to be used for information pertinent to the Department's Early Warning System. Moving forward, these models also can be applied to criteria identified in the final-form regulation.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures that may be required. Explain how the dollar estimates were derived.

The regulations carry no anticipated cost for local governments. While a school district may incur a cost to appeal a designation of financial recovery status, the decision to appeal is at the discretion of the individual school district. Therefore, these regulations do not impose a direct cost on districts, as they do not mandate that a district pursue an appeal. Further, the right to appeal does not constitute a newly-established provision by the State Board, but merely reflects the right granted to school districts in section 621-(A)(c) of the School Code and is included in the regulations for completeness.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required. Explain how the dollar estimates were derived.

This information is reflected in the response to question #19 as the regulated community in Chapter 18 is state government – specifically, the Department of Education.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

These regulations will cause the Department to undertake legal procedures related to opinions, declarations, appeals, petitions, contracts and challenges in issuing declarations of financial recovery status and administering appeals to such declarations. Additional accounting and consulting work will be required to develop procedures to conduct preliminary information reviews, request and review additional information, and produce summary reports.

The Department also will undertake new reporting and recordkeeping responsibilities related to procedures for issuing declarations of financial recovery status; complying with communication requirements of the School Code; providing expert advice to the Secretary; and coordinating and consolidating information.

(23) 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	FY +1	FY +2	FY +3	FY +4	FY +5
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	Year	Year	Year	Year	Year	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						
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	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Revenue Losses	NA	NA	NA	NA	NA	NA

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY -3 2012-13 (Actual)	FY -2 2013-14 (Actual)	FY -1 2014-15 (Actual)	Current FY 2015-16 (Available)
PDE General Government Operations	\$23,414,000	\$23,608,000	\$23,534,000	\$24,088,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

These regulations will not have an adverse impact on small business.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The regulated community for this rulemaking is the Department. The regulations do not directly regulate specific groups including minorities, the elderly, small businesses or farmers.

(26) 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.

Through its Advisory Committee and subsequent Board discussions, the Board considered additional criteria for inclusion in the regulations. However, through the course of its deliberations, the Board found that certain factors under consideration were duplicative and, therefore, unnecessary.

For example, the Board's Advisory Committee reviewed a proposal that the Secretary consider criteria that account for sudden, unexpected costs experienced by school districts, such as costs associated with a natural disaster. The Advisory Committee determined that such criteria were unnecessary given a provision that already allows the Secretary to not issue a declaration of financial recovery status if circumstances facing a district were caused by an emergency within the past five years.

The Board considered including a factor that looked at whether a district in financial watch status did not show improvement as a result of that designation. However, this was not included in the proposed regulation as it is already part of the Department's decision-making process.

The Board also considered including factors to assess the stability of a district's tax base due to the loss of a major employer as measured by reductions in local real estate and earned income tax revenues. These criteria were not included in the rulemaking as they represent circumstances outside the control of a school district and, in certain circumstances, the state already provides special aid to assist districts who experience a significant loss in local real estate taxes.

Further, the Board examined a proposed criterion for the Secretary to consider undisputed missed payments of social security or pension obligations. While such missed payments may represent a serious issue, the criterion was not included in the regulations because the circumstances that led to such missed payments likely would be captured by other criteria already included in the rulemaking.

Additional discussion occurred over whether the regulations should include a concept allowing the Secretary to consider undisputed obligations owed to creditors in determining whether to place a district in Financial Recovery Status. That concept was not included in the rulemaking due to concerns about the Department potentially being put in a position to serve as a broker for unpaid creditors, and questions as to whether the Department has the authority to determine undisputed payments between school districts and their vendors.

The Board also discussed including a factor that considered whether a district's non-instructional expenditures increased disproportionately to a district's instructional expenditures over a three-year period. The factor was not included in the rulemaking due to concerns related to local control over budgeting.

