

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

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

(1) Agency
State Board of Education

(2) Agency Number: 006
Identification Number: 332

IRRC Number: 3076

(3) PA Code Cite: 22 Pa. Code, Chapter 11

(4) Short Title: Student Attendance

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

Primary Contact: Karen Molchanow, Executive Director, State Board of Education, (717) 787-3787, ra-stateboardofed@pa.gov

Secondary Contact:

(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 Supreme Court of Pennsylvania, in *Commonwealth v. Kerstetter*, No. 60 MAP 2013, 2014 Pa. LEXIS 1500 (filed June 16, 2014), held that 22 Pa. Code § 11.13 (relating to compulsory school age) is inconsistent with provisions of Article XIII of the Public School Code. Therefore, the State Board is amending § 11.13 to be consistent with the Court's ruling that public school kindergarten students are subject to compulsory school attendance requirements if the child's parents or guardians voluntarily enroll the child in kindergarten. Section 11.13 also is being amended to acknowledge the discretionary authority granted to the governing body of the School District of Philadelphia, per section 2103(8) of the Public School Code (24 P.S. § 21-2103(8)), to establish its compulsory school age at age six (6), instead of age eight (8).

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

Act of March 10, 1949 (P.L. 30, No. 14), 24 P.S. § 26-2603-B (added by the Act of March 30, 1988 (P.L. 321, No. 43)).

(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.

The regulation is amended to conform to the ruling of the Supreme Court of Pennsylvania in *Commonwealth v. Kerstetter*, No. 60 MAP 2013, issued June 16, 2014..

(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 above, the regulation is amended to conform to the ruling of the Pennsylvania Supreme Court that 22 Pa. Code § 11.13 is inconsistent with provisions of Article XIII of the Public School Code. Students, parents and school administrators will benefit from clarity on compulsory school attendance requirements by revising the regulation to conform to the court's holding.

(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?

This amendment is necessary because of a judicial ruling interpreting the Public School Code and should not put Pennsylvania at a competitive disadvantage with other states.

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

The regulation will not affect other existing or proposed regulations of either the promulgating agency or other state agencies. However, the Department of Education will amend two of its guidance documents (Admission to Kindergarten and Beginners; Compulsory Attendance and Truancy Elimination Plan) to align with this amendment to Chapter 11.

(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.)

The Board will consider any comments, recommendations or objections, and will respond as required.

In addition, during its July 10, 2014, public meeting, the Board discussed the ruling issued in

Commonwealth v. Kerstetter and announced its intention to amend Chapter 11 for consistency with the court's findings. Opportunities for public comment on the matter were made available at the State Board's public meeting on July 10, 2014, at the September 10, 2014, meeting of the Board's Council on Basic Education, and at the September 11, 2014, meeting of the State Board of Education.

(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 which will be affected by the regulation. How are they affected?

Because the Supreme Court has determined that § 11.13 is inconsistent with Article XIII of the Public School Code, the regulation should have no effect upon any school district, student or parent. However, the Supreme Court's ruling in *Commonwealth v. Kerstetter* does affect students enrolled in public kindergarten programs and school districts that offer kindergarten. During the 2013-2014 school year, total kindergarten enrollment in the Commonwealth was 128,877. Of those enrollments, 36,452 were in half-day kindergarten programs and 92,425 were in full-day kindergarten programs. There currently are 499 school districts that offer kindergarten. The affected parties must ensure that students enrolled in public kindergarten programs are in compliance with compulsory attendance requirements.

(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.

As noted in question # 15 above, students and parents of students enrolled in public kindergarten programs and school districts that offer kindergarten will be required to comply with the regulation, as well as the Public School Code provisions on which the regulation is based.

(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.

This regulatory change is not expected to have any fiscal impact as it is necessary for consistency with a judicial ruling. The regulation will benefit parents and public school districts by clarifying compulsory attendance requirements as they pertain to students who voluntarily attend public kindergarten programs.

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

The regulation does not carry adverse effects as it simply conforms 22 Pa. Code § 11.13 with a judicial ruling and aligns the regulation with discretionary authority regarding compulsory school age granted to the governing body of the School District of Philadelphia by section 2103(8) of the Public School Code (24 P.S. § 21-2103(8)).

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

This regulatory change is not expected to have any impact on the regulated community since the regulatory change simply conforms the regulation to a statutory change and a judicial ruling.

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

This regulatory change is not expected to have any impact on local governments since the regulatory change simply conforms the regulation to a statutory change and a judicial ruling.

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

This regulatory change is not expected to have any impact on state government since the regulatory change simply conforms the regulation to a statutory change and a judicial ruling.

(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.

The Board does not anticipate that this regulatory change will affect the amount of legal, paperwork or administrative costs of the regulated community, as the amendment simply conforms the regulation to a statutory change and a judicial ruling.

(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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 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	0	0	0	0	0	0
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	0	0	0	0	0	0

Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

Program	FY -3	FY -2	FY -1	Current FY

(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.

