

Comments of the Independent Regulatory Review Commission



State Board of Education Regulation #6-329 (IRRC #3064)

Financial Recovery

September 17, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the July 19, 2014 *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 Education (Board) to respond to all comments received from us or any other source.

Whether the regulation is consistent with the intent of the General Assembly.

Act 141 of 2012 (Act) added Article VI-A to the Public School Code of 1949 (24 P.S. §§ 6-601 *et. seq.*). Article VI-A provides for financial recovery in certain school districts. Section 621-A(a)(2)(i) of the Act (24 P.S. § 6-621-A(a)(2)(i)) directs the Board to promulgate regulations establishing additional criteria which 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 to be in either moderate or severe recovery status.

Section 621-A(a)(2)(i) of the Act includes 15 criteria the Secretary of Education (Secretary) may consider in determining whether to issue a declaration that a school district is in financial recovery status. This rulemaking repeats the 15 criteria from the Act and adds three additional criteria. Two of the criteria (§§ 18.5(a)(7) and (8)) are being added because they are conceptually congruent with Section 621-A(a)(2)(i)(F) of the Act (24 P.S. § 6-621-A(a)(2)(i)(F)), which is reflected in § 18.5(a)(6) of the rulemaking. Sections 18.5(a)(6), (7) and (8) direct the Secretary to consider whether a school district is subject to withholding of certain State appropriations.

The third criterion being added by the Board is found at § 18.5(a)(17). It reads as follows: “The school district experiences a deficit of 3% or more for 3 consecutive school years resulting in a reduction of unassigned fund balance each year.” This criterion is being promulgated to reflect the fact that the Board recognizes that there are circumstances when deficit spending may be appropriate.

In determining whether a regulation is in the public interest, Section 5.2(a) of the Regulatory Review Act directs this Commission, first and foremost, to consider whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the

intention of the General Assembly in the enactment of the statute upon which the regulation is based. (71 P.S. § 745.5b(a)). We question whether the addition of the three regulatory criteria developed by the Board to the 15 statutory criteria of the Act is consistent with the intent of the General Assembly and Section 621-A(a)(2)(i) of the Act which directs the Board to promulgate regulations “establishing *additional criteria* which the Secretary may consider in determining whether to issue a declaration that a school district is in financial recovery status.” (Emphasis added.) Did the Board consult with the General Assembly to determine if the three additional criteria satisfy the mandate of the Act?