Further, the Board discussed including a criterion to allow the Secretary to consider information related

to financial challenges or irregularities provided by federal, state or local authorities. However, the criterion was unnecessary because the Department already receives school district audits from the state Auditor General and a system is in place to intervene if malpractice is identified.

Finally, the Board considered including a criterion that would allow the Secretary to consider whether a local school board had been removed from office due to neglect of duty related to its fiscal responsibilities. The Board did not include the criterion in the regulations because the underlying issues that would lead to removal of a local governing board likely would be captured by other criteria already included in the rulemaking.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

Chapter 18 will not have an adverse impact on small businesses.

(28) 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.

Empirical data did not serve as the basis for these regulations.

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

- | | |
|---|-----------------|
| A. The date by which the agency must receive public comments: | August 17, 2014 |
| 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: | May 2016 |
| D. The expected effective date of the final-form regulation: | September 2016 |

E. The date by which compliance with the final-form regulation will be required:

September 2016

F. The date by which required permits, licenses or other approvals must be obtained:

N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The State Board will review Chapter 18 every four years in accordance with the State Board's policy and practice in monitoring all its regulations.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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

State Board of Education
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 6-329
DATE OF ADOPTION: November 13, 2014

BY: Kane Sullivan

TITLE Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: Marisa H. Z. Lehr

5/17/2016
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.

FINAL-FORM RULEMAKING # 6-329

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 18]

Financial Recovery

The State Board of Education (Board) adopts Chapter 18 (relating to financial recovery) to read as set forth in Annex A. Notice of proposed rulemaking was published at 44 Pa.B. 4514 (July 19, 2014).

Statutory Authority

The Board acts under the authority of section 621-A(a)(2)(i) of the Public School Code of 1949 (School Code) (24 P. S. § 6-621-A(a)(2)(i)).

Purpose

This rulemaking establishes criteria the Secretary of Education (Secretary) may consider in determining whether to place a school district in financial recovery status and provides guidance to the Secretary in determining whether a district would be deemed in either moderate or severe recovery status.

Background

The act of July 12, 2012 (P. L. 1142, No. 141) (Act 141), added to the School Code section 621-A(a)(2)(i), which identifies 15 criteria the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status. Section 621-A of the School Code also directs the Board to promulgate regulations that establish additional criteria the Secretary may consider in determining whether to issue a declaration of financial recovery status, and whether a financial recovery school district should be deemed in either moderate or severe recovery status.

In promulgating the regulations mandated by Act 141, the Board was required under section 621-A(a)(2)(ii)(A) of the School Code (24 P.S. § 621-A(a)(2)(ii)(A)) to convene and consult with a statewide Advisory Committee (Committee) comprised of representatives of the Department of Education (Department), the Governor's Office of the Budget, and a superintendent, school board member and school business official representative of urban, rural and suburban school districts. The Committee met four times in 2012 to develop a draft proposed rulemaking for the Board's consideration. All Committee meetings were open to the public and public comment was invited at each meeting.

From its first meeting on September 6, 2012, through the conclusion of its deliberations on December 6, 2012, the Committee worked in conjunction with the Board's Standing Committee on Financial Recovery. Updates on the development of the draft regulations were reported to the full Board at its public meetings on September 13 and November 15, 2012. In addition, the full Board reviewed and considered the draft regulations at two additional public meetings in 2013, and reviewed and considered final regulations at its public meeting on November 13, 2014. Opportunity for public comment was part of the agenda at each of the Board's public meetings.

In the early stages of its deliberations, the Committee reviewed its statutory charge and received a presentation on Act 141 so that Committee members had a comprehensive understanding of how their work fit into the broader system of supports for struggling school districts established by the General Assembly in the Act. This included receiving a presentation on the new Early Warning System developed by the Department to identify districts that show indications of financial challenges and provide them with technical assistance early on in the

hopes that their challenges may be addressed before a declaration of financial recovery status would become necessary.

