

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 84d]

Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits

The Insurance Department (Department) proposes to add Chapter 84d (relating to recognition of the 2001 CSO mortality table for use in determining minimum nonforfeiture standards and minimum standards for valuation) to read as set forth in Annex A. The proposal is made under the authority of sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412), section 301(c)(1) of The Insurance Department Act of 1921 (act) (40 P. S. § 71(c)(1)), section 410A (e)(8)(F) of The Insurance Company Law (law) (40 P. S. § 510.1(e)(8)(F)) and 31 Pa. Code § 84c.5(a) and (b) (relating to basic reserves minimum standard; and deficiency reserves minimum standard). Likewise, this proposal is made under the Department's rulemaking authority under the Unfair Insurance Practices Act (UIPA) (40 P. S. §§ 1171.1—1171.15) (as such authority is further explained in *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977)), because the Insurance Commissioner (Commissioner) has determined that, in and of itself, it is not a violation of the UIPA for a company to determine nonforfeiture benefits for the same type of policy of life on both a sex-distinct and sex-neutral basis. See section 5(a)(7) of the UIPA (40 P. S. § 1171.5(a)(7)).

Purpose

Section 301(c)(1) of the act, section 410A (e)(8)(F) of the law and 31 Pa. Code § 84c.5(a) and (b) authorize the Commissioner to promulgate regulations specifying new mortality tables adopted after 1980 by the National Association of Insurance Commissioners (NAIC) for use in determining minimum valuation standards and minimum nonforfeiture standards for life insurance policies. The purpose of this rulemaking is to add Chapter 84d to specify the 2001 CSO Mortality Table as a new mortality table. The 2001 CSO Mortality Table shall be used by January 1, 2009, but may be used earlier upon election by an insurer.

The 2001 CSO Mortality Table is based on historical experience and has been developed by the American Academy of Actuaries. In December 2002, the NAIC adopted the proposed mortality table in its "Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits Model Regulation." This proposed rulemaking was patterned after the NAIC model regulation. Changes to the model regulation of an editorial nature were made for consistency with current Commonwealth regulations relating to valuation standards and nonforfeiture standards, and for wording clarification. The language of § 84d.6 (relating to permitted issuance) of the proposed rulemaking was modified because the NAIC language is vague and subject to interpretation that would conflict with the UIPA. See section 5(a)(7) of the UIPA. The section was modified to relate to the determination of nonforfeiture benefits under the same type of policy.

The use of the 2001 CSO Mortality Table will allow insurers to provide minimum reserves and nonforfeiture benefits based on a table recognizing current mortality.

A copy of this proposed rulemaking was shared with the Insurance Federation of Pennsylvania, Inc. (IFP), the Pennsylvania Association of Mutual Insurance Companies (PAMIC) and the Fraternal Insurance Organization. There were no negative comments received and the IFP, representing a substantial portion of the life insurance industry operating in this Commonwealth, expressed a desire that the 2001 CSO Mortality Table be recognized in this Commonwealth for use in determining minimum reserves and nonforfeiture benefits.

Explanation of Regulatory Requirements

Section 84d.1 (relating to purpose) explains the purpose of the rulemaking.

Section 84d.2 (relating to definitions) defines the terms used in the rulemaking.

Section 84d.3 (relating to 2001 CSO mortality table) provides for the use of the 2001 CSO Mortality Table as an additional mortality table which may be used, upon election by the insurer, to determine minimum reserves and nonforfeiture benefits for life insurance issued prior to January 1, 2009, and as the mortality table that shall be used to determine minimum reserves and nonforfeiture benefits for life insurance issued on and after January 1, 2009.

Section 84d.4 (relating to applicability of the 2001 CSO mortality table to Chapter 84c (relating to valuation of life insurance policies)). This section provides specific rules for using the 2001 CSO Mortality Table in applying the requirements of Chapter 84c in the determination of reserves for life insurance policies.

Section 84d.5 (relating to gender-blended tables). This section provides for the use in determining minimum nonforfeiture benefits of a mortality table that is a blend of the 2001 sex distinct tables.