No special regulatory methods to minimize any adverse impact on small businesses were considered because the regulatory change is not expected to have any impact on small businesses.

(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.

No special provisions have been developed to meet the needs of any group. The regulatory amendment (as do the statutory provisions on which the regulation is based) affects students who voluntarily enroll in kindergarten in public school districts.

(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.

Alternative regulatory approaches were not considered as the purpose of revising § 11.13 is to conform the chapter to the holding of the Supreme Court of Pennsylvania in *Commonwealth v. Kerstetter*.

(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.

No special regulatory methods to minimize any adverse impact on small businesses were considered because the regulatory change is not expected to have any 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.

The Board has not relied on data to justify this regulation.

(29) 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: September 2014
- D. The expected effective date of the final-form regulation: January 2015
- E. The date by which compliance with the final-form regulation will be required: January 2015
- 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 11 on a regular basis in accordance with the Board's policy and practice respecting all its regulations. Therefore, no sunset date is necessary.

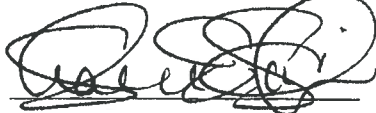
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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>State Board of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>6-332</u></p> <p>DATE OF ADOPTION: <u>Sept. 11, 2014</u></p> <p>BY: <u>Karen Molchanow</u></p> <p>TITLE <u>Executive Director</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: </p> <p><u>9/19/14</u> DATE OF APPROVAL</p> <p><u>Executive Deputy General Counsel</u> (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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Final-Omitted Rulemaking
STATE BOARD OF EDUCATION

[22 PA. CODE CH. 11]

Student Attendance

The State Board of Education (Board) amends Chapter 11 (relating to student attendance) to read as set forth in Annex A as a final-omitted rulemaking. The Board acts under authority of section 2603-B of the Public School Code of 1949 (24 P.S. § 26-2603-B).

Summary

The final-omitted rulemaking amends § 11.13 (relating to compulsory school age) to conform to judicial rulings that found this section to be inconsistent with the compulsory school age and attendance requirements of the Public School Code (*see* 24 P.S. §§ 13-1326 & 13-1327 (relating to definitions and compulsory school attendance)). The regulation also is amended to acknowledge the discretionary authority related to compulsory school age granted by section 2103(8) of the Public School Code (24 P.S. § 21-2103(8) (relating to Board of Public Education; additional duties)) to the governing authority of a school district of the first class.

On June 16, 2014, the Supreme Court of Pennsylvania upheld lower court rulings and affirmed that if a parent or guardian elects to enroll his or her child in a public kindergarten program, the parent and student are subject to the Public School Code's compulsory attendance requirements. *See Commonwealth v. Kerstetter*, 94 A.3d 991 (Pa. 2014). The appellant had argued that kindergarten students are not subject to compulsory attendance, based in part on § 11.13, which provides as follows: "Compulsory school age refers to the period of a child's life from the time the child enters school as a beginner which may be no later than at the age of 8

years, until the age of 17 or graduation from high school, whichever occurs first. A beginner is a child who enters a school district's lowest elementary school grade that is above kindergarten." Based on its examination of the relevant law, the Supreme Court concluded that § 11.13 inappropriately comingles the terms "compulsory school age" and "beginner" in a manner that is inconsistent with statute. Based on a plain-language reading of Article XIII of the Public School Code (relating to pupils and attendance), the Court ruled that the terms address discrete issues and apply to different audiences. Thus, § 11.13 is not consistent with the School Code.

The use of the term "beginners" in section 1304 of the Public School Code (24 P.S. § 13-1304 (relating to admission of beginners)) provides guidance to school districts as to the point at which districts *must* admit students to their schools. Since kindergarten is not made mandatory in the Commonwealth, logic dictates that the term "beginners" must be understood to mean students attending primary grades above the kindergarten level. Further, the School Code states that the use of the term "beginners" in this context applies only to section 1304.

Sections 1326 and 1327 of the Public School Code (24 P.S. §§ 13-1326 & 13-1327), by contrast, contain provisions for enforcing attendance in school that are directed at parents and guardians, including a definition for "compulsory school age." As defined in section 1326, compulsory school age begins when a parent or guardian "elects" to have his or her child enter school; and school attendance may be no later than eight (8) years of age. The Court noted that there is no reference to the term "beginner" in this statutory definition, nor does the definition restrict compulsory school age to primary classes above kindergarten.

Because the Supreme Court has ruled finally that § 11.13 is inconsistent with relevant provisions of Article XIII of the Public School Code, the Board must amend § 11.13 to remove

references to the term “beginner” – a term that the Court has held is unrelated to the determination of compulsory school age.