In the next stage of its deliberations, the Committee reviewed approaches used by other states to identify school districts facing financial challenges and discussed whether criteria used by those states were factors that should be included in the Board's regulations. In total, the Committee reviewed relevant policies in Michigan, California, Texas, Florida, Arizona and Illinois. The Committee also reviewed other Commonwealth laws concerning financially distressed entities to be better informed regarding the criteria used in other Commonwealth policies to classify distressed local governments.

Upon receiving the Committee's recommendation on Chapter 18, the Board's Standing Committee on Financial Recovery (Standing Committee) held a public meeting on January 9, 2013, and adopted amendments to further refine areas where the Standing Committee felt the Committee's recommendation needed greater clarity. Proposed Chapter 18, as approved by the Standing Committee, then was presented for additional input by both the Board's Council of Basic Education (Council) at its public meeting on January 9, 2013, and the full Board at its public meeting on January 10, 2013. Both the Council and the Board provided an opportunity for public comment prior to approval of the proposed rulemaking.

Subsequently, the Board withdrew its proposed rulemaking to engage in continued discussion of the criteria identified for the Secretary's consideration. On November 14, 2013, the Board discussed and approved a revised proposed rulemaking that removed criteria that were identified as being duplicative and, therefore, unnecessary. An additional opportunity for public comment was made available prior to the Board's consideration of the revised proposed rulemaking at its public meeting on November 14, 2013.

Notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on July 19, 2014. The public comment period came to a close on August 18, 2014. The Board reviewed Chapter 18 and adopted it as a final-form rulemaking with minor clarifying technical revisions at the Board's public meeting on November 13, 2014.

Public comments on proposed rulemaking

The Pennsylvania School Boards Association (PSBA) submitted comments on the proposed rulemaking in a letter to the Board dated August 13, 2014. PSBA's letter was the only comment that the Board received during the public comment period. PSBA expressed support for the rulemaking. PSBA also suggested the addition of language to section 18.2 (relating to purpose) stating that no weighting of the 18 criteria in the rulemaking may be inferred and that one specific criterion may not be used to make a declaration of recovery status. Act 141 did not include these types of stipulations. The Board believes that such stipulations are unnecessary in the regulations and contrary to the intent of the legislation and the Board.

A statement that no weighting of the criteria may be inferred could be misinterpreted so as to render each criterion equal to the others. Hence, the suggested language could undermine the Board's intent of not assigning weight to individual criteria. Section 621-A(a)(2)(i) of the School Code states the Secretary "may consider" the criteria in determining whether to issue a declaration. Hence, the Secretary is given the authority to use discretion concerning the criteria. There is no language stating the criteria are all equal. Given the number and variety of school districts across the Commonwealth, each with its unique financial conditions, it would not be prudent to limit the ability of the Secretary to determine and address the financial conditions in a particular district.

The Independent Regulatory Review Commission (IRRC) also submitted comments, which the Board received on September 17, 2014. After noting that Act 141 directs the Board to promulgate regulations establishing additional criteria, IRRC questioned whether the three new criteria in this rulemaking were consistent with the intent of Act 141. It asked if the Board consulted with the General Assembly to determine if the three additional criteria satisfy the mandate of Act 141.

The chairs of the House and Senate Education Committees (Committees) in the General Assembly are members of the Board *ex officio*. Hence, through this statutorily prescribed structure, the Board was in continuous communication with relevant policy leaders of the General Assembly concerning all of its activities in developing this rulemaking. As noted above, the Board reviewed the development of Chapter 18 at five different public meetings. The Board shared copies of the rulemaking with the Committee chairs as it was being reviewed and approved by the Board, and as required by the Regulatory Review Act.