Section 84d.6 (relating to permitted usage). This section establishes that the determination of nonforfeiture benefits for the same kind of life insurance policy on both a sex-distinct and sex-neutral basis is not, in and of itself, a violation of the UIPA.

Affected Parties

This proposed rulemaking will apply to insurers issuing life insurance coverage in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department due to the use of the new mortality table since the extent of the analysis performed by the Department is not affected by the mortality table used in the calculation of nonforfeiture benefits and reserves.

General Public

It is unlikely that there will be any adverse fiscal impact on consumers who purchase life insurance coverage. The use of the 1980 CSO table may result in a reduction in nonforfeiture benefit amounts; however, with the highly competitive life insurance market in this Commonwealth there will most likely be a reduction in the cost of insurance due to improved mortality recognized by the 2001 CSO Mortality Table.

Political Subdivisions

There will be no fiscal impact on political subdivisions as insurers will continue to maintain adequate reserves and provide adequate nonforfeiture benefits. Adequate reserves have the potential to minimize insurer insolvencies that could result in less erosion of the tax base since insurers pay premium taxes on premium income and pay salaries that are taxed.

Private Sector

The proposed rulemaking may have some fiscal impact on insurance companies issuing life insurance coverage. Insurers will be required to expend some time to prepare and submit to the Department forms using the 2001 CSO Mortality Table.

Paperwork

The proposed rulemaking will not impose additional paperwork on the Department and the insurance industry. The proposed rulemaking provides for the use of an additional mortality table and does not impose additional requirements resulting in additional paperwork.

Effectiveness/Sunset Date

The proposed rulemaking will become effective upon final adoption and publication in the *Pennsylvania Bulletin* as final-form rulemaking. No sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to psalvatore@state.pa.us or faxed to (717) 772-1969.

Under the Regulatory Review Act (71 P. S. §§ 745.1—745.15), the Department is required to write to all commentators, requesting whether or not they wish to receive a copy of the final-form rulemaking. To better serve our stakeholders, the Department has made a determination that all commentators will receive a copy of the final-form rulemaking when it is made available to the Independent Regulatory Review Commission (IRRC) and the legislative standing committees.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 19, 2003, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has, as required by the Regulatory Review Act, provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

IRRC will notify the Department of any objections to any portion of the proposed rulemaking within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the

Governor, and the General Assembly to review these objections before final publication of the regulations.

M. DIANE KOKEN,
Insurance Commissioner

(Fiscal Note: 11-218. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 31. INSURANCE****PART VI. LIFE INSURANCE**

CHAPTER 84d. RECOGNITION OF THE 2001 CSO MORTALITY TABLE FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES AND NONFORFEITURE BENEFITS

Sec.

- 84d.1. Definitions.
- 84d.2. Purpose.
- 84d.3. 2001 CSO Mortality Table.
- 84d.4. Applicability of the 2001 CSO Mortality Table to chapter 84c (relating to valuation of life insurance policies).
- 84d.5. Gender-blended tables.
- 84d.6. Permitted issuance.

§ 84d.1. Purpose.

This chapter implements section 301(c)(1) of the act (40 P. S. § 71(c)(1)), section 410A(e)(8)(F) of the law (40 P. S. § 510.1(e)(8)(F)) and § 84c.5(a) and (b) (relating to general requirements for basic reserves and premium deficiency reserves) which authorize the Commissioner to promulgate regulations specifying tables adopted after 1980 by the NAIC for use in determining minimum nonforfeiture standards and minimum valuation standards.

§ 84d.2. Definitions.

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

Act—The Insurance Department Act of 1921 (40 P. S. §§ 1—324).

Actuarial Standards Board—The board established by the American Academy of Actuaries, or a successor thereto, to develop and promulgate standards of actuarial practice.

Commissioner—The Insurance Commissioner of the Commonwealth.

Composite Mortality Tables—The mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

Law—The Insurance Company Law of 1921 (40 P. S. §§ 341—991).

NAIC—The National Association of Insurance Commissioners.

Smoker and nonsmoker mortality tables—The mortality tables with separate rates of mortality for smokers and nonsmokers.

