

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 403]

Compliance with the No Child Left Behind Act of 2001

The Department of Education (Department) amends Chapter 403 (relating to compliance with the No Child Left Behind Act of 2001) to read as set forth in Annex A.

Contact Person

Questions regarding these standards should be directed to Myrna Delgado, Chief, Division of Student and Safe School Services, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 772-2813.

Effective Date

The standards will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The Department acts under the authority of section 2603-B(d)(10)(i) of the Public School Code of 1949 (code) (24 P. S. § 26-2603-B(d)(10)(i)), which was added by section 31 of the act of June 29, 2002 (P. L. 524, No. 88) (Act 88). Section 2603-B(d)(10)(i) of the code empowers the Department, with the approval of the State Board of Education (State Board), to adopt standards to comply with the No Child Left Behind Act of 2001 (NCLB) (Pub. L. 107-110, 115 Stat. 1425) to maintain the eligibility of the Commonwealth to receive Federal funding for education programs. Under section 2603-B(d)(10)(i) of the code, the State Board must approve or disapprove the standards within 30 days of submission to its office or at its next scheduled meeting, whichever is sooner. Failure of the State Board to approve or disapprove the standards within the time prescribed results in the standards proposed by the Department being deemed approved. Standards promulgated by the Department under section 2603-B(d)(10)(i) of the code must be deposited with the *Pennsylvania Bulletin* for publication but they are exempt from the following laws:

(a) Sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law.

(b) Section 204(b) of the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

(c) The Regulatory Review Act (71 P. S. §§ 745.1—745.15).

In light of these exemptions and the express approval of the State Board, the Department is depositing these standards for publication in final-form.

Description of Process

On March 19, 2003, the Department presented to the State Board several definitions that were part of two sets of draft proposed standards necessary to comply with the NCLB (standards for victims of violent crime and standards for persistently dangerous schools). On that same day, a special committee of the State Board, which was established to work with the Department in the development and review of standards necessary to comply with the NCLB, conducted a public meeting to review and

discuss the draft standards proposed by the Department and to receive public comment on the proposal.

At the regular business meeting of the State Board held March 20, 2003, the Secretary of Education made a detailed presentation explaining the Department's definitions and draft proposed standards. At its March 20, 2003 meeting, the State Board publicly voted to approve the definitions presented by the Department. On March 20, 2003, the Chairperson of the State Board signed a resolution that adopted the definitions as standards. That resolution was published at 33 Pa.B. 2838, 2841 (June 14, 2003).

On May 21, 2003, the Department presented to the State Board two sets of proposed standards necessary to comply with the NCLB. On that same day, a special committee of the State Board, which was established to work with the Department in the development and review of standards necessary to comply with the NCLB, conducted a public meeting to review and discuss the standards proposed by the Department and to receive public comment on the proposal.

At the regular business meeting of the State Board held May 22, 2003, the Secretary of Education made a detailed presentation explaining the Department's proposed standards. At its May 22, 2003 meeting, the State Board publicly voted to approve the standards presented by the Department. On May 22, 2003, the Chairperson of the State Board signed a resolution that adopted the standards. That resolution was published at 33 Pa.B. 2838, 2841.

Background and Need for Standards

On January 8, 2002, President George W. Bush signed the NCLB into law. The NCLB, inter alia, amends the Elementary and Secondary Education Act of 1965 (ESEA) (Pub. L. 89-10, 79 Stat. 27) (20 U.S.C.A. § 6301 et seq.). The purpose of the NCLB is to ensure that all children have the opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state achievement standards and academic assessments. In furtherance of this purpose, the NCLB provides grants to state education agencies and sub-grants to local education agencies (LEAs). To remain eligible for funding under the NCLB, state and LEAs must comply with the requirements of the NCLB.

Section 9532 of the NCLB (20 U.S.C.A. § 7912), requires states to establish and implement two policies: allowing a student who is a victim of a violent criminal offense to transfer to a safe public school and allowing a student who attends a persistently dangerous school to transfer to a safe public school. Both transfers are within the LEA including a charter school.

Description of Standards

The standards proposed by the Department and approved by the State Board establish both of the required policies.

The standards require LEAs to provide a student who is the victim of a violent criminal offense the option to transfer to another school that is a safe public school. The standards also establish definitions of "victim" and "violent criminal offense" for the LEA to use in applying the transfer option.

The standards also require the Department to identify those schools that meet the definition of "persistently

dangerous school.” After that identification takes place, LEAs with persistently dangerous schools must provide each student who attends such a school the option to transfer to another school that is a safe public school. The LEA, in conjunction with the Department, also must develop a corrective action plan that addresses the conditions in each persistently dangerous school.

Fiscal Impact

These standards are necessary to ensure that the State and its LEAs remain eligible to receive Federal funding under the NCLB. The standards will not result in new costs to the State because the Department will continue to use NCLB Title IV state program funds to cover the additional costs that will result from these standards. School districts may incur some costs to implement the transfer option in the case of students requiring transportation or for costs associated with students who transfer to other schools (charter schools or schools with which the LEA elects to make a tuition arrangement).