Provisions of the Final-Form Regulation

The text of the final-form version of Chapter 18 is virtually identical to the text of the proposed rulemaking. There are no substantive revisions. Ten minor changes were made to clarify and streamline the text. More than half of these minor revisions are found in section 18.3 (relating to definitions). The revisions streamline definitions by removing text that repeats the definitions of terms found in Act 141 and conforms Chapter 18 to regulatory drafting standards by referring to the citation where such definitions exist in statute. The changes also add a clarifying reference to the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems* to the definition of “total annual expenditures.”

In response to a tolling memo submitted by the Office of Attorney General on the proposed rulemaking, the Board also added a reference to section 621-A(a)(2) of the School Code in section 18.7 to clarify the scope and purpose of that section. The addition of the cross-reference makes it more explicit that the section applies only in circumstances where the Secretary has discretion in determining whether to declare a school district to be in financial recovery status after considering the criteria in section 18.5.

As noted in the notice of proposed rulemaking, the regulations include provisions from Act 141 for completeness. The final-form rulemaking implements section 621-A of the School Code and includes procedures for issuance of a declaration of the financial recovery status of a school district by the Secretary; the 18 criteria that the Secretary may consider in determining whether to issue a declaration; the statutory limitation that no more than nine districts may be declared to be in financial recovery status or in receivership at any time; and delineations of when a district is in moderate or severe recovery status.

The final section of the regulations refers to section 621-A(c) of the School Code, which states that declarations of financial recovery status are subject to appeal under 2 Pa.C.S. §§ 501-08 and 701-04 (relating to administrative law and procedure).

Affected Parties

The rulemaking would guide the decision making of the Secretary and affect work of the Department's staff.

Cost and Paperwork Estimates

State government incurred one-time costs of \$75,000 in Fiscal Year 2012-2013 to develop, populate and reconcile models to be used by the Department for information collected

relevant to the Department's Early Warning System. These models also can be applied to criteria identified in this rulemaking.

The rulemaking also establishes new responsibilities for the Secretary and staff of the Department. The Department estimates it will incur an annual cost of \$738,950 to support staffing necessary to carry out new responsibilities related to collecting and analyzing information pertaining to the criteria identified in the rulemaking and to undertake certain legal procedures. Based on the Governor's proposed General Government Operations appropriation, the agency will redirect current resources in order to absorb these costs and carry out its statutory obligations with no additional funds.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 18 every four years in accordance with the Board's policy and practice respecting all of its regulations. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 8, 2014, the Board submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 4514, to the Independent Regulatory Review Commission (IRRC) and to the chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period. In preparing the final-form rulemaking, the Board has considered all comments from IRRC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), the final-form rulemaking was deemed approved by the House Committee on **TBD** and by the Senate Committee on **TBD**. Under section 5.1(e) of the Regulatory Review Act, IRRC met on **TBD**, and approved the final-form rulemaking.

Contact Person

For information about Chapter 18, please contact Karen Molchanow, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787.

Findings

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the School Code.

Order

The Board, acting under the authorizing statute, orders as follows:

(a) The regulations of the Board, 22 Pa. Code Chapter 18, are adopted.

(b) The chair of the Board 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 chair of the Board 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*.

KAREN MOLCHANOW
Executive Director

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

SUBPART A. MISCELLANEOUS PROVISIONS

CHAPTER 18. FINANCIAL RECOVERY

§ 18.1. Statutory authority

The statutory authority for this chapter is section 621-A(a)(2) of the Public School Code of 1949 (24 P.S. § 6-621-A(a)(2) (relating to issuance of declaration; criteria)).

§ 18.2. Purpose

Consistent with the requirements of section 621-A(a)(2) of the School Code (24 P.S. § 6-621-A(a)(2) (relating to criteria)), the purpose of this chapter is to establish criteria that the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status, and whether a school district in financial recovery status is in moderate or severe recovery status.

§ 18.3. Definitions

For the purposes of this chapter, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

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Average daily membership – The final average daily membership of a school district as most recently determined by the Department in accordance with procedures established by the Secretary under section 2501(3) of the School Code (24 P.S. § 25-2501(3) (relating to definitions)).