2001 CSO Mortality Table—The mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality

Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the 2001 CSO Mortality Table includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

2001 CSO Mortality Table (F)—The mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

2001 CSO Mortality Table (M)—The mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

§ 84d.3. 2001 CSO Mortality Table.

(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this section, the 2001 CSO Mortality Table may be used as the minimum nonforfeiture standard and the minimum valuation standard for policies issued on or after January 1, 2004, and before the date specified in subsection (b). If the company elects to use the 2001 CSO Mortality Table, it shall do so for both nonforfeiture and valuation purposes.

(b) Subject to the conditions stated in this chapter, the 2001 CSO Mortality Table shall be used as the minimum nonforfeiture standard and the minimum valuation standard for policies issued on and after January 1, 2009.

(c) For each policy form with separate rates for smokers and nonsmokers a company may use the 2001 CSO Mortality Tables in one of the following ways:

(1) The Composite Mortality Tables as the minimum nonforfeiture standard and the minimum valuation standard.

(2) The Composite Mortality Tables as the minimum nonforfeiture standard and to determine the minimum reserves required by section 301 of the act (40 P. S. § 71) and the Smoker and Nonsmoker Mortality Tables as the minimum valuation standard to determine the additional minimum reserves, if any, required by section 303 of the act (40 P. S. § 73).

(3) The Smoker and Nonsmoker Mortality Tables as the minimum nonforfeiture standard and the minimum valuation standard.

(d) For each policy form without separate rates for smokers and nonsmokers the Composite Mortality Tables shall be used as the minimum nonforfeiture standard and the minimum valuation standard.

(e) Subject to the restrictions of § 84d.4 (relating to applicability of the 2001 CSO Mortality Table to Chapter 84c (relating to valuation of life insurance policies)) and Chapter 84c (relating to valuation of life insurance policies), the 2001 CSO Mortality Table may, at the option of the company for each policy form, be used in its ultimate or select and ultimate form as the minimum nonforfeiture standard and the minimum valuation standard.

(f) When the 2001 CSO Mortality Table is the minimum reserve standard for any policy form for a company, the actuarial opinion in the annual statement filed with the Commissioner shall be based on an asset adequacy analysis as specified in Chapter 84b (relating to actuarial opinion and memorandum). The Commissioner may exempt a company from this requirement if it only does business in this Commonwealth.

§ 84d.4. Applicability of the 2001 CSO Mortality Table to Chapter 84c (relating to valuation of life insurance policies).

(a) The 2001 CSO Mortality Table shall be used in applying Chapter 84c (relating to valuation of life insurance policies) in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in § 84d.3(a) (relating to 2001 CSO mortality table) and § 84d.3(b).

(1) The net level reserve premium referenced in § 84c.2(b)(2)(ii) (relating to applicability) shall be based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(2) All calculations in § 84c.4(b)(1) (relating to segmented and unitary reserve methods) shall be made using the 2001 CSO Mortality Table. The value of " $q_{x+k+t-1}$ " is the valuation mortality rate for deficiency reserves in policy year $k+t$, but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(3) The basic reserves minimum standard in § 84c.5(a) (relating to general requirements for basic reserves and premium deficiency reserves) shall be the 2001 CSO Mortality Table.

(4) The deficiency reserves minimum standard in § 84c.5(b) shall be the 2001 CSO Mortality Table. If select mortality rates are used, they may be multiplied by $X\%$ for durations in the first segment, subject to the conditions specified in § 84c.5(b)(3)(i)—(ix). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant standards of practice as promulgated by the Actuarial Standards Board.

(5) The valuation mortality table used in determining the tabular cost of insurance in § 84c.6(c) (relating to minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies)) shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

(6) The calculations specified in § 84c.6(e)(4) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(7) The calculations specified in § 84c.6(f)(4) shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(8) The net premiums referenced in § 84c.6(g)(2) shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

(9) The 1-year valuation premium in § 84c.7(a)(1)(ii) (relating to minimum valuation standard for universal life insurance policies that contain provisions resulting in the ability of a policy owner to keep a policy in force over a secondary guarantee period) shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

(b) Nothing in this section expands the applicability of Chapter 84c to include life insurance policies exempted under § 84c.2(b).

§ 84d.5. Gender-blended tables.

