

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: 006

Identification Number: 336

IRRC Number: 3146

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(3) PA Code Cite: 22 Pa. Code § 11.20

(4) Short Title: Nonimmunized children.

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

Primary Contact: Karen Molchanow, Executive Director, (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 proposed rulemaking amends Section 11.20 of Title 22 of the Pennsylvania Code, relating to nonimmunized children, for clarity and for consistency with revisions proposed by the Pennsylvania Department of Health (DOH) to Title 28, Chapter 23, Subchapter C of the Pennsylvania Code, relating to immunizations.

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

Sections 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. §§ 26-2603-B and 26-2604-B(a)-(b)). Also, Sections 1303a, 1327, and 1330 of the Public School Code of 1949 (24 P.S. §§ 13-1303a, 13-1327, and 13-1330).

(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.

No.

(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 proposed rulemaking is necessary to ensure consistency among requirements related to the attendance of students who are not fully immunized that appear in regulations issued both by DOH and by the State Board of Education (Board). Parents, students, educators and school administrators at public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, will benefit from consistency in provisions related to student attendance that cross multiple state agencies.

(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?

Reviewing the available vaccination data from surrounding states shows that Pennsylvania's rates are lower than those states. The median length for provisional periods throughout the country is 30 days. The following chart shows the length of provisional periods for Pennsylvania and for surrounding states, along with the measles, mumps and rubella vaccination (MMR) rates for kindergarten in those states for the year 2013. Although West Virginia has a provisional period as long as Pennsylvania, it has no religious/philosophical exception.

	Provisional period In days	2013 K MMR % rate
Ohio	15	96.2
W VA	240	96.1
VA	90	93.1
NY	14	96.8
NJ	15	96.8
MD	20	97.6
DE	14	96.4
PA	240	86.4

(Email from the Centers for Disease Control and Prevention (CDC), Federal Department of Health and Human Services, October 2013 (First Column); and Morbidity and Mortality Weekly Report (MMWR) (Vol. 63, No. 41) (October 17, 2014) (Second Column)).

States surrounding Pennsylvania, with exception of West Virginia, have a higher MMR rate and a shorter provisional time period. Pennsylvania is the only state in this group with less than 90% MMR rate.

Pennsylvania's reduction of a provisional period for school admission should not have an impact, either positive or negative, on the Commonwealth's ability to compete with other states. The reduction of the provisional period should, however, increase herd immunity in the Commonwealth, and, therefore, make the Commonwealth a safer place for children and for adults.

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

The proposed regulations do not affect other regulations of the Board. DOH regulations at 28 Pa. Code § 23.85(e) also set forth timeframes for provisional admission and for the review of a provisionally-admitted student's plan for receiving required doses of immunizations. DOH has announced its intention to adopt proposed revisions to 28 Pa. Code § 23.85(e), and the Board's proposed amendments to Section 11.20 of Title 22 will provide consistency with the amendments being proposed by DOH to its regulations. Because the regulations were not jointly promulgated, the agencies are doing this in separate rulemakings.

(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.)

Prior to its approval of the proposed rulemaking, the Board offered three opportunities for public comment on the draft proposed revisions to 22 Pa. Code § 11.20 at public meetings of the Board. Opportunities for comment were provided during meetings of the Committee on Chapter 11 and the Council of Basic Education on January 13, 2016, and at the meeting of the State Board of Education on January 14, 2016.

In addition, to garner input from small business owners, the Board submitted a copy of the proposed regulation to the National Federation of Independent Business (NFIB) with a request that NFIB review and provide feedback relevant to the impact of the regulation on small business owners in the Commonwealth. The Board has not been apprised of any concerns on behalf of the small business community.

DOH also conducted outreach on its companion revisions proposed in regulation number 10-197. That outreach included gaining unanimous approval for draft proposed revisions to Title 28, Chapter 23, Subchapter C of the Pennsylvania Code (concerning immunization) from its Advisory Health Board on November 4, 2015. DOH also presented its proposed revisions to the Health Policy Board on November 17, 2015, distributed to media outlets an FAQ document discussing the proposed regulations, and reached out to representatives of the Pennsylvania School Nurses Association to discuss the proposed regulations.

(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?

The proposed rulemaking will assist the parents of school-aged children and the administrators and professional staff of public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, in understanding the rules for student attendance in relation to immunizations by providing clarity and consistency in regulations affecting such requirements across state agencies.

(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.

All citizens of the Commonwealth with school-aged children and their children would be required to comply with the proposed rulemaking.

All public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools would be affected by these proposed regulations. With the exception of home education programs, data on which is not maintained, the number of schools affected would be 7,495.

