

Comments of the Independent Regulatory Review Commission



State Board of Education Regulation #6-336 (IRRC #3146)

Nonimmunized Children

June 8, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the April 9, 2016 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (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.

Temporary waiver. – Clarity; Implementation procedures.

The Board is clarifying its existing provision that requires children to meet the immunization requirements established by the Department of Health (Department) in order to be admitted to a school, which is consistent with the Public School Code of 1949. 24 P.S. § 13-1303a(a). This regulation was submitted and published simultaneously with the Department's proposed rulemaking that amends 28 Pa. Code Chapter 23, Subchapter C (relating to immunization) (regulation #10-197/IRRC #3147). We have a procedural concern relating to clarity and implementation of this regulation as a final-form regulation.

The Board's regulation proposes to add the phrase "temporary waiver" for consistency with the Department's proposed regulation, so that the Board's regulation will read ". . . temporary waiver . . . admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C . . ." Our concern is that temporary waivers are not part of the Board's regulation, but rather are part of the Department's *proposed* regulation at 28 Pa. Code § 23.85(h). In other words, temporary waivers do not yet exist in 28 Pa. Code Chapter 23, Subchapter C. While we recognize and appreciate the coordination that has occurred between the Board and the Department, it is possible that the Department could delete temporary waivers from its final-form regulation. For this reason, the Board's final-form regulation should not be submitted until after the Department's regulation is published in the *Pennsylvania Bulletin* as final and establishes temporary waivers in the Department's regulation. Until that time, we are unable to determine whether the regulation is in the public interest.