(a) For any ordinary life insurance policy delivered or issued for delivery in this Commonwealth on and after January 1, 2004, that utilizes the same premium rates

and charges for male and female lives or is issued in circumstances when applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each policy form, be substituted for the 2001 CSO Mortality Table as the minimum nonforfeiture standard. The blended tables may not be used as the minimum valuation standard.

(b) If blended tables are used as the minimum nonforfeiture standard, the company shall choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

§ 84d.6. Permitted usage.

In and of itself, it is not a violation of the Unfair Insurance Practices Act (40 P. S. §§ 1171.1—1171.15) for a company to determine nonforfeiture benefits for the same type of policy of life insurance on both a sex-distinct and sex-neutral basis.

[Pa.B. Doc. No. 03-1691. Filed for public inspection August 29, 2003, 9:00 a.m.]

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 11]

Pupil Attendance

The State Board of Education (State Board) proposes to amend Chapter 11 (relating to pupil attendance) to read as set forth in Annex A. The authority for this proposed rulemaking is section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B) (code).

Purpose

Chapter 11 sets forth requirements for student attendance in public schools. Proposed revisions to the regulations reflect current statutory provisions, court decisions and practices.

Requirements of the Proposed Amendments

Section 11.3 (relating to minimum required hours)

Under the current regulation, school districts are penalized in the receipt of subsidies from the Commonwealth when they do not meet the minimum daily hours of instruction, even when they far exceed the annual minimum. The State Board proposes to revise this section to provide additional flexibility to school districts in meeting the statutory-based minimum annual hours of instruction that must be offered by schools.

Section 11.5 (relating to part-time attendance for potential graduates)

The State Board proposes to revise this section to reflect the current practice of the Department of Education (Department) allowing a school district to count students enrolled in courses at postsecondary institutions in the district's average daily membership when the district pays the cost of tuition, fees and textbooks.

Section 11.6 (relating to part-time enrollment of alternative education students)

The State Board proposes to amend this section to conform it to amendments to the code made by the act of

November 23, 1999 (P. L. 529, No. 48) (Act 148). In enacting Act 48, the General Assembly added a new Article XIX-E of the code (24 P. S. §§ 19-1901-E—19-1903-E).

Section 11.7. (relating to religious objections)

The State Board proposes to revise this section to conform Chapter 11 to language now contained in Chapter 4 (relating to academic standards and assessment) regarding excusals from instruction due to a conflict with religious beliefs.

Section 11.11 (relating to entitlement of resident children to attend public schools)

The State Board proposes to revise subsection (a) to address student enrollment issues when a child's parents, who are divorced, separated or live apart for other reasons, live in different school districts. The State Board proposes to add subsections (b) and (c) to establish consistent student enrollment procedures across this Commonwealth. The intent is to limit delays in student enrollment that are common for many students, particularly those in foster care, students living with a relative or other adult who is not their natural parent, and students living in families who relocate frequently throughout the year. The State Board proposes to add a new § 11.11(d) to reflect the decision of the United States Supreme Court in the case of *Plyler v. Doe*, 457 U.S. 202 (1982). In *Plyler v. Doe*, the Supreme Court held that it is unconstitutional to deny free public education to children who are not legally admitted into the United States. Therefore, school districts must provide a free public education to children whose immigration status is not documented. The Federal Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603) requires that students with F-1 Visas pay tuition to attend school.

The State Board proposes to add a new § 11.11(e) to put existing practice and Department policy, as outlined in a Basic Education Circular, into regulatory form.

Section 11.12 (relating to school age)

The State Board proposes to amend this section to reflect section 10 of act of June 28, 2002 (P. L. 524, No. 88), which amended section 1301 of the code (24 P. S. § 13-1301). The new provision permits students who attain age 21 while still enrolled in school to continue school enrollment through the end of the school term.

Section 11.16 (relating to early admission of beginners)

The State Board proposes to amend this section to delete the mental age test as a mandatory criteria used by schools in determining early school admission for beginners. This provision currently limits the discretion of school districts in permitting early enrollment of children in school and presents expensive and inappropriate burdens on school officials in determining the mental age of children.