(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 proposed rulemaking will benefit the parents of school-aged children and the administrators and professional staff of public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, in understanding the rules for student attendance in relation to immunizations by providing clarity and consistency in understanding regulations that address immunization requirements across state agencies.

For further explanation, see the response to number 23(a).

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

As noted above, the benefits of consistency in regulations across state agencies should reduce confusion and questions from parents, school administrators and their professional staff about the full array of requirements for student attendance.

(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.

The proposed rulemaking would make amendments for clarity and for consistency with proposed rules of the Department of Health. The Board's proposed regulations in and of themselves do not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

For further explanation, see the response to number 23(a).

(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.

As local government entities, school districts are included in the regulated community addressed in question 19.

(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.

The proposed rulemaking does not affect state government.

(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.

Proposed revisions to 22 Pa. Code § 11.20 do not address legal, accounting or consulting procedures and do not establish additional reporting, recordkeeping or other paperwork requirements. School reporting requirements related to immunizations are found in DOH regulations at Title 28, Chapter 23, Subchapter C.

(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
	0	0	0	0

* Public school districts receive state support for their general operations through Basic Education Funding that is allocated through the Department of Education. Vaccination requirements are already in place, and schools already have mechanisms in place to determine whether children have met current vaccination requirements. While the proposal to require more frequent monitoring of students who are not fully immunized could impact a school's administrative duties, the impact would vary depending on the number of children in a school who are not fully immunized. The impact also would depend on how a school elects to utilize the discretion granted to it per 28 Pa. Code § 23.85(e)(3) in designating staff responsible for fulfilling monitoring duties.

(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.

The regulation does not carry an adverse impact for 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.

Proposed revisions to 22 Pa. Code § 11.20 do not include such special provisions. However, revisions proposed by DOH to Title 28, Chapter 23, Subchapter C of the Pennsylvania Code include special provisions that address homeless students and students who transfer to a school in the Commonwealth either from out of state or from another country.

(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.

The Board did not consider alternative regulatory schemes.

(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.

The regulation does not carry an adverse impact for 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 the regulation.

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

- | | |
|---|-------------|
| A. The date by which the agency must receive public comments: | March 2016 |
| B. The date or dates on which public meetings or hearings will be held: | March 2016 |
| 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: | August 2016 |
| E. The date by which compliance with the final-form regulation will be required: | August 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 22 Pa. Code § 11.20 on a regular basis in accordance with the Board's policy and practice respecting all its regulations. Therefore, no sunset date is necessary.

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

Amy M. Elliott

BY: _____
(DEPUTY ATTORNEY GENERAL)

MAR 14 2016

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. 006-336
DATE OF ADOPTION: January 14, 2016

BY: *Kan Mollenhauer*

TITLE Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

[Signature]

BY: _____
DATE OF APPROVAL 2/24/16
Deputy General Counsel

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

Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 11]

Student Attendance

The State Board of Education (Board) proposes to amend Chapter 11 (relating to student attendance) to read as set forth in Annex A. The Board is acting under the authority of sections 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. §§ 26-2603-B and 26-2604-B).

Purpose

The proposed rulemaking seeks to amend 22 Pa. Code § 11.20 (relating to nonimmunized students) for clarity and for consistency with proposed regulations of the Pennsylvania Department of Health (DOH) seeking to amend Title 28, Chapter 23, Subchapter C of the Pennsylvania Code (relating to immunization).

Background

Currently, children in Pennsylvania may not be admitted or permitted to attend school unless the child has met the immunization requirements established by DOH, which also provide for medical or religious exemptions from immunizations. Children who have not received all doses of required immunizations may be provisionally admitted for up to eight months. Provisional admission is contingent upon the child completing the remaining required immunization doses per a plan crafted for the child. Administrators at the child's school are responsible for reviewing the child's plan for receiving the necessary vaccinations every 60 days.

Summary of the Proposed Rulemaking

The proposed rulemaking makes clarifying amendments to 22 Pa. Code § 11.20(a). The revisions proposed to that subsection eliminate language that is duplicative to requirements already established by DOH under 28 Pa. Code § 23.84 (relating to exemption from immunization) and maintain the requirement for students to comply with the immunization regulations established by DOH in order to be admitted or permitted to attend school. Further, the revisions would allow a student who is unable to provide documentation of full immunization to attend a public, private, nonpublic, special education or vocational school under certain circumstances where the Secretary of Health issues a temporary waiver of the immunization requirements. The reference to a temporary waiver is being added for consistency with the provisions of a proposed rulemaking of DOH, seeking to amend Title 28, Chapter 23, Subchapter C of the Pennsylvania Code (relating to immunization), that would establish a temporary waiver to immunization requirements that could be issued by the Secretary of Health in the event of a nationwide vaccine shortage or in the event of a disaster.

