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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

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GAMING OVERSIGHT

February 12, 2010

Mr. Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Dear Mr. Kaufman:

On behalf of the Republican Members of the House Education Committee, I am providing comments to the Pennsylvania Pre-K Counts program requirements regulatory package, #006-319. Act 45 of 2007 created the Pre-K Counts program and gave the Department the authority to promulgate regulations in final-form because funds were included for the program in the General Appropriations Bill, Act 38A of 2007. Since the passage of these Acts over two years ago, the Department developed detailed implementation guidelines to govern the program, as opposed to the promulgation of a regulatory package. The final-form regulatory package – 22 PA Code, Chapter 405 – now proposed by the Department embodies the guidelines that have governed the program. We are pleased that the Department of Education has taken the necessary steps to establish these regulations through the regulatory process.

The final-omitted regulations contain important first steps toward ensuring that the Pre-K Counts program is effective, cost-efficient, and serves the children in the Commonwealth who would benefit the most from quality, early learning programs. Certain parts of the regulations require that the program provides high quality education and is compatible with Pennsylvania's educational system; however, there are other provisions that warrant further clarification and exploration.

First, Republicans have always strived to ensure accountability for taxpayer dollars. As such, we are pleased with the language contained in Section 405.73, which

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states that the funds appropriated for the program may only be used for costs associated with providing quality program services to eligible children enrolled in Pre-K Counts. Likewise, we are pleased to see Section 405.22 aimed at maximizing the resources appropriated for the Pre-K Counts programs through coordination with other early learning programs being supported by the State.

Recognizing the efficiencies of maximizing resources, we nevertheless have reservations with the practice of braiding funds, given the mandated limitations on the use of various funding streams and the potential monetary penalties that could be imposed for noncompliance. Braiding is the process whereby providers braid multiple funding streams together so that different funding sources pay "for similar services so each program is charged its fair share of program costs."

We also recognize the Department for encouraging and requiring the coordination and collaboration with agencies that provide services to children, per proposed Section 405.31. By allowing Pre-K Counts providers to coordinate and collaborate with Child Care Works providers, Head Start providers, and Child Care Information Service (CCIS) agencies, it is far more likely that the children who need early childhood education services the most will be served. This requirement for collaboration is explored further in Section 403.21, where the early childhood programs discussed above are expected to coordinate their efforts to ensure that children who are most at-risk are targeted for enrollment in a valuable early childhood program.

While there are many provisions contained in the final-form regulations that should be recognized for their intent to provide a quality early learning program, the unintended consequences of applying them evenly across such a wide range of providers should be further explored. Approved Pre-K Counts providers vary widely from family day-care homes, licensed nursery schools, certain Keystone STARs programs, Head Start grantees to multi-million dollar school districts educating thousands of children. Because of this wide range, there may need to be varying levels of compliance for providers so as not to infringe upon school board responsibilities, collective bargaining agreements and Federal statutes.

According to the regulations, for example, children with disabilities "must be served in inclusive environments" and constitute no more than 20% of the initial enrollment. By establishing specific criteria targets for placement of children with disabilities, the State's predetermination of a child's placement appears to be a direct con-

tradition to the federal regulations in 34 CFR 300.320 and 300.321 regarding the development of the Individual Education Plans (IEP) for the child.

As noted above, there is a wide range of approved providers in the Pre-K Counts program, from family day-care centers to school districts with an elected board of school directors. The regulatory package contains mandates for staffing, curriculum, class size and staffing ratios. These areas are stated responsibilities for a board of school directors included within the Public School Code and may remove negotiable provisions of collective bargaining agreements.

The regulatory package also states that program providers **must** comply with program announcements, issued by the Departments [emphasis added]. First, the term "must" appears to imply a level of legal compliance for unknown mandates which is in conflict with the intent of notice and public input as set forth in the Commonwealth Documents Law.

Secondly, the program announcements which are internally developed by the departments are very explicit in their direction of the staffing and operation of the programs. The announcements go so far as to prescribe the range of staff salaries, staff promotion policies, monthly reporting requirements, etc. At the present time, the Office of Early Learning Services (DPW/PDE) issues such announcements for kindergarten programs, early intervention, Keystone STARS, child care centers, licensed nursery schools, family group homes, Head Start providers and Pre-K Counts programs which include school districts.

We would like to note one area in particular that we believe that varying levels of compliance should be explored for the different types of Pre-K Counts program. The program announcements require program providers to comply with the Early Childhood Environment Rating Scale (ECERS). ECERS is a scale developed at the University of North Carolina that has become relevant in the discussion of quality and accountability for early learning programs. The scale is being used for inspections and may have an impact on the funding level received by each Pre-K Counts provider. While there is value in providing guidance to assure a provider's quality, the usefulness of applying the mandated ECERS, considering the wide range of providers and making subsequent funding decisions, is debatable.

For example, ECERS has 43 items, organized into 7 subscales, such as space and furnishings (indoor/outdoor space), personal care routines (toileting/diapering), etc. For example, "greeting and departing" is included in the subscale section of personal care routines. The manual includes the following:

9. Greeting/Departing

1.1 Score "Yes" when children are usually (75% of the time) not acknowledged by staff, either verbally or non-verbally, either positively or neutrally, upon entering the classroom, or very soon after their arrival (within 1-2 minutes).

3.1 Most requires that at least 75% of the children are greeted warmly, and any new staff member greets the children as well.

5.1 Observe greeting very carefully to see if each child is actually greeted, and that the greeting is personal and positive (e.g., caregiver makes eye contact and smiles, uses child's real name or nickname, says something to child or asks something). For suggestions on accurately assessing greeting and departing see All About the ECERS-R pp. 80-85.

5.3 To give credit, each parent does not have to be greeted warmly during the observation, but it must be obvious that, in general (approximately 75% of the time), parents are treated in this way.'

Another example concerns the area of art programs. ECERS documents state that food is not an acceptable art material for children because "[e]dible materials, such as chocolate pudding, dried pasta, popcorn, etc., cannot be counted as art materials because they give a misleading message about the proper use of food. In addition, many children are being raised in homes where food cannot be wasted, and using food in art causes a conflict in the messages given at home and school."

Comments from teachers that have experience with the ECERS rating scales have expressed that they [inspectors] are more concerned with "[w]orrying about where to put the library in the room instead of being concerned with are the children

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reading the books" (Citation: <http://atozteacherstuff.com>). We believe that some of the requirements of the ECERS scales are overly burdensome and oppressive.

On a positive note, we are pleased to see that the Department has included a general rule in Section 405.3 that would allow families with children enrolled in the program to pay all or part of the cost of participation if they are willing and able to do so. However, the draft package specifically prohibits program providers from discussing the issue of a co-pay with program participants. It is important that the Pre-K Counts program is as cost-efficient as possible to ensure that children who are most at-risk or needy receive services; but, as stewards of taxpayer dollars and in light of the current economic outlook, we need to be sure to use these limited resources wisely.

Legislation has been introduced in both the House of Representatives and the Senate to address some of the issues enumerated above (i.e., a study of co-pays for other early learning programs, use of funds, etc). However, we felt that certain issues, such as compliance with federal statutes and ensuring the State does not interfere with the responsibilities of other elected officials, should be brought to your attention for your consideration as you deliberate the final-form regulatory package proposed by the Department.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, reading "Paul I. Clymer". The signature is fluid and cursive, with the first name "Paul" and last name "Clymer" clearly legible.

Paul I. Clymer, Chairman
House Education Committee (R)

cc: Honorable Samuel Smith, House Republican Leader
Honorable James Roebuck, House Majority Education Committee Chairman
Honorable Jeffrey Piccola, Senate Majority Education Committee Chairman
Honorable Andrew Dinniman, Senate Democratic Education Committee Chairman
The Honorable Gerald L. Zahorchak, Secretary of Education
Mr. Joseph Torsella, Chairman of the State Board of Education
Mr. James M. Smith, Independent Regulatory Review Commission Analyst