Section 11.19 (relating to nonresident child living with a district resident)

The State Board proposes to amend this section to reflect section 12 of the act of June 22, 2001 (P. L. 530, No. 35) (Act 35) which amended section 1302 of the code (24 P. S. § 13-1302). This provision permits school boards to require that residents seeking to enroll a child in school, who is not their own, to provide reasonable information that substantiates their sworn statement as required by section 1302. Act 35 authorizes school boards to request additional information based on guidelines issued by the Department.

Section 11.20 (relating to nonimmunized children)

The State Board proposes to amend this section to clarify that children who are not immunized or for whom an exemption is obtained may not attend any educational program that meets compulsory school attendance requirements regardless of the type of educational institution or program. This provision would be revised to insure that all children, regardless of where they are educated, obtain necessary childhood immunizations or are exempted from doing so. This change fills a gap that exists in the current regulations.

Section 11.25 (relating to temporary excusals due to illness or other urgent reasons)

The State Board proposes to amend this section to insure that all students who are excused from school attendance or who are provided homebound instruction are returned to the regular school program as soon as appropriate, and that the excusals are not used to avoid addressing the educational needs of students.

Section 11.27 (relating to graduation)

The State Board proposes to amend paragraph (3) to put into regulatory form existing Department practice and policy as outlined in a Basic Education Circular. The State Board proposes to add a new paragraph (4) to permit schools to count students in their average daily membership—a number that helps to determine State subsidy amounts—students with disabilities who participate in the graduation ceremony with their class even though the student might continue to attend school in the next and subsequent school terms.

Section 11.31 (relating to students not enrolled in public schools due to private tutoring)

The State Board proposes to amend subsection (a) to reflect provisions of the act of December 21, 1988 (P. L. 1321, No. 169), which amended section 1327 of the code (24 P. S. § 13-1327) and Chapter 4. Subsection (b) would be amended to clarify the role of school districts in approving private tutoring programs.

Section 11.31a (relating to students not enrolled in public schools due to participation in a home education program)

The State Board proposes add this new section to clarify the role of school districts in approving home education programs.

Section 11.33 (relating to dual enrollment)

The State Board proposes to update this section to permit students who are home educated or privately tutored, and who also are enrolled part-time in the public schools, to be counted for State reimbursement purposes on a prorated basis. In doing so, the child's attendance would be included in the calculation of the school district's average daily membership, which is one factor in determining the amount of a school district's State subsidy.

Section 11.41 (relating to school district policies and rules)

The State Board proposes to revise subsection (c) to incorporate the provisions of section 13 of Act 35, which amended section 1329 of code (24 P. S. § 13-1329) regarding excusal of students to attend agricultural fairs.

Affected Parties

This proposed rulemaking would affect the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alterna-

tive schools). Provisions contained in §§ 11.13, 11.20, 11.22, 11.31, 11.31a and 11.32 also affect students who meet compulsory school attendance laws through enrollment in a private or religious school or through home education or private tutoring.

Cost and Paperwork Estimates

Since these regulations largely reflect changes in State and Federal statutes, court decisions and regulations, the costs associated with compliance will be negligible. Schools traditionally update enrollment and attendance policies annually, since they provide their policies to students and their parents each school year. Some schools may need to improve student recordkeeping and retrieval to comply with the requirement that student records be transmitted within 5 days to the school to which a student transferred. Any costs associated with this policy will depend upon the school's current record keeping procedures and support. In cases where a transferred student has a disability, the new school may be required to incur costs in conducting a new evaluation of the student when records are not promptly received. Any costs associated with compliance with this change will be outweighed by the benefits provided to students and schools receiving student records.

Changes to § 11.3 would result in indeterminate cost savings to schools, by permitting additional flexibility in meeting the minimum hours of instruction required to be conducted in schools each year. The current regulation limits this flexibility by establishing minimal daily and weekly hourly requirements. Changes to the requirement that schools provide a minimum number of hours of instruction per day, week and month also will provide additional flexibility to schools in meeting the statutorily established minimum 900 hours of instruction for elementary schools and 990 for secondary schools, and might impact State subsidy payments to a small number of school districts.

