

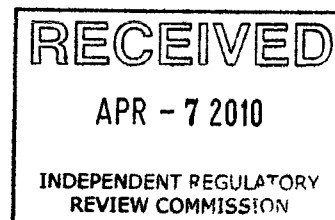


COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

2817

April 7, 2010

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17126



Dear Mr. Kaufman:

Enclosed is a copy of the revised "final omitted regulation" approved by the Department of Education ("Department") (22 Pa. Code, Chapter 405, Pennsylvania Pre-K Counts Requirements, Standards, and Procedures, #006-319). The Department submits the enclosure for review and action by the Commission pursuant to the provisions of section 5.1(c) of the Regulatory Review Act.

In accordance with section 745.5a(g)(2) of the Regulatory Review Act, this revised "final omitted regulation" is submitted following the Department's March 8, 2010 request to toll the time for review of the regulation and the Commission's subsequent March 9, 2010 response that noted no objection to the Department's request.

The Department's enclosed "final omitted regulation" has been revised consistent with the suggested revisions that have been provided by your staff; the comments submitted by both the House and Senate Education Committees; comments submitted by the Disability Rights Network; and incorporates those changes that the Department agreed were necessary to conform with the intention of the General Assembly and with applicable law. Specifically, the Department:

1. Revised section 405.2 as follows:
  - a. *Act* - Inserted "(b)" after "Subarticle XV-D."
  - b. *Approved provider* - Inserted "the" before "Act."
  - c. *At-risk child* - Modified the definition so that it aligns with the Act and does not expand the statutory definition.
  - d. *Eligible provider* - Changed the definition to include "as defined in the Act" to remain consistent with the statute, but retained language clarifying the eligibility of child day care centers and group day care homes.
  - e. *Eligible student* - Added "An eligible student" to the beginning of the definitional phrase.
  - f. *Teacher Aide* - Replaced the word "lead" with "primary" before the word "teacher" at the end of the definition.

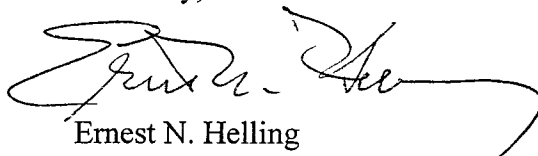
2. Corrected the letter sequence errors in section 405.3 and changed “eligible children” to “eligible student” as it appeared therein.
3. Revised section 405.3(h) (formerly subsection (g)) by removing the requirement that “[p]rogram providers *must comply* with the program announcements issued by the Department”. (Emphasis added).
4. Revised section 405.24 by adding subsection (d) which states that “An approved provider shall not deny a student admission to a program by reason of the student’s disability.”
5. Revised section 405.31(e) to read that “Approved providers must coordinate and collaborate with Head Start agencies”, thus creating a clear standard with which program providers can comply.
6. Revised section 405.42(a) to include the phrase “in section 4.20 (relating to prekindergarten education)” after “Early Learning Standards”.
7. Replaced the word “that” with the word “than” in subsection 405.44(a)(4); and changed the word “bi-annual” to the word “semi-annual” in subsection 405.44(c).
8. Added the word “Approved” before the word “providers” in sections 405.46; 405.47; 405.48; 405.49 and 405.50.
9. Modified section 405.51 to clarify that approved providers shall not deny any student admission to a classroom based on a disability or delay regardless of the suggested twenty (20) percent classroom capacity goal for the start of a program year.

The Department is confident that these revisions will satisfy all concerns raised by the Commission and the House and Senate Education Committees. In addition, the Department asserts that the revised “final omitted regulation” does not violate any provision of the Americans with Disabilities Act, notwithstanding the fact that the Disability Rights Network continues to oppose the language of this provision even after it has been twice revised in the interim in an effort to address the concerns of the Network.

The Department will continue to provide the Commission with any assistance that is necessary to facilitate a thorough review of this revised “final omitted regulation”.

Thank you for your consideration.

Sincerely,



Ernest N. Helling  
Assistant Chief Counsel

Enclosure

cc: Gerald L. Zahorchak, D.Ed. Secretary, PA Department of Education  
Todd Klunk, Acting Deputy Secretary, Office of Child Development and Early Learning, PA Department of Education  
Judy Shopp, Esq., Chief Counsel, PA Department of Education  
Nicole Bordonaro, Esq., Assistant Counsel, PA Department of Education  
Teresa Colarusso, PA Department of Education, Office of Government Relations  
Harriet Dichter, Acting Secretary, Department of Public Welfare  
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Gregory Dunlap, Esq., Deputy General Counsel, Office of General Counsel  
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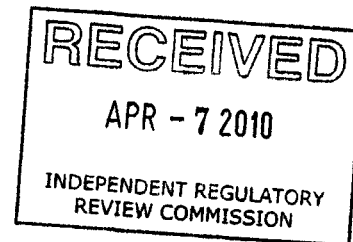


COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

2817

April 7, 2010

The Honorable James R. Roebuck, Jr.  
Chair, House Education Committee  
Room 208, Irvis Office Building  
Harrisburg, PA 17120



Dear Representative Roebuck:

Enclosed is a copy of the revised "final omitted regulation" approved by the Department of Education ("Department") (22 Pa. Code, Chapter 405, Pennsylvania Pre-K Counts Requirements, Standards, and Procedures, #006-319) and resubmitted after tolling in accordance with section 745.5a(g)(2) of the Regulatory Review Act. The Department submits the enclosure for review and action by the Committee pursuant to the provisions of section 5.1(c) of the Regulatory Review Act. The regulation is also being delivered today to the Senate Education Committee, Independent Regulatory Review Commission and the Office of the Attorney General.

The enclosed regulation has been revised consistent with the comments submitted by the Independent Regulatory Review Commission, both the House and Senate Education Committees; comments submitted by the Disability Rights Network; and incorporates those changes that the Department agreed were necessary to conform with the intention of the General Assembly and with applicable law. Specifically, the Department:

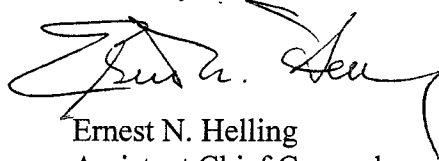
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  - c. *At-risk child* - Modified the definition so that it aligns with the Act and does not expand the statutory definition.
  - d. *Eligible provider* - Changed the definition to include "as defined in the Act" to remain consistent with the statute, but retained language clarifying the eligibility of child day care centers and group day care homes.
  - e. *Eligible student* - Added "An eligible student" to the beginning of the definitional phrase.
  - f. *Teacher Aide* - Replaced the word "lead" with "primary" before the word "teacher" at the end of the definition.
2. Corrected the letter sequence errors in section 405.3 and changed "eligible children" to "eligible student" as it appeared therein.

3. Revised section 405.3(h) (formerly subsection (g)) by removing the requirement that “[p]rogram providers *must comply* with the program announcements issued by the Department”. (Emphasis added).
4. Revised section 405.24 by adding subsection (d) which states that “An approved provider shall not deny a student admission to a program by reason of the student’s disability.”
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6. Revised section 405.42(a) to include the phrase “in section 4.20 (relating to prekindergarten education)” after “Early Learning Standards”.
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9. Modified section 405.51 to clarify that approved providers shall not deny any student admission to a classroom based on a disability or delay regardless of the suggested twenty (20) percent classroom capacity goal for the start of a program year.

The Department is confident that these revisions will satisfy all concerns raised regarding this regulation and will continue to provide the Commission with any assistance that is necessary to facilitate a thorough review of this revised final omitted regulation.

Thank you for your consideration.

Sincerely,



Ernest N. Helling  
Assistant Chief Counsel

Enclosure

cc: Gerald L. Zahorchak, D.Ed. Secretary, PA Department of Education  
Todd Klunk, Acting Deputy Secretary, Office of Child Development and Early Learning, PA Department of Education  
Judy Shopp, Esq., Chief Counsel, PA Department of Education

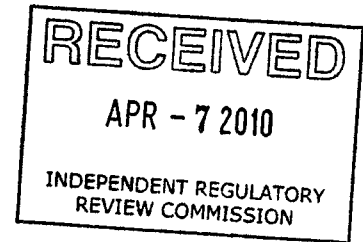
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Harriet Dichter, Acting Secretary, Department of Public Welfare  
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Leslie Lewis-Johnson, Esq., Chief Counsel, IRRC



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

2817

April 7, 2010



The Honorable Paul I. Clymer  
House Education Committee  
216 Ryan Office Building  
Harrisburg, PA 17120

Dear Representative Clymer:

Enclosed is a copy of the revised "final omitted regulation" approved by the Department of Education ("Department") (22 Pa. Code, Chapter 405, Pennsylvania Pre-K Counts Requirements, Standards, and Procedures, #006-319) and resubmitted after tolling in accordance with section 745.5a(g)(2) of the Regulatory Review Act. The Department submits the enclosure for review and action by the Committee pursuant to the provisions of section 5.1(c) of the Regulatory Review Act. The regulation is also being delivered today to the Senate Education Committee, Independent Regulatory Review Commission and the Office of the Attorney General.

The enclosed regulation has been revised consistent with the comments submitted by the Independent Regulatory Review Commission, both the House and Senate Education Committees; comments submitted by the Disability Rights Network; and incorporates those changes that the Department agreed were necessary to conform with the intention of the General Assembly and with applicable law. Specifically, the Department:

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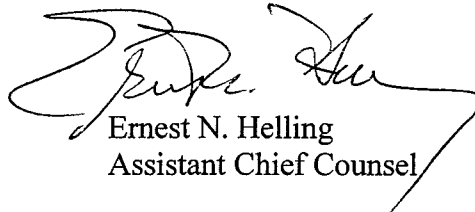


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The Department is confident that these revisions will satisfy all concerns raised regarding this regulation and will continue to provide the Commission with any assistance that is necessary to facilitate a thorough review of this revised final omitted regulation.

Thank you for your consideration.

Sincerely,



Ernest N. Helling  
Assistant Chief Counsel

Enclosure

cc: Gerald L. Zahorchak, D.Ed. Secretary, PA Department of Education  
Todd Klunk, Acting Deputy Secretary, Office of Child Development and Early Learning, PA Department of Education



Judy Shopp, Esq., Chief Counsel, PA Department of Education  
Nicole Bordonaro, Esq., Assistant Counsel, PA Department of Education  
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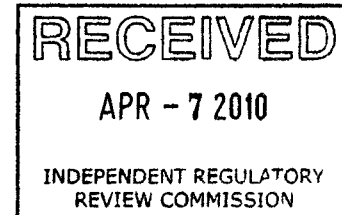


COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

2817

April 7, 2010

The Honorable Andrew Dinniman  
Minority Chair, Senate Education Committee  
Room 183, Main Capitol Building  
Harrisburg, PA 17120



Dear Senator Dinniman:

Enclosed is a copy of the revised "final omitted regulation" approved by the Department of Education ("Department") (22 Pa. Code, Chapter 405, Pennsylvania Pre-K Counts Requirements, Standards, and Procedures, #006-319) and resubmitted after tolling in accordance with section 745.5a(g)(2) of the Regulatory Review Act. The Department submits the enclosure for review and action by the Committee pursuant to the provisions of section 5.1(c) of the Regulatory Review Act. The regulation is also being delivered today to the House Education Committee, Independent Regulatory Review Commission and the Office of the Attorney General.

The enclosed regulation has been revised consistent with the comments submitted by the Independent Regulatory Review Commission, both the House and Senate Education Committees; comments submitted by the Disability Rights Network; and incorporates those changes that the Department agreed were necessary to conform with the intention of the General Assembly and with applicable law. Specifically, the Department:

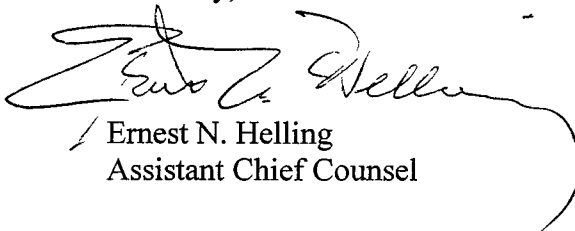
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3. Revised section 405.3(h) (formerly subsection (g)) by removing the requirement that “[p]rogram providers *must comply* with the program announcements issued by the Department”. (Emphasis added).
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The Department is confident that these revisions will satisfy all concerns raised regarding this regulation and will continue to provide the Commission with any assistance that is necessary to facilitate a thorough review of this revised final omitted regulation.

Thank you for your consideration.

Sincerely,



/ Ernest N. Helling  
Assistant Chief Counsel

Enclosure

cc: Gerald L. Zahorchak, D.Ed. Secretary, PA Department of Education  
Todd Klunk, Acting Deputy Secretary, Office of Child Development and Early Learning, PA Department of Education

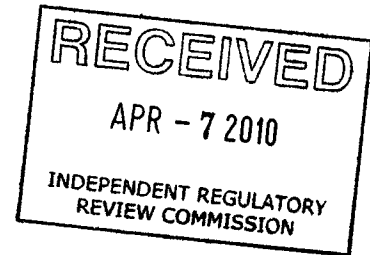
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COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL

2817

April 7, 2010



The Honorable Jeffrey Piccola  
Chair, Senate Education Committee  
Room 173, Main Capitol Building  
Harrisburg, PA 17120

Dear Senator Piccola:

Enclosed is a copy of the revised "final omitted regulation" approved by the Department of Education ("Department") (22 Pa. Code, Chapter 405, Pennsylvania Pre-K Counts Requirements, Standards, and Procedures, #006-319) and resubmitted after tolling in accordance with section 745.5a(g)(2) of the Regulatory Review Act. The Department submits the enclosure for review and action by the Committee pursuant to the provisions of section 5.1(c) of the Regulatory Review Act. The regulation is also being delivered today to the House Education Committee, Independent Regulatory Review Commission and the Office of the Attorney General.

The enclosed regulation has been revised consistent with the comments submitted by the Independent Regulatory Review Commission, both the House and Senate Education Committees; comments submitted by the Disability Rights Network; and incorporates those changes that the Department agreed were necessary to conform with the intention of the General Assembly and with applicable law. Specifically, the Department:

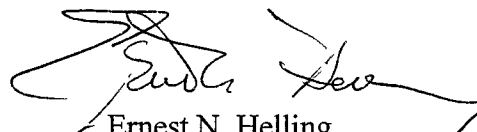
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The Department is confident that these revisions will satisfy all concerns raised regarding this regulation and will continue to provide the Commission with any assistance that is necessary to facilitate a thorough review of this revised final omitted regulation.

Thank you for your consideration.

Sincerely,



Ernest N. Helling  
Assistant Chief Counsel

Enclosure

cc: Gerald L. Zahorchak, D.Ed. Secretary, PA Department of Education  
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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF EDUCATION

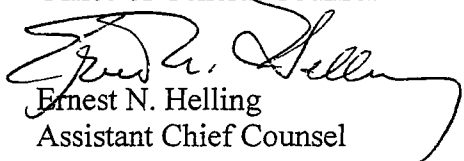
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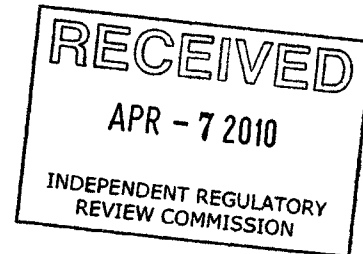
2817

DATE: April 7, 2010

SUBJECT: Final Omitted Regulation

TO: Robert A. Mulle  
Chief Deputy Attorney General  
Review and Advice Section  
Office of General Counsel

FROM:   
Ernest N. Helling  
Assistant Chief Counsel



Enclosed are two originals and three copies of the revised final omitted regulation approved by the Office of General Counsel. Please note that the Office of Attorney General previously approved this regulation prior to its being tolled on March 9, 2010. The regulation is also being delivered today to the House and Senate Education Committees and the Independent Regulatory Review Commission.

DEPARTMENT OF EDUCATION  
22 Pa. Code, Chapter 405  
Pennsylvania Pre-K Counts Requirements, Standards, and Procedures

The enclosed regulation has been revised consistent with the comments submitted by the Independent Regulatory Review Commission, both the House and Senate Education Committees; comments submitted by the Disability Rights Network; and incorporates those changes that the Department agreed were necessary to conform with the intention of the General Assembly and with applicable law. Specifically, the Department:

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Enclosure

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Judy Bailets, Staff Assistant, Governor's Office of Policy  
Danielle Guyer, Acting Chief Legislative Analyst, Office of the Budget  
Glenda Davidson, OGC Regulatory Coordinator