In general, any additional costs associated with the Unsafe School Choice Option for compliance with the NCLB are not expected to be major. All public school entities already report violence data annually to the Department.

If a school entity were designated as “persistently dangerous,” its administration would be required to prepare and submit a corrective action plan and implement that plan. Because it is unclear what types of steps might be identified in such a plan, it is not clear what the costs associated with their implementation might be.

In addition, there may be costs to school entities associated with students who transfer because they have been the victim of a violent crime or they attend a persistently dangerous school. Those costs should be minimal for the former category—in part because many LEAs already voluntarily offer these transfers—but could be more significant if large numbers of students elect to transfer out of schools designated as persistently dangerous (such as, transportation of students to safe schools, funds paid to charter schools or other schools under a tuition arrangement). Because the Department cannot predict how many schools will be designated as persistently dangerous or how many students will choose to transfer from schools designated as such, it is not possible to project the associated costs.

Paper Work Requirements

The additional paper work requirements resulting from these standards are minimal and mandated by the NCLB.

Regulatory Review

Under section 2603-B(d)(10)(iii) of the code, these standards are exempt from the Regulatory Review Act.

Findings

The Department finds that:

(1) Proposed rulemaking in advance of the promulgation of standards is not required under section 2603-B(d)(10)(iii)(A) of the code, added by section 31 of Act 88, which expressly provides that the standards are exempt from the requirements of sections 201—205 of the Commonwealth Documents Law.

(2) The State Board approved the proposed standards by public vote at its meetings on March 20, 2003, and May 22, 2003.

(3) The promulgation of these standards is necessary for compliance with the NCLB.

Order

The Department, acting under the authorizing statute, orders that:

(a) The standards of the Department, 22 Pa. Code Part XVI, are amended by amending § 403.2 and by adding § 403.6 to read as set forth in Annex A.

(b) The Secretary of Education will certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) The order shall take effect upon publication in the *Pennsylvania Bulletin*.

VICKI L. PHILLIPS, Ed.D.,
Secretary

Fiscal Note: 6-288. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART XVI. STANDARDS

CHAPTER 403. COMPLIANCE WITH THE NO CHILD LEFT BEHIND ACT OF 2001

§ 403.2. Definitions.

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

AYP—Adequate yearly progress as defined by section 1111(b)(2)(C) of Title I (20 U.S.C.A. § 6311(b)(2)(C)), added by NCLB.

Associate's degree—Associate's degree as described in § 31.21(b)(1) (relating to curricula).

Core academic subjects—Core academic subjects as defined by section 9101(11) of the ESEA (20 U.S.C.A. § 7801(11) (relating to definitions)), as amended by the NCLB.

Dangerous incident—A weapons possession incident resulting in arrest (guns, knives or other weapons) or a violent incident resulting in arrest (homicide, kidnapping, robbery, sexual offenses and assault) as reported on the Violence and Weapons Possession Report (PDE-360).

Department—The Department of Education of the Commonwealth.

ESEA—The Elementary and Secondary Education Act of 1965 (20 U.S.C.A. §§ 6301—7941), as amended by the NCLB.

Highly qualified elementary teacher—Highly qualified elementary teacher as defined by section 9101(23) of the ESEA (20 U.S.C.A. § 7801(23)), as amended by the NCLB.

Highly qualified middle or secondary teacher—Highly qualified middle or secondary teacher as defined by section 9101(23) of the ESEA as amended by the NCLB.

Institution of higher education—Institution of higher education as defined by section 9101(24) of the ESEA.

LEA—A local educational agency.

NCLB—The No Child Left Behind Act of 2001 (Pub. L. No. 107—110, 115 Stat. 1425) (20 U.S.C.A. §§ 6053e, 6054b, 6055h, 6056a, 1041—1044, 3427 and 6052).

PSSA—The Pennsylvania System of State Assessment.

Persistently dangerous school—A public elementary, secondary or charter school that meets one of the following

criteria in the most recent school year and in 1 additional year of the 2 years prior to the most recent school year:

(i) For a school whose enrollment is 250 or less, at least five dangerous incidents.

(ii) For a school whose enrollment is 251 to 1,000, a number of dangerous incidents that represents at least 2% of the school's enrollment.

(iii) For a school whose enrollment is over 1,000, 20 or more dangerous incidents.

Public School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

Safe public school—A public school that has not been designated as a persistently dangerous school under this chapter or that has had that designation removed by the Department.

State Board—The State Board of Education of the Commonwealth.

Title I—Title I of the ESEA (20 U.S.C.A. §§ 6301—6578), as amended by the NCLB.

Two years of study at an institution of higher education—Completion of 48 credits at an institution of higher education.

Victim or student victim—The student against whom a violent criminal offense has been perpetrated while the student was in or on the grounds of the public elementary or secondary school that the student attends.

Violent criminal offense—Any of the following offenses that are set forth in 18 Pa.C.S. (relating to Crimes Code):

- (i) Kidnapping.
- (ii) Robbery.
- (iii) Aggravated assault (on the student).
- (iv) Rape.
- (v) Involuntary deviate sexual intercourse.
- (vi) Sexual assault.
- (vii) Aggravated indecent assault.
- (viii) Indecent assault.