The Board's proposed rulemaking also would remove 22 Pa. Code § 11.20(b) to eliminate duplication with requirements established by DOH at Title 28, Chapter 23, Subchapter C of the Pennsylvania Code, and already cross-referenced in the Board's proposed regulations at 22 Pa. Code § 11.20(a).

Affected Parties

The proposed rulemaking would affect public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, and their employees. The proposed

rulemaking also would affect citizens of the Commonwealth with school-aged children and their children.

Cost and Paperwork Estimates

The proposed rulemaking would make amendments for clarity and for consistency with proposed rules of DOH. The Board's proposed regulations in and of themselves do not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

Effective Date

The proposed rulemaking would become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

The Board will review the effectiveness of 22 Pa. Code § 11.20 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 March 29, 2016, 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 (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments,

recommendations or objections must specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons and individuals affiliated with small businesses are invited to submit written comments, questions, suggestions, commendations, concerns, or objections regarding this proposed rulemaking to Karen Molchanow, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126, ra-stateboardofed@pa.gov. Comments must be submitted to the Board within 30 days of publication of this notice of proposed rulemaking in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Karen Molchanow at (717) 787-3787 or TDD (717) 787-7367.

KAREN MOLCHANOW,
Executive Director

ANNEX A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

CHAPTER 11. STUDENT ATTENDANCE

§ 11.20. Nonimmunized children.

(a) A child may not be admitted to or permitted to attend a public, private, nonpublic, special education or vocational school **[in a district]** unless the immunization, exemption, temporary waiver or provisional admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C (relating to immunization), have been met **[or the child has received from the chief school administrator of the public, private, nonpublic, special education or vocational school a medical or religious exemption from immunization under 28 Pa. Code § 23.84 (relating to exemption from immunization)]**.

(b) **[A child who has not received all doses of the required immunizations or who has not been exempted from immunization, but who has received at least one dose of each of the required immunizations, may be provisionally admitted and attend public school for a period of up to 8 months. Provisional admission or continued attendance shall be conditioned upon the parent or guardian's submission to the superintendent of a plan for the student's completion of the required immunization doses. The plan shall be reviewed by the school district at least every 60 calendar days. If, after 8 months, the child has not received all doses of the required immunizations, the child thereafter may not be further admitted to or be permitted to attend the public schools until all doses have been received.]**

(c)] A child who has been admitted to school or permitted attendance in violation of this section may not be counted toward receipt of Commonwealth reimbursement for the period of the admission or attendance.



COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

March 29, 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 proposed rulemaking approved by the State Board of Education (22 Pa. Code § 11.20, regulation #6-336), for review 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, and the Legislative Reference Bureau.

The proposed rulemaking aligns 22 Pa. Code § 11.20 with proposed revisions to regulations of the Pennsylvania Department of Health (DOH) at Title 28, Chapter 23, Subchapter C of the Pennsylvania Code that are reflected in companion regulation number 10-197. As a courtesy, copies of regulation #6-336 also are being delivered today to the Senate Committee on Public Health and Welfare and the House Committee on Health to help facilitate their review of DOH’s companion regulations.

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 blue ink that reads "Karen Molchanow".

Karen Molchanow
Executive Director

Enclosures

cc: Marisa G. Z. Lehr, Deputy General Counsel, Governor’s Office of General Counsel
Shawn E. Smith, Deputy General Counsel, Governor’s Office of General Counsel
Jordan M. Wagner, Regulatory Coordinator, Governor’s Office of General Counsel
Ernie Helling, Office of Chief Counsel, Department of Education
Wallace Rejrat, 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: 6-336
SUBJECT: NONIMMUNIZED CHILDREN
AGENCY: STATE BOARD OF EDUCATION/DEPARTMENT OF EDUCATION

TYPE OF REGULATION

- X Proposed Regulation
- 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>
3-29-16	<u>Cheryl Wacker</u>	MAJORITY CHAIR <u>Rep. Saylor</u>
3-29-16	<u>April McClinton</u>	MINORITY CHAIR <u>Rep. Roebuck</u>
		<i>SENATE COMMITTEE ON EDUCATION</i>
3-29-16	<u>Judy Merrill</u>	MAJORITY CHAIR <u>Sen. Smucker</u>
3-29-16	<u>JMS</u>	MINORITY CHAIR <u>Sen. Dimmiman</u>
3/29/16	<u>K Cooper</u>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
3/29/16	<u>Courina Bryant</u>	<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>