Schools might need to update their policies regarding enrollment and attendance as a result of these changes. Since many of the changes, such as permitting students to remain in school through the end of the school term in which they turn 21 years of age and allowing students with excused absences to participate in agricultural fairs, are as a result of statutory changes, court decisions or Federal requirements, schools should have already revised their policies to reflect these changes as they occurred over the past several years. Schools also normally update their enrollment and attendance policies annually, since this area also is frequently changed due to statutory amendments and court decisions. Therefore, any costs associated with updating local policies to reflect the regulations should be negligible.

Effective Date

This proposed rulemaking would become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by it, the State Board will review the effectiveness of Chapter 11 after 4 years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 18, 2003, the State Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chair-

persons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia A. White, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the *Pennsylvania Bulletin*.

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

PATRICIA A. WHITE,
Executive Director

Fiscal Note: 6-279. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 11. PUPIL ATTENDANCE

GENERAL PROVISIONS

§ 11.1. School term.

Public kindergartens, elementary and secondary schools shall be kept open each school [year] term for a minimum of 180 days of instruction for [pupils] students. No days may be counted as days taught on which the schools are closed, and no time may be counted as a [pupil] student session for an activity to which admission is charged. However, [upon request] when a meritorious educational program warrants, the Secretary may, [when a meritorious educational program warrants] upon request, approve a school [year] term containing a minimum of 990 secondary or 900 elementary and 450 kindergarten hours of instruction as the equivalent of 180 school days.

§ 11.2. School day.

Instruction time for [pupils] students shall be time in the school day devoted to instruction and instructional activities provided as an integral part of the school program under the direction of [certificated] certified school employees.

§ 11.3. Minimum required hours.

(a) Minimum hours of instruction time for [pupils based on a school term of 180 days] students shall be as follows:

[Grade	Day	Week	Year
K	2.5	12.5	450
1-6	5.0	25.0	900
7-12	5.5	27.5	990]

Grade Hours

K	2 hours, 30 minutes, each day of the school term
1-6	900 hours for the school term
7-12	990 hours for the school term

(b) Schools with grade level configurations that differ from those outlined in subsection (a) (for example, K-8), are required to meet the minimum annual hourly requirements for each specified grade level.

§ 11.4. Early withdrawal for postsecondary institution attendance.

[Pupils] Students attending a postsecondary institution full-time prior to graduation from high school shall be dropped from the membership roll of the district at the time they stop attending school.

§ 11.5. Part-time attendance for potential graduates.

(a) [A pupil] Students of school age may qualify for graduation by attending the public school part-time when lawfully employed part-time or when officially enrolled in a postsecondary institution part-time. For reimbursement purposes, membership in the public school shall be calculated by counting the time the [pupils] students spend in the public school on a pro rata basis.

(b) Public schools that offer students enrollment at a postsecondary institution as part of the high school program and pay the tuition, fees and textbooks on behalf of students may continue to include the students in their average daily membership.

§ 11.6. Part-time enrollment of alternative education students.

Students may be allowed to attend public school less than full-time because of participation in a Department approved alternative [educational] program operated by a public school or a private alternative education institution as provided by section 1903-E of the Public School Code of 1949 (24 P. S. § 19-1903-E). For reimbursement purposes, the students may be counted as in full membership.

§ 11.7. Religious objections.

[Upon written parental request, a school district may excuse a pupil from instruction in those portions of science and health courses which conflict with the religious beliefs of the pupil.] Students shall be excused from instruction as provided by § 4.4(d)(3) (relating to general policies).

ADMISSION TO PUBLIC SCHOOLS

§ 11.11. Entitlement of resident children to attend public schools.

(a) A school age child is entitled to attend the public schools of the child's district of residence. A child's district of residence is that in which the parents or the guardian resides [, or, if]. When the parents reside in differ-

ent school districts due to separation, divorce or other reason, the child may attend school in the district of residence of the parent with whom the child lives for a majority of the time, unless a court order or court approved custody agreement specifies otherwise. If the parents have joint custody and time is evenly divided, the parents may choose which of the two school districts the child will enroll for the school year. If the child is an emancipated minor, the resident school district is the one in which the child is then living. For purposes of this section, an emancipated minor is a person [below the age of] under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated.

(b) A school district or charter school shall normally enroll a child the next business day, but no later than 5 business days from application. The school district or charter school has no obligation to enroll a child until the parent, guardian or other person having control or charge of the student applying has supplied proof of the child's age, residence, and immunizations as required by law; completed a sworn statement in accordance with section 1304-A of the Public School Code of 1949 (24 P. S. § 13-1304-A); and supplied any other documentation specifically required by law. School districts and charter schools receiving requests for educational records from another school district or charter school shall forward the records within 5 business days of receipt of the request.

(c) The requirement of subsection (b) applies equally to nonresident children who are children living in facilities, institutions or foster homes as defined in § 11.18 (relating to nonresident child living in facilities or institutions), or with a district resident who is supporting the child without personal compensation as defined in § 11.19 (relating to nonresident child living with a district resident), provided that the person making the application has supplied the documentation required by law.

(d) A child's right to be admitted to school may not be conditioned on the child's immigration status. A school may not inquire regarding the immigration status of a student as part of the admission process. This provision does not relieve a student who has obtained an F-1 visa from the student's obligation to pay tuition under Federal law.

(e) A school entity shall administer a home language survey to all students seeking first time enrollment in its schools in accordance with requirements of the United States Department of Education's Office for Civil Rights.

§ 11.12. School age.

School age is the period of a child's life from the earliest admission age to a school district's [kindergarten] educational program [or, when no kindergarten program is provided, to the district's earliest admission age for beginners,] until [the age of 21 years or] graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever [occurs first] should first occur.

§ 11.13. Compulsory school age.

Compulsory school age refers to the period of a child's life from the time the child enters school as a beginner (which may be no later than at the age of 8 years), until the age of 17 or graduation from a high school, whichever [occurs first] should first occur. A beginner is a child who enters a public school district's lowest elementary school grade that is above kindergarten.

§ 11.14. Admission to kindergarten when provided.

When kindergarten is provided, the board of school directors shall establish the district's minimum entry age to kindergarten [which may]. The minimum entry age to kindergarten may not be less than 4 years, no months, before the first day of the school term. [and the] The district's maximum entry age to kindergarten[, which] shall be less than the district's entry age for beginners.

§ 11.15. Admission of beginners.

The board of school directors shall establish the district's minimum entry age for beginners, which may not be less than a chronological age of 5 years and 7 months before September 1, nor more than 6 years, no months, before the first day of the school term of the district. The board of school directors shall permit a child of beginners' age to attend the district's first grade and may not require the child to attend kindergarten, prefirst grade, transitional class or other grade or class that is not regular first grade without parental consent.

§ 11.16. Early admission of beginners.

The board of school directors of a school district may, upon parental request[,] and when recommended by a public school psychologist and approved by the district superintendent of schools, admit as a beginner a child with a chronological age of 5 years [and a mental age of 7 years or more] as of the first day of the district's school term. A board of school directors is not required to admit a child as a beginner whose chronological age is less than the district's established admission age for beginners.

§ 11.18. Nonresident children living in facilities or institutions.

(a) The board of school directors of a school district in which there is located [an agency supervised or] a licensed shelter, group home, maternity home, residence, facility, orphanage or other institution for the care or training of children or adolescents, shall admit to the district's public schools schoolage children who are living at or assigned to the facility or institution and who are residents of the district or another school district in this Commonwealth.

(b) The board of school directors of a school district[,] in which a day treatment program, operated under approval from the Department of Public Welfare by a private children and youth agency, is located[,] may purchase educational services for a child referred to the program under section 1310(b) of the Public School Code of 1949 (24 P. S. § 13-1310(b)).

* * * * *

§ 11.19. Nonresident child living with a district resident.

A nonresident child is entitled to attend the district's public schools if that child is maintained and supported in the home of a district resident as if the child were the resident's own child and if the resident receives no

personal compensation for maintaining the student in the district. Before accepting the child as a **[pupil] student**, the board of school directors of the district **[may] shall** require the resident to file with the secretary of the board of school directors **either appropriate legal documentation to show dependency or guardianship or** a sