

# PROPOSED RULEMAKING

## DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 342]

### Special Education Services and Programs

The Department of Education (Department) proposes to amend Chapter 342 (relating to special education services and programs) to read as set forth in Annex A, under the authority of section 13-1372 of the Public School Code of 1949 (24 P. S. § 13-1372) and § 14.3 (relating to standards).

Chapter 342 governs the Commonwealth's operation of special education services and programs for eligible students. The proposed amendment to § 342.34 (relating to extended school year services) establishes definitions, criteria and procedures for considering and documenting the need for extended school year (ESY) services for eligible students under Chapter 14 (relating to special education services and programs).

#### *Purpose*

The purpose of amending § 342.34 is to ensure that Commonwealth standards are consistent with Chapter 14, Federal law and judicial decisions affecting ESY services for eligible students, and to provide guidance to local educational agencies when determining whether or not eligible students under Chapter 14 are entitled to ESY services. Definitions and criteria previously only alluded to in § 14.34 (relating to extended school year services) are specified in proposed § 342.34.

The proposed amendment complements amendments being proposed by the State Board of Education under §§ 14.1 and 14.34 (relating to definitions; and extended school year services).

ESY services address the needs of eligible students who lose behavioral patterns or skills (regression) during an interruption in educational programming and who do not recover those behavior patterns or skills (recoupment), making it unlikely that the student will attain or maintain the goals as reflected in the Individualized Education Program (IEP) or make reasonable progress from year to year.

Respecting that not all students receiving special education services and programs need extended services because of regression and failure to recoup, the Department is proposing an amendment to § 342.34 intended to facilitate a local education agency's (LEA) determination as to whom among the students eligible for special education services and programs are also eligible for ESY services and to provide procedures that will ensure that these decisions are reached within the regulatory provisions of the Individuals with Disabilities Education Act, the regulatory provisions under 34 CFR Part 300 and *Armstrong v. Kline*, 476 F. Supp. 583 (E. D. Pa. 1979).

Failure to promulgate these standards could mean denial of a free appropriate public education to eligible students, loss of student progress, provision of services by LEAs when not required, unnecessary due process hearings and significant loss of funding for noncompliance with Federal regulations.

#### *Affected Parties*

The proposed standard will benefit Commonwealth students who are eligible for special education services and programs and who need ESY services to enable them to receive a free appropriate public education. The proposed standard also affects the parents and guardians of these students, as well as all school districts and intermediate units by providing clear policy for implementation and dispute resolution.

#### *Cost and Paperwork Estimates*

Costs imposed on State government will be for providing training and technical assistance to school districts and intermediate units in interpreting and implementing the new standards. These efforts are ongoing for various sections of the standards, so the proposed change in standards will not materially affect the Commonwealth's costs.

The number of students entitled to ESY services should not increase significantly as a result of the proposed standard, since each district must consider all eligible students for ESY services if regression and limited recoupment capacity warrant this consideration. Costs may increase slightly because of the demand expectations created by bringing attention to the issue. The ESY services are already being provided to approximately 3,000 students in this Commonwealth. The Department is not aware of students in this Commonwealth who are entitled to ESY services but are not receiving them. As a result of the Department's analysis of fiscal impact, the maximum increase in the number of students served would be less than 10%. Given an average cost of services of \$1,968, a 10% increase would result in a total added cost across this Commonwealth of approximately \$590,000. These costs are expected to be offset by Federal IDEA Part B funds within the budgets of intermediate units. The fiscal impact on school districts should be minimal.

The proposed amendment to § 342.34 will not substantially alter paperwork, accounting or reporting requirements already in place.

#### *Effective Date*

The proposed standard will become effective upon final publication in the *Pennsylvania Bulletin*.

#### *Sunset Date*

The effectiveness of Chapter 342 (including § 342.34) will be reviewed by the Department and State Board of Education every 4 years, in accordance with the Board's policy and practice respecting all regulations and standards promulgated by the Department and Board. Thus, no sunset date is necessary.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 7, 1997, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the proposed amendment, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendment, they will notify the Department within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the standards, by the Board, the General Assembly and the Governor of objections raised.

*Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*. Persons needing additional information regarding this proposal may contact William Penn, Director, Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126-0333 (717) 783-6913.

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

Alternative formats of the proposed amendment (such as braille, large print, cassette tape) can be made available to members of the public upon request to Dr. Garland at the telephone and TDD numbers listed in this Preamble.

EUGENE W. HICKOK,  
*Secretary*

**Fiscal Note:** 6-259. (1) General Fund; (2) Year 1997-98 is \$ 590,000; (3) 1st Succeeding Year 1998-99 is \$ 720,000; 2nd Succeeding Year 1999-00 is \$ 720,000; 3rd Succeeding Year 2000-01 is \$ 720,000; 4th Succeeding Year 2001-02 is \$ 720,000; 5th Succeeding Year 2002-03 is \$ 720,000; (4) Fiscal Year 1996-97 \$6.08 million; Fiscal Year 1995-96 \$6.07 million; Fiscal Year 1994-95 \$5.19 million; (7) special education; (8) recommends adoption. The costs are expected to be offset by Federal IDEA Part B funds within the budget of the intermediate units.

**Annex A**

**TITLE 22. EDUCATION**

**PART XVI. STANDARDS**

**CHAPTER 342. SPECIAL EDUCATION SERVICES AND PROGRAMS**

§ 342.34. Extended school year **services**.

[ See § 14.34 (relating to extended school year services). ]

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

**Regression**—Reversion to a lower level of functioning evidenced by a measurable decrease in the level of skills or behaviors which occurs as the result of an interruption in educational programming.

**Recoupment**—Recovery of skills or behavioral patterns, or both, specified on the IEP to a level demonstrated prior to the interruption of educational programming.

(b) Factors such as those listed in this section shall be considered by IEP teams whenever relevant, but no single factor listed in this section is determinative of need for extended school year (ESY) services.

(c) When considering the need for ESY services, the team shall pay particular attention to students with disabilities that are thought of as severe and to IEP goals that are associated with self-sufficiency and independence from caretakers. School districts may not limit their consideration of the need for ESY services to students with particular types or degrees of disability, particular student goals, particular methods of programming provided during the regular school term or the availability of retrospective data on regression and recoupment.

(d) ESY services shall be designed to attain or maintain skills and behaviors relevant to established IEP goals and objectives.

(e) Reliable sources of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress may include the following:

(1) Progress of goals on consecutive IEPs.

(2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.

(3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.

(4) Medical or other agency reports indicating degenerative-type difficulties which become exacerbated during breaks in educational services.

(5) Observations and opinions by educators, parents and others.

(6) Results of tests including criterion-referenced tests, curriculum-based assessments, ecological like skills assessments and other appropriate measures.

(f) Documentation that ESY has been considered shall be made on each eligible student's IEP. When determined to be necessary by the IEP team, ESY services shall be reflected on a student's IEP.

[Pa.B. Doc. No. 97-762. Filed for public inspection May 16, 1997, 9:00 a.m.]

**DEPARTMENT OF  
PUBLIC WELFARE**

[55 PA. CODE CH. 141]

**Volunteer Community Service; General Eligibility Requirements**

The Department of Public Welfare (Department), under the authority of section 403(b) of the Public Welfare Code (code) (62 P. S. § 403(b)) proposes to amend § 141.81 (relating to MA eligibility policy) to read as set forth in Annex A. The proposed amendment affects State-funded General Assistance (GA) category of Medically Needy Only Medical Assistance (MNO-MA).

*Purpose*

The purpose of this proposed amendment is to add a provision to recognize volunteer community service as meeting the work requirement required under the act of May 16, 1996 (P. L. 175, No. 35) (Act 35) for MNO-MA. The Department is proposing this amendment in response to requests from interested parties. This proposed amendment would extend MNO-MA coverage to persons who attempt but are unable to find employment and instead participate in volunteer community service. An individual will be required to participate in volunteer community service for at least 100 hours per month. Persons who are employed for less than 100 hours per month may use a combination of hours worked in paid employment and volunteer community service to qualify for MNO-MA.

*Background*

Act 35 amended section 442.1 of the code (62 P. S. § 442.1) relating to the determination of eligibility for MNO-MA. Section 442.1(a)(3)(ii) of the code provides eligibility for MNO-MA to individuals who are not eligible for cash assistance but who meet certain other conditions, including a person who verifies employment of at least 100 hours per month earning at least the minimum wage. In addition, section 442.1(a)(2) of the code provides eligibility for MNO-MA to individuals who meet standards of financial and nonfinancial eligibility established by the Department with approval of the Governor.

The Department received requests from interested parties advocating that persons who are actively engaged in volunteer community service for 100 hours per month be considered as meeting the work requirement under Act 35. Accordingly, the Department proposes to adopt the amendment to permit these individuals to qualify for MNO-MA.

*Need for the Amendment*

This amendment is needed to recognize the performance of volunteer community service to establish eligibility for MNO-MA. The Department proposes to cover individuals who have made a good faith effort to find employment for at least 100 hours each month for at least minimum wage but are unable to find paid work and thus participate in volunteer community service. An individual will be required to participate in community service for at least 100 hours each month of eligibility. To be counted, community service shall be performed through a municipality or a nonprofit organization that qualifies as tax-exempt under section 501(c)(3) or (4) or (d) of the Internal Revenue Code (26 U.S.C.A. § 501(c)(3) or (4) or (d)). The number of hours that an individual participates in community service must be verified.

*Summary of the Proposed Amendment*

The Department proposes to add new § 141.81(i), Community Service for General Category (TD). The new subsection extends eligibility for MNO-MA to individuals in the TD category who meet the financial requirements but are not otherwise eligible unless they verify either 100 hours per month of volunteer community service or a combination of volunteer community service and paid employment at the minimum wage that totals at least 100 hours per month. The proposed amendment describes community service; requires that community service be performed through a municipality or a nonprofit organization that qualifies as tax-exempt under section 501(c)(3) or (4) or (d) of the Internal Revenue Code and provides service in a nondiscriminatory manner consistent with Federal, State and local law; clarifies that the community service must be comparable to work for which an em-

ployer would normally pay at least minimum wage and does not promote religion or involve political, electoral or partisan activities; and outlines the responsibilities of clients participating in community service.

*Affected Individuals and Organizations*

The proposed amendment will affect applicants for and recipients of MNO-MA who do not qualify for a Federally-funded category of MA or for State-funded MA on any other basis. These individuals are categorized as GA-related. It will also affect municipalities and nonprofit organizations where individuals perform community service.

*Fiscal Impact*

The estimated costs to the State associated with permitting a person to qualify for MNO-MA on the basis of performing community service are \$15.505 million based on the assumption that 10 percent of the affected population would be able to verify 100 hours of volunteer community service.

We are unable to quantify the actual costs to the private sector. However, the benefits of having a welfare recipient participate in volunteer community service should outweigh the costs associated with supervising and documenting the participant's activity. Documentation would include maintaining attendance records, providing monthly verification of the actual number of hours of participation, and providing assurances to and writing job descriptions for participants.

*Paperwork Requirement*

No new forms are anticipated. Persons who apply for MNO-MA will be required to obtain and provide monthly verification of the actual number of hours that they participate in community service. Additionally, a person has to obtain and provide to the Department a volunteer responsibilities description and specific assurances.

*Effective Date*

This proposed amendment will be effective upon publication as final rulemaking.

*Sunset Date*

No sunset date is applicable.

*Public Comment Period*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to the Department of Public Welfare, Patricia H. O'Neal, Director, Bureau of Policy, Room 431, Health and Welfare Building, Harrisburg, PA 17120 (717) 787-4081, within 30-calendar days of the date of publication in the *Pennsylvania Bulletin*. Comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulation. Comments received after the 30-day comment period will be considered for any subsequent revisions of this regulation.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 1997, the Department submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendment, the Department has provided IRRC

and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendment, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor and the General Assembly of these objections before final publication of the regulation.