Claim – **The term** [As] **as** defined [by] **in** section 602-A of the School Code (24 P.S. § 6-602-A (relating to definitions))[, **a right to (1) payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (2) an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured**].

Deficit – **The term** [As] **as** defined [by] **in** section 602-A of the School Code (24 P.S. § 6-602-A)[, **the excess of expenditures over revenues, calculated as a percentage of revenue, during an accounting period, and which calculation includes all governmental fund types and all proprietary fund types, but excludes all fiduciary fund types of the school district**].

Expenditures – **The term** [As] **as** defined [by] **in** section 602-A of the School Code (24 P.S. § 6-602-A)[, **reductions in fund equity, including current operating expenses that require the use of fund equity, debt service and capital outlays. The term shall not include interfund transfers**].

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Financial Recovery School District – **The term [As] as** defined **[by] in** section 602-A of the School Code (24 P.S. § 6-602-A)[, **a school district declared by the Secretary to be in financial recovery status under section 621-A of the School Code (24 P.S. § 6-621-A (relating to issuance of declaration))**].

Fixed costs – Expenditures for utility services, insurance-general, communications, energy, and debt service, as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

Fund equity – **The term [As] as** defined **[by] in** section 602-A of the School Code (24 P.S. § 6-602-A)[, **excess of assets of a fund over its liabilities. The term shall include a fund balance**].

Revenues – **The term [As] as** defined **[by] in** section 602-A of the School Code (24 P.S. § 6-602-A (relating to definitions))[, **additions to fund equity other than from interfund transfers, proceeds of debt and proceeds of disposition of general fixed assets**].

School Code – The Public School Code of 1949 (24 P.S. §§ 1-101—27-2702).

School district – **The term [As] as** defined **[by] in** section 602-A of the **[Public]** School Code (24 P.S. § 6-602-A)[, **a school district of the first class A, second class, third class and fourth class and a Financial Recovery School District. The term does not include a school district of the first class**].

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Total annual expenditures – Reductions in fund equity (including current operating expenses that require the use of fund equity), debt service and capital outlays (including all governmental fund types and all proprietary fund types), as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*, but excluding all fiduciary fund types of the school district. The term shall not include interfund transfers.

Unassigned fund balance – Amounts available for any purpose within the general fund only, as defined in the *Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems*.

§ 18.4. Issuance of declaration under section 621-A(a)(1) of the School Code

(a) As provided by section 621-A(a)(1) of the School Code (24 P.S. § 6-621-A(a)(1) (relating to criteria)), the Secretary shall issue a declaration that a school district is in financial recovery status when either of the following applies:

(1) The school district has an average daily membership greater than 7,500 and receives an advance of its basic education subsidy at any time.

(2) The school district receives an advance of its basic education subsidy at any time and either of the following applies:

(i) The school district is subject to a declaration of financial distress under section 691 of the School Code (24 P.S. § 6-691 (relating to when district distressed)).

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(ii) The school district is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue in operation.

(b) As provided by section 621-A(a)(1)(ii)(B) of the School Code (24 P.S. § 6-621-A(a)(1)(ii)(B)), the Secretary may decline to issue a declaration that a school district is in financial recovery status where the Secretary determines that the school district, within the previous five years, has faced an emergency that caused the occurrence of a circumstance set forth in subsection (a).

(c) As provided by section 621-A(b) of the School Code (24 P.S. § 6-621-A(b) (relating to failure of Commonwealth to make payment)), no school district shall be declared in financial recovery status if the circumstances enumerated in subsection (a) have been caused by the failure of the Commonwealth to make any payment of money due to the school district at the time the payment is due, including payment of any Federal funding that is distributed through the Commonwealth.