(ix) Attempt to commit any of the following: homicide, murder or voluntary manslaughter.

§ 403.6. Unsafe school choice option.

(a) *Requirement of the NCLB.* The Department adopts these standards as required by the Unsafe School Choice Option provision of section 9532 of the NCLB (Section 9532) (20 U.S.C.A. § 7912).

(b) *Definition.* For purposes of this section, "local educational agency" or "LEA" means a school district, an area vocational-technical school, an intermediate unit or a charter school.

(c) *Student opportunity to transfer.*

(1) *Victim of a violent criminal offense.*

(i) Except as provided as follows, a student who becomes a victim of a violent criminal offense while in or on the grounds of the public elementary or secondary school that the student attends, shall be offered the opportunity to transfer to a safe public school within the LEA, including a charter school.

(ii) For a student victim to be entitled to transfer to another school under this chapter, the violent criminal

offense first must be reported to law enforcement authorities by the student, the student's parent or guardian, or school officials.

(iii) A student victim (or the student's parent or guardian) may apply to the LEA to transfer to another school within 30 calendar days after the incident is reported to school authorities.

(2) *Student who attends a persistently dangerous school.*

(i) Except as provided as follows, a student who attends a persistently dangerous school shall be offered the opportunity to transfer to a safe public school within the LEA, including a charter school.

(ii) A student who attends a persistently dangerous school may apply to transfer at any time while the school maintains that designation.

(d) *Responsibilities of LEAs.*

(1) *Toward victims of violent criminal offenses.*

(i) Within 10 calendar days of receiving notice of the violent criminal offense, the LEA shall notify the student victim that the student has the right to transfer to a safe public elementary or secondary school within the LEA, including a public charter school.

(ii) The notification and offer to transfer shall state that no student is required to transfer to another school.

(iii) Upon receipt of an application to transfer, the LEA shall transfer the student as soon as possible, and shall transfer the student within 10 calendar days after receiving the application.

(iv) When considering a student's request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent.

(v) To the extent possible, the LEA shall allow the student to transfer to a school that is making adequate yearly progress, and one that is not identified as being in school improvement, corrective action or restructuring.

(vi) A charter school only has to accept a student who meets its admission criteria if space is available.

(vii) If there is not another safe school within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students.

(2) *Toward students who attend a persistently dangerous school.*

(i) Under the act of June 30, 1995 (P. L. 220, No. 26) know as the Pennsylvania's Safe Schools Act, all school entities as defined by the act shall report to the Department incidents involving acts of violence; possession of a weapon; or the possession, use, or sale of a controlled substance, alcohol or tobacco by any person on school property or at school-sponsored events or on school transportation to and from school or school-sponsored activities.

(ii) Within 10 school days of receiving notification by the Department, an LEA shall notify the parent or legal guardian of each student who attends the school that the Department has identified the school as persistently dangerous.

(iii) The LEA shall offer the students who attend the school the opportunity to transfer to a safe public school, including a charter school, within the LEA.

(iv) The notification and offer to transfer shall state that no student is required to transfer to another school.

(v) Upon receipt of an application to transfer, the LEA shall transfer the student within 30 calendar days.

(vi) When considering a student's request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent.

(vii) To the extent possible, the LEA shall allow the student to transfer to a school that is making adequate yearly progress, and one that is not identified as being in school improvement, corrective action or restructuring.

(viii) A charter school only has to accept a student who meets its admission criteria if space is available.

(ix) If there is not another safe school within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students.

(x) The LEA shall submit a corrective action plan to the Department within 30 calendar days of receiving notification that a school has been identified as persistently dangerous.

(xi) The LEA shall receive approval from the Department for its corrective action plan and shall implement all steps contained in its corrective action plan within the time periods specified in that plan.

(xii) After the Department has notified an LEA that a school is no longer identified as a persistently dangerous school, the LEA is encouraged to permit students who transferred to complete their education at their new school. LEAs may not require students to return to their original school if the students are enrolled in a charter school.

(e) *Responsibilities of Department.*

(1) The Department will identify those schools that meet or exceed the criteria for a persistently dangerous school by analyzing the Annual Report on School Violence and Weapons Possession (PDE-360). In identifying persistently dangerous schools, the Department will use the most recent data available to it from the reporting LEA, and will take all reasonable steps to verify that the data is valid and reliable.

(2) After review and verification of PDE-360 data, the Department will promptly inform an LEA when any of its schools meets the definition of persistently dangerous school.

(3) The Department will provide technical assistance to the LEA in developing a corrective action plan. The Department will review proposed corrective action plans submitted by LEAs and approve suitable corrective action plans.

(4) After approval of the corrective action plan, the Department will conduct a site visit to each persistently dangerous school to assess the school's progress in implementing the plan. If no significant improvement is observed, the Department may require the LEA to submit a revised corrective action plan for that school.

(5) The Department will reassess a school's designation as persistently dangerous at the end of the school year during which its corrective action plan is completed.

(6) During the reassessment described in this section, the Department will remove the designation if the school no longer meets the definition of persistently dangerous school.

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