FEATHER O. HOUSTON,  
Secretary

**Fiscal Note:** 14-436. (1) General Fund;

	MA—Inpatient	Outpatient	Capitation
(2) 1997-98 is	\$7,819,000	\$3,022,000	\$ 9,092,000
(3) 1998-99 is	8,132,000	3,143,000	9,455,000
1999-00 is	8,458,000	3,269,000	9,834,000
2000-01 is	8,796,000	3,399,000	10,227,000
2001-02 is	9,148,000	3,535,000	10,636,000
2002-03 is	9,514,000	3,677,000	11,061,000
(4) 1996-97	\$317,747,000	\$714,802,000	\$577,078,000
1995-96	452,180,000	792,293,000	661,031,000
1994-95	550,452,000	722,422,000	602,328,000

(7) Medical Assistance—Inpatient, Outpatient and Capitation Appropriations; (8) recommends adoption. The costs above assume that 10% of the MA recipients will be able to verify 100 hours of voluntary community service. The costs for 1997-98 are included in the 1997-98 Executive Budget.

**Annex A**

**TITLE 55. PUBLIC WELFARE**

**PART II. PUBLIC ASSISTANCE MANUAL**

**Subpart C. ELIGIBILITY REQUIREMENTS**

**CHAPTER 141. GENERAL ELIGIBILITY PROVISIONS**

**ELIGIBILITY PROVISIONS FOR MA FOR MEDICALLY NEEDY**

**§ 141.81. MA eligibility policy.**

\* \* \* \* \*

(i) *Community Service for General Category (TD).* An individual who meets the financial requirements for GA-MNO but is not otherwise eligible may qualify if the individual demonstrates a good faith effort to seek employment, accept any offer of employment and maintain employment, including verifying registration at the job center, and verifies either 100 hours per month of approved volunteer community service or a combination of approved volunteer community service and paid employment for at least the minimum wage that totals at least 100 hours per month in each of the 6 months during which eligibility for GA-MNO is being determined.

(1) To be counted under this subsection, community service shall be performed through a municipality or a nonprofit organization that qualifies as tax-exempt under sections 501(c)(3) or (4) or (d) of the Internal Revenue Code (Community Service Agency) (26 U.S.C.A. § 501(c)(3) or (4) or (d)). This organization shall be representative of a community or a significant segment of the community that is engaged in meeting human, educational or environmental community needs.

(2) Eligible volunteer community service shall consist of tasks that would usually be performed by paid employees of a municipality or organization if there were sufficient resources to pay for the work. As used in this chapter, the term “community service” means performance of tasks designated to accomplish any of the following:

(i) Preservation, enhancement and remediation of the environment.

(ii) Promotion of the well-being of children, the elderly, persons with physical or developmental disabilities, and persons with low incomes.

(iii) Educational development, including literacy training, adult basic education courses and instruction in job search skills and job application skills.

(iv) Improvement activities on public land or facilities.

(v) Projects or activities calculated to improve public health, safety and welfare.

(3) An individual's participation in community service shall be counted if the value of the service the individual performs is comparable to work for which an employer would normally pay at least minimum wage. The final determination of comparability will rest with the Department.

(4) An individual's participation in community service will not be considered for purposes of eligibility if the activities promote religion or are of a political, electoral or partisan nature, nor for any routine unpaid civic activities such as attending parent-teacher association and neighborhood group meetings, or participating in the neighborhood watch program.

(5) Responsibilities of clients participating in community service activities are:

(i) Obtaining a volunteer responsibilities description from the community service agency and providing it to the Department.

(ii) Identifying to the Department the appropriate official or staff member responsible for supervising the person participating in community service.

(iii) Providing to the Department, on a monthly basis, a copy of the contemporaneous time records of the community service agency which show the actual number of hours of participation each month. These time records shall be attested to by the community service agency.

(iv) Obtaining and providing to the Department certification from the community service agency that the client shall continue to participate in each of the 6 months during which eligibility for GA-MNO is being determined.

(v) Obtaining and providing to the Department assurance that the community service agency meets health and safety standards prescribed by Federal, State and local law.

(vi) Obtaining and providing to the Department assurance that the community service agency will provide equipment, special protective clothing or uniforms as required by the nature of the work.

(vii) Obtaining and providing to the Department assurance that the volunteer service provided by the individual will not result in the displacement of

any currently-employed worker or position, including partial displacement, such as the reduction in hours of nonovertime work, wages or employment benefits.

(viii) Obtaining and providing to the Department assurance that the volunteer service provided by the individual will not impair existing contracts for services or collective bargaining agreements.