§ 18.5. Issuance of declaration under section 621-A(a)(2) of the School Code

(a) Consistent with section 621-A(a)(2)(i) of the School Code (24 P.S. § 6-621-A(a)(2)(i) (relating to criteria)), the Secretary may consider the following criteria when determining whether to issue a declaration that a school district is in financial recovery status:

(1) The school district receives at least 85 percent of its per pupil funding from the Commonwealth and collects less than 50 percent of local taxes levied to fund the school district.

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(2) The school district's unreserved fund balance has declined for 3 consecutive years and is less than 5 percent of the school district's annual expenditures. As used in this paragraph, a school district's unreserved fund balance shall mean the school district's unassigned fund balance.

(3) The school district's fixed costs are at least 30 percent of the school district's total annual expenditures.

(4) The school district's total outstanding debt is greater than the school district's total annual expenditures.

(5) The salaries of any teachers or other employees of the school district are unpaid at least 15 days after payment is due.

(6) The school district is subject to withholding of its State appropriation under section 633 of the School Code (24 P.S. § 6-633 (relating to reports to the Secretary of Education; withholding state appropriations)).

(7) The school district is subject to withholding of its State appropriation under section 785 of the School Code (24 P.S. § 7-785 (relating to failure to pay rent or make payments; withholding appropriation)).

(8) The school district is subject to withholding of its State appropriation under section 8283(c) of the General Local Government Code (53 Pa.C.S. § 8283(c) (relating to failure to pay by school districts)).

(9) The school district has defaulted on the payment of a debt due to any school district, intermediate unit or charter school that remains unpaid on or after January 1 of the year

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following the school year it was due and there is no dispute regarding the validity or amount of the claim.

(10) The school district's assigned and unassigned total fund balance is less than zero in the school district's general fund.

(11) The school district's assigned and unassigned total fund balance in the school district's general fund as a percentage of total expenditures is less than 3 percent.

(12) The school district experiences a delinquent tax rate of more than 10 percent.

(13) The assessed valuation of taxable real estate in the school district, as certified by the State Tax Equalization Board, has not increased over the previous 5 years.

(14) Any amount due a joint board of school directors under a joint board agreement remains unpaid beyond the due date specific in the joint board's articles of agreement.

(15) The school district has contracted a loan not authorized by law.

(16) The school district has accumulated and operated with a deficit equal to at least 2 percent of the assessed valuation of the taxable real estate within the school district for 2 successive school years.

(17) The school district experiences a deficit of 3 percent or more for 3 consecutive school years, resulting in a reduction of unassigned fund balance each year.

(18) A new, merged or union school district has been formed and one or more of the former school districts which compose the mergedd[r] or union school district was a distressed school district under section 691 of the School Code (24 P.S. § 6-691 (relating to when district distressed)) or a financial recovery school district under Article VI-A of the School Code (24

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P.S. §§ 6-601-A—6-693-A (relating to school district financial recovery)) at the time of the formation of the new, merged or union school district.

(b) As provided by section 621-A(b) of the School Code (24 P.S. § 6-621-A(b) (relating to failure of Commonwealth to make payment)), no school district shall be declared in financial recovery status if the circumstances enumerated in subsection (a) have been caused by the failure of the Commonwealth to make any payment of money due to the school district at the time the payment is due, including payment of any Federal funding that is distributed through the Commonwealth.

(c) The Secretary may decline to issue a declaration that a school district is in financial recovery status where the Secretary determines that the school district, within the previous five years, has faced an emergency that caused the occurrence of a circumstance set forth in subsection (a).

(d) When the Secretary issues a declaration that a school district is in financial recovery status, the Secretary shall specify the criteria set forth under this section that placed the school district in financial recovery status.

§ 18.6. Limitation

(a) As provided by section 621-A(a)(1)(ii)(A) of the School Code (24 P.S. § 6-621-A(a)(1)(ii)(A) (relating to criteria)), no more than 9 school districts may be under a declaration of financial recovery status or in receivership at any time.

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(b) The Secretary may not use information that is more than 5 years old when considering criteria under § 18.5 (relating to issuance of declaration under section 621-A(a)(2) of the School Code).

§ 18.7. Moderate and severe recovery status for declarations issued under section 621-A(a)(2) of the School Code

(a) *Moderate recovery status* – The Secretary shall issue a declaration that a Financial Recovery School District is in moderate recovery status **pursuant to section 621-A(a)(2) of the School Code (24 P.S. § 6-621-A(a)(2) (relating to criteria))** if the Financial Recovery School District is not declared by the Secretary in severe recovery status.

(b) *Severe recovery status* – The Secretary shall issue a declaration that a Financial Recovery School District is in severe recovery status **pursuant to section 621-A(a)(2) of the School Code (24 P.S. § 6-621(a)(2))** if the financial conditions of the school district indicate that the school district is unable, or is reasonably unlikely to be able, to fulfill the 180 days of instruction for pupils requirement provided by section 1501 of the School Code (24 P.S. § 15-1501 (relating to minimum number of days; school month)) for the present school year or for the following school year due to the lack of existing revenue sources and additional revenue sources as are provided by and allowed under law, including the Taxpayer Relief Act (53 P.S. §§ 6926.101-6926.5006).

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§ 18.8. Appeal

As provided by section 621-A(c) of the School Code (24 P.S. § 6-621-A(c) (relating to appeal), a school district may appeal the Secretary's declaration of financial recovery status under the Administrative Agency Law (2 Pa.C.S. (relating to administrative law and procedure)).

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**List of Commentators on Proposed Rulemaking
Regulation #6-329 (#3064)
Financial Recovery
22 Pa. Code Chapter 18
State Board of Education**

John Callahan, Senior Director for Government Affairs
Pennsylvania School Boards Association
400 Bent Creek Blvd.
Mechanicsburg, PA 17050-1873

Independent Regulatory Review Commission
Commonwealth of Pennsylvania
333 Market Street, 14th Floor
Harrisburg, PA 17101



COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

May 26, 2016

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

Dear Mr. Sumner:

Enclosed is a copy of a final-form rulemaking approved by the State Board of Education (22 Pa. Code, Chapter 18, regulation #6-329), for review and action by the Independent Regulatory Review Commission ("Commission") pursuant to the Regulatory Review Act. This rulemaking is also being delivered today to the Pennsylvania House of Representatives and Senate Standing Committees on Education.

The State Board of Education will provide the Commission with any assistance it may require to facilitate a thorough review of this proposed rulemaking.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Karen Molchanow".

Karen Molchanow
Executive Director

Enclosures

cc: Thomas Howell, Deputy General Counsel, Governor's Office of General Counsel
Marisa Lehr, Deputy General Counsel, Governor's Office of General Counsel
Alicia Rizzi, Regulatory Coordinator, Governor's Office of General Counsel
Alaina Koltash, Office of Chief Counsel, Department of Education
Angela Fitterer, Government Relations Office, Department of Education

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 6-329
SUBJECT: FINANCIAL RECOVERY
AGENCY: STATE BOARD OF EDUCATION

TYPE OF REGULATION

- Proposed Regulation
- X 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

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON EDUCATION</i>		
5-26-16	<i>Cheyl A. Saylor</i>	MAJORITY CHAIR <i>Rep. Saylor</i>
5-26-16	<i>April McClellan</i>	MINORITY CHAIR <i>Rep. Roebuck</i>
<i>SENATE COMMITTEE ON EDUCATION</i>		
5/26/16	<i>Judy Merritt</i>	MAJORITY CHAIR <i>Sen. Smucker</i>
5-26	<i>John Stiller</i>	MINORITY CHAIR <i>Sen. Dinniman</i>
5/26/16	<i>K Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
_____	_____	<i>ATTORNEY GENERAL</i> (for Final Omitted only)
_____	_____	<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)

