

Comments of the Independent Regulatory Review Commission



State Board of Education Regulation #6-346 (IRRC #3283)

Certification of Professional Personnel

February 17, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the December 19, 2020 *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.

1. Section 49.1. Definitions. – Clarity and lack of ambiguity.

Culturally relevant and sustaining education (CR-SE)

The definition of “culturally relevant and sustaining education (CR-SE)” includes two terms that are vague. A commentator identifies “cultural awareness” as unclear and asks that it be “stated in an actionable, [observable], and measurable manner.” In addition, “trauma-informed approaches” is unclear. We ask the Board to define these identified terms to improve the clarity of this definition and the regulations.

Professional ethics

The definition of “professional ethics” references “applicable laws and regulations.” This term is vague. We recommend that the definition include the specific laws and regulations to improve clarity.

2. Section 49.14. Approval of institutions and alternative program providers. – Possible conflict with or duplication of statutes or existing regulations; Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors; Fiscal impact; Clarity and lack of ambiguity.

Paragraph (4)(i) requires the development of program goals and purposes that address cognitive competencies, among other topics. The term “cognitive competencies” is neither explained in the Preamble nor defined in the regulations. A commentator states that this term is “too vague and redundant with existing competencies to add value to current program frameworks.” We ask the Board to clarify the regulations by defining this term.

This term is also found in Section 49.16(c) (relating to approval of induction plans).

Paragraph (4)(v) requires demonstration of “recruitment and participation of students from historically underrepresented groups” and annual reporting of admission, retention and graduation rates. Commentators suggest that the annual reporting requirements be limited to people of color, as “universities do not have good data on which students are first generation” and financial aid offices typically do not disclose the social economic status of students. We ask the Board to explain the reasonableness of these reporting requirements and implementation procedures for institutions and alternative program providers to report on economically disadvantaged and first-generation college-goers. Further, the Board should consider revising the reporting requirements to establish a standard that is achievable for the regulated community.

Under paragraph (4)(vii), institutions and alternative program providers “shall develop corrective action steps if identified as at-risk or low performing program providers as defined by the Department” of Education (Department). Where does the Department define these terms? We ask the Board to explain these standards and revise this paragraph to improve clarity by adding a citation or explanation.

As explained in the Preamble, paragraph (4)(viii) addresses the minimum number of hours of field experiences and requirements for supervising teachers “to grant more discretion over clinical experiences to the Secretary [of Education] in consultation with the Board.” While this approach provides flexibility to the Department and the Board, it circumvents the regulatory review process because it does not adequately revise Section 354.25 (relating to preparation program curriculum), which sets standards for the student teaching experience and cooperating teachers. Changes to Section 354.25 should be done through the regulatory review process. We suggest this provision be deleted and addressed in a separate proposed rulemaking.

Further, in response to Regulatory Analysis Form (RAF) Question # 19, the Board states that it anticipates the new competencies “will be implemented through the existing practice of updating the content of required coursework for relevancy and, as such, will not impose a new cost on educator preparation programs.” However, a commentator states that to “add education in professional ethics, structured literacy, and CR-SE – higher education instructors will need to be trained to teach relevant content. That training will come at an additional cost.” We ask the Board to address the fiscal impact on institutions and alternative program providers by providing an estimated cost in RAF Questions # 19 and 23.

3. Section 49.16. Approval of induction plans. – Need; Reasonableness.

Subsection (a) requires a school entity to provide a two-year induction experience for first-year teachers, long-term substitutes who are hired for a position for 45 days or more and educational specialists. What is the rationale for requiring long-term substitutes to participate in a two-year program? We ask the Board explain the reasonableness of and need for training long-term substitutes in the Preamble to the final-form regulation.

Further, commentators recommend adding structured literacy to topics covered by induction plans. We ask the Board to consider adding structured literacy for newly-employed educators as it prepares the final-form regulation.

4. Section 49.17. Continuing professional education. – Reasonableness.

Subsection (a)(6) lists the components of continuing professional development “including the provision of training in structured literacy for professional employees at the **elementary level.**” [Emphasis added.] Commentators express concern with requiring structured literacy only for those educators at the elementary level, many stating that structured literacy should be inclusive of all grades. We ask the Board to explain the rationale for requiring structured literacy only for elementary teachers. Similar to Comment # 3, we ask the Board to consider adding structured literacy for all educators as it prepares the final-form regulation.

Further, this paragraph does not include cognitive competencies. This training is required for preservice educators under Section 49.14(4)(i) (relating to approval of institutions and alternative program providers) and newly-employed teachers under Section 49.16(c). We ask the Board to explain why cognitive competencies are not included in continuing education development. If appropriate, the Board should consider adding training in this area in the final-form regulation.

5. Section 49.31. Criteria for eligibility. – Need; Statutory authority.

Under this section, the Department may issue an emergency, Long-Term or Day-to-Day Substitute Permit for service in an approved private school. The Preamble states that this is a statutory change. However, a citation is not provided. Further, this chapter establishes requirements for the certification and permitting of persons serving in public school entities. We ask the Board to explain the statutory authority for this amendment and why it is needed in this chapter.

6. Section 49.85. Limitations. – Clarity and lack of ambiguity.

Subsection (c) states the validity dates of instructional certificates issued under subsection (b) and details grade level limitations for instructional certificates issued beginning January 1, 2022. To improve the clarity of this regulation, we suggest the Board revise subsection (b) to include validity dates and subsection (c)(1) to list grade level limitations.

7. Section 49.111. Supervisory Certificate. – Reasonableness; Statutory authority.

Subsection (e) provides for the issuance of a Special Education Supervisory Certificate to an individual who has “completed 5 years of satisfactory certified experience as a school psychologist.” The Board explains in the Preamble that this will “help increase the availability of qualified special education supervisors in this Commonwealth.” Commentators have numerous concerns regarding this Supervisory Certificate, including the following:

- School psychologists do not have the knowledge, experience and skills to support, guide and evaluate special education teachers;

- School psychologists do not have the knowledge, experience and skills to design, assess and implement instructional programs;
- Allowing school psychologists to move into supervisory roles will not enhance the delivery of services to special education students;
- Lowering the qualifications of this certificate will have serious implications for the equity and quality of special education services;
- This may exacerbate the shortage of school psychologists.

We ask the Board to explain why it believes school psychologists are properly trained and capable of carrying out special education supervisory duties and why this role is appropriate and reasonable. Further, we ask the Board to state the specific statutory authority for this provision.

8. Miscellaneous clarity.

- We ask the Board to review the regulations to ensure the consistent and proper use of “shall” and “will” and revise these words as directed by Section 6.7(a) and (c) of the *Pennsylvania Code & Bulletin (Style Manual)*.
- We identified the following clarity issues in Section 49.1 (relating to definitions):
 - The definition of “alternative program provider” should be revised to cross-reference section 1207.1(a) of the act. [Emphasis added.]
 - The terms “approved educator certification program” and “completer” are not used in the regulations. These definitions should be deleted under Section 2.11(c) of the *Style Manual*.
 - The definition of “baccalaureate degree” contains a substantive provision relating to graduate degrees. Section 2.11(e) of the *Style Manual* states that substantive provisions may not be contained in a definition section. We recommend moving the requirements for graduate degrees to the body of the regulations.
- The Board should review cross-references to Section 49.12 (relating to eligibility) to ensure citations reflect renumbering.
- The citation to the Federal Higher Education Act in Section 49.14(6) should be revised to encompass the entire statute.
- Section 49.17(c) (relating to continuing professional education) should be revised to cross-reference section 1205.5(g) **of the act**. [Emphasis added.]