(ix) Obtaining and providing to the Department assurance that the volunteer service provided by the individual will not be a substitute for the filling of a position when any other person is on layoff from the same or a substantially-equivalent job within the same organizational unit, or when an employer has terminated any regular employee.

(x) Obtaining and providing to the Department assurance that the volunteer service provided by the individual will not infringe in any way upon promotional opportunities of any currently-employed individual.

(xi) Obtaining and providing to the Department assurance that the volunteer service provided by the individual will not be a substitute for the filling of any established unfilled vacancy.

(xii) Obtaining and providing to the Department assurance that the community service agency will cooperate with and respond to requests for information needed to complete an audit, including retaining work and attendance records for 4 years.

(xiii) Verifying to the Department monthly that the individual has completed either 100 hours per month of approved volunteer community service or a combination of approved volunteer community service and paid employment for at least the minimum wage that totals at least 100 hours per month.

(xiv) Verifying to the Department monthly that the individual has made a good faith effort to seek employment, accept any offer of employment and maintain employment, including verifying registration at the job center.

(6) Failure to comply with the verification, submission and other requirements of this subsection will result in ineligibility. A person who makes a willfully false statement or misrepresentation or withholds information or by other fraudulent means secures, attempts to secure or aids or abets another in securing MA under this subsection shall be subject to prosecution under Chapter 255 (relating to restitution).

[Pa.B. Doc. No. 97-763. Filed for public inspection May 16, 1997, 9:00 a.m.]

## ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Browns Run—Warren County; Notice of Public Hearing and Extension of Public Comment Period

The Environmental Quality Board (Board) announces it will hold a public hearing to accept comments on the

Board's proposal to redesignate Browns Run in Warren County as Exceptional Value Waters.

The Board's proposal to redesignate Browns Run was published at 27 Pa.B. 1449 (March 22, 1997) for public comment. During the public comment period, the Board received requests to conduct a public hearing regarding Browns Run. Therefore, a public hearing has been scheduled for July 1, 1997. In addition, the deadline for comments on Browns Run has been extended to July 2, 1997.

The hearing will be held at 7 p.m. as follows:

July 1, 1997 Warren County Courthouse  
204 Fourth Avenue  
(Market and Fourth Sts.)  
Warren, PA

Anyone interested in presenting testimony at the hearing should contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-2063 (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness, and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Nancy Roush at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD), to discuss how their needs may be accommodated.

Written comments, suggestions or objections regarding the proposal may also be submitted to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: 15th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301). Comments must be received by July 2, 1997. Comments received by facsimile will not be accepted. Electronic comments may be submitted to RegComments@A1.dep.state.pa.us. In addition to written or electronic comments, interested persons may submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by July 2, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

Copies of this regulatory proposal may be obtained from Edward Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, Department of Environmental Protection, P. O. Box 8555, Harrisburg, PA 17105-8555, (717) 787-9637, or E-mail at Brezina.Edward@A1.dep.state.pa.us.

JAMES M. SEIF,  
*Chairperson*

[Pa.B. Doc. No. 97-764. Filed for public inspection May 16, 1997, 9:00 a.m.]

## [25 PA. CODE CH. 93]

**Trout Run—Hellam Township, York County; Notice of Public Hearing and Extension of Public Comment Period**

The Environmental Quality Board (Board) announces it will hold a public hearing to accept comments on the Board's proposal to redesignate Trout Run in Hellam Township, York County as Exceptional Value Waters.

The Board's proposal to redesignate Trout Run was published at 27 Pa.B. 1449 (March 22, 1997) for public comment. During the public comment period, the Board received requests to conduct a public hearing regarding Trout Run. Therefore a public hearing has been scheduled for July 2, 1997. In addition, the deadline for comments on Trout Run has been extended to July 2, 1997.

The hearing will be held at 7 p.m. as follows:

July 2, 1997      Friendship Fire Company  
163 E. Market Street  
Hellam, PA

Anyone interested in presenting testimony at the hearing should contact Nancy Roush at the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-2063 (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony will be limited to 10 minutes for each witness, and three written copies of the oral testimony must be submitted at the hearing. Each organization is requested to designate one witness to present testimony on its behalf.