The Board also makes a technical amendment to § 11.13 in recognition of the discretionary authority related to compulsory school age granted to the governing authority of a school district of the first class by section 2103(8) of the Public School Code (24 P.S. § 21-2103(8)). Effective July 1, 2008, an amendment to that section granted the school district’s governing authority the right to set the compulsory school age for the district at no earlier than age six (6) (with the exception of home education students, who could continue to comply with the compulsory attendance age of eight (8) established for all other public school students in the Commonwealth).

Affected Parties

Because the regulation is inconsistent with the Public School Code as authoritatively interpreted by the Supreme Court of Pennsylvania, the final-omitted rulemaking conforming the regulation to statute will affect no one. However, the amendment would avoid potential confusion by anyone unfamiliar with the Supreme Court’s opinion in *Commonwealth v. Kerstetter*.

Cost and Paperwork Estimates

The final-omitted regulation does not carry a new cost for the regulated community. The amendment does not alter current paperwork or reporting requirements and does not create additional paperwork or reporting requirements.

Effective Date

The final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of Chapter 11 every four years in accordance with the Board's policy and practice respecting all of its regulations. Thus, no sunset date is necessary.

Contact Person

Interested persons may contact Karen Molchanow, Executive Director of the State Board of Education, at 333 Market Street, Harrisburg, PA 17126-0333; (717) 787-3787; or ra-stateboardofed@pa.gov.

Final-Omitted Rulemaking

The Board has promulgated this regulation as a final-omitted rulemaking. The Board believes this regulation meets the criteria established in Section 204(3) of the Commonwealth Documents Law, 45 P.S. § 1204(3), because the proposed amendment will conform § 11.13 to Article XIII of the Public School Code as interpreted by the Supreme Court of Pennsylvania in *Commonwealth v. Kerstetter*. The amendment also makes a technical amendment in recognition of discretionary authority relating to compulsory school age granted to the governing authority of a school district of the first class by section 2103(8) of the School Code. Any other amendment to 22 Pa. Code § 11.13 would be inconsistent with the Public School Code. Therefore, consideration of alternative formulations is contrary to the public interest.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on October 10, 2014, the Board submitted a copy of the final-omitted regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Education and the Senate Committee on Education. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on **TBD** the regulation was deemed approved by the House and Senate Education Committees. Under section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)), IRRC met and approved the regulation on **TBD**.

Findings

The Board finds that:

(1) Notice of proposed rulemaking is impracticable, unnecessary and contrary to the public interest under section 204(3) of the Commonwealth Documents Law and the regulations thereunder, 1 Pa. Code § 7.4(3).

(2) The amendment of the regulation in the manner provided in this order is necessary and appropriate for administration of the Public School Code of 1949.

Order

Acting under the authority of the Public School Code of 1949, the Board orders that:

- (a) The regulations of the Board, 22 Pa. Code Chapter 11, are amended by amending § 11.13 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.
- (b) The Executive Director shall submit this order and Chapter 11 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 Executive Director of the Board shall certify this order and Chapter 11 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 11. STUDENT ATTENDANCE

ADMISSION TO PUBLIC SCHOOLS

§ 11.13. Compulsory school age.

Except as otherwise provided by law, [Compulsory] compulsory school age refers to the period of a child's life from the time the child enters school **[as a beginner]** (which may be no later than at the age of 8 years), until the age of 17 or graduation from a high school, whichever occurs first. **[A beginner is a child who enters a school district's lowest elementary school grade that is above kindergarten.]**

As approved by the State Board of Education on September 11, 2014

All additions and deletions are highlighted in **Bold** type

[bracketed items] are deletions

underscored items are additions



COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

October 10, 2014

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-omitted regulation approved by the State Board of Education (22 Pa. Code, Chapter 11 – Student Attendance, #006-332) for review and action by the Commission pursuant to section 5.1(c) of the Regulatory Review Act. The regulation also is being delivered today to the House and Senate Standing Committees on Education and the Office of Attorney General.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of this final-omitted regulation.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Karen Molchanow".

Karen Molchanow
Executive Director

Enclosure

cc: Acting Secretary Carolyn Dumaresq
Gregory Dunlap, Esq.
Jordan Gouker
Michael Rodriguez

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

I.D. NUMBER: 6-332
SUBJECT: STUDENT ATTENDANCE
AGENCY: STATE BOARD OF EDUCATION/DEPARTMENT OF EDUCATION

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

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IPRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON EDUCATION</i>		
10/10/14	<u>Eileen Kuck</u>	MAJORITY CHAIR <u>Clymer</u>
10/10/14	<u>April Edwards</u>	MINORITY CHAIR <u>Roebuck</u>
<i>SENATE COMMITTEE ON EDUCATION</i>		
10/10/14	<u>David Hill</u>	MAJORITY CHAIR <u>Folmer</u>
10/10/14	<u>Jane King</u>	MINORITY CHAIR <u>Dinniman</u>
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
10/10/14	<u>K Cooper</u>	
10/10/14	<u>Julie Holt</u>	<i>ATTORNEY GENERAL</i> (for Final Omitted only)
		<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)