Persons with a disability who wish to attend the hearing and require an auxiliary aid, service or other accommodation in order to participate should contact Nancy Roush at (717) 787-4526, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD), to discuss how their needs may be accommodated.

Written comments, suggestions or objections regarding the proposal may also be submitted to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: 15th Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301). Comments must be received by July 2, 1997. Comments received by facsimile will not be accepted. Electronic comments may be submitted to RegComments@A1.dep.state.pa.us. In addition to written or electronic comments, interested persons may submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by July 2, 1997. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

Copies of this regulatory proposal may be obtained from Edward Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, Department of Environmental Protection, P.O. Box 8555, Harrisburg, PA 17105-8555, (717) 787-9637, or E-mail at Brezina Edward@A1.dep.state.pa.us.

JAMES M. SEIF,  
*Chairperson*

[Pa.B. Doc. No. 97-765. Filed for public inspection May 16, 1997, 9:00 a.m.]

# STATE BOARD OF EDUCATION

[22 Pa. CODE CH. 14]

## Special Education Services and Programs

The State Board of Education (Board) proposes to amend Chapter 14 (relating to special education services and programs), which relates to special education services and programs, to read as set forth in Annex A, under the authority of sections 1372, 2603-B and 2604-B of the Public School Code of 1949 (24 P. S. §§ 13-1372, 26-2603-B and 26-2604-B).

Chapter 14 governs the Commonwealth's operation of special education services and programs for eligible students. Proposed amendments to §§ 14.1 and 14.34 (relating to definitions; and extended school year services) define extended school year (ESY) services for eligible students and clarify requirements for the identification of students in need of ESY and the program itself.

Extended school year services address the needs of eligible students who lose behavioral patterns or skills (regression) during an interruption in educational programming and who do not recover those behavior patterns or skills (recoupment), making it unlikely that the student will attain or maintain the goals reflected in the Individualized Education Program (IEP) or make reasonable progress from year to year.

### *Purpose*

The purpose of amending §§ 14.1 and 14.34 is to ensure that Commonwealth regulations are consistent with the Individuals with Disabilities Education Act, the regulatory provisions under 34 CFR Part 300 and *Armstrong v. Kline*, 476 F. Supp. 583 (E. D. Pa. 1979).

The proposed amendment to § 14.1 establishes a definition of "extended school year services."

As currently written, § 14.34 requires IEP Teams to consider only eligible students with severe disabilities for ESY services. In part, the proposed changes to § 14.34 are intended to bring the regulations up to date with practices in the field. Basic Education Circular 3-94 alerted school districts that the Department of Education (Department) views the regulatory language as too restrictive and advised districts to consider any student for ESY services if regression and limited recoupment capacity warrant this consideration. Accordingly, the word "severe" is proposed to be deleted from § 14.34. Additional proposed language in § 14.34 sets forth responsibility with regard to the identification of ESY eligible students and overall scope of the program.

The proposed amendments complement amendments being proposed by the Department of Education under § 342.34 (relating to extended school year services).

Failure to promulgate these amendments could mean denial of a free appropriate public education to eligible students, loss of student progress, provision of services by LEAs when not required, unnecessary due process hearings and significant loss of funding for noncompliance with Federal regulations.

### *Affected Parties*

The proposed amendments will benefit Commonwealth students who are eligible for special education services and programs and who need ESY services to enable them to receive a free appropriate public education. The pro-

posed amendments also affect the parents and guardians of these students, as well as all school districts and intermediate units by providing clear policy for ESY services.

*Cost and Paperwork Estimates*

Costs imposed on State government will be for providing training and technical assistance to school districts and intermediate units in interpreting and implementing the new regulations and accompanying standards proposed under Chapter 342 (relating to standards for special education services and programs). The efforts are ongoing for various sections of the regulations, so the proposed changes in regulations will not materially affect the State's costs.

The number of students entitled to ESY services should not increase significantly as a result of these proposed amendments, since each district must consider all eligible students for ESY services if regression and limited recoupment capacity warrant this consideration. Costs may increase slightly because of the demand expectations created by bringing attention to the issue. ESY services are already being provided to approximately 3,000 students in this Commonwealth. The Board is not aware of students in this Commonwealth who are entitled to ESY services but are not receiving them. As a result of the Department of Education's analysis of fiscal impact, the maximum increase in the number of students served would be less than 10%. Given an average cost of services of \$1,968, a 10% increase would result in a total added cost across this Commonwealth of approximately \$590,000. These costs are expected to be offset by Federal IDEA Part B funds within the budgets of intermediate units. The fiscal impact on school districts should be minimal.

Proposed amendments to §§ 14.1 and 14.34 will not substantially alter paperwork, accounting or reporting requirements already in place.

*Effective Date*

These proposed amendments will become effective upon final publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The effectiveness of Chapter 14 (including §§ 14.1 and 14.34) will be reviewed by the Board every 4 years, in accordance with the Board's policy and practice respecting all regulations and standards promulgated by the Department and Board. Thus, no sunset date is necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 7, 1997, the Board submitted a copy of these proposed amendments to Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Committees have objections to any portion of the proposed amendments, they will notify the Board within 20 days of the close of the public comment period. If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies

detailed procedures for review, prior to final publication of the standards, by the Board, the General Assembly and the Governor of objections raised.

*Public Comments and Contact Person*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Peter H. Garland, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*. Persons needing additional information regarding this proposal may contact William Penn, Director, Bureau of Special Education, 333 Market Street, Harrisburg, PA 17126-0333 (717) 783-6913.

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

Alternative formats of the proposed amendments (such as, braille, large print, cassette tape) can be made available to members of the public upon request to Dr. Garland at the telephone and TDD numbers listed above.

PETER H. GARLAND,  
*Executive Director*

**Fiscal Note:** 6-260. (1) General Fund; (2) Year 1997-98 is \$ 590,000; (3) 1st Succeeding Year 1998-99 is \$ 720,000; 2nd Succeeding Year 1999-00 is \$ 720,000; 3rd Succeeding Year 2000-01 is \$ 720,000; 4th Succeeding Year 2001-02 is \$ 720,000; 5th Succeeding Year 2002-03 is \$720,000; (4) Fiscal Year 1996-97 \$6.08 million; Fiscal Year 1995-96 \$6.07 million; Fiscal Year 1994-95 \$5.19 million; (7) Special Education; (8) recommends adoption. The costs are expected to be offset by Federal IDEA Part B funds within the budget of the intermediate units.

**Annex A**

**TITLE 22. EDUCATION**

**PART I. STATE BOARD OF EDUCATION**

**CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS**

**§ 14.1. Definitions.**

The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Extended school year services—Special education or related services provided outside of a standard schedule of school days within a school term, for the purpose of ensuring the provision of a free appropriate public education to an eligible student.**

\* \* \* \* \*

§ 14.34. Extended school year services.

(a) An eligible student [ with severe disabilities ] is entitled to [ an appropriate educational program in excess of 180 days per year ] extended school year (ESY) services if regression caused by interruption in educational programming and limited recoupment capacity [ renders ], or other factors, makes it unlikely that the student will attain [ a level of self-sufficiency and independence from caretakers that would be expected in view of the student's disability ] or maintain skills and behavior relevant to established IEP goals and objectives. School districts are responsible for considering the need for ESY services for each eligible student, including each student placed

by the district in an approved private school or other placement site not operated by the school district.

(b) [ To provide an appropriate program, the IEP team shall consider annually the needs of eligible students with severe disabilities for extended school year programming. In making this determination ] Consideration of the need for ESY services shall occur at the IEP team meeting to be convened at least annually, or more frequently if conditions warrant consistent with § 14.32(h)(3) (relating to IEP). Consideration means that ESY services are raised and discussed at the IEP team meeting. When consideration requires the IEP team to make a formal determination of need for ESY services, the IEP team shall rely on criteria in Chapter 342 (relating to special education services and programs) and applicable judicial decisions.

(c) Need for ESY services is not based on any of the following:

(1) The desire or need for day care or respite care service.

(2) The desire or need for a summer recreation program.

(3) The desire or need for other programs or services which, while they may provide educational benefit, are not required to ensure the provision of a free appropriate public education.

(d) This section does not require more than required by Federal law and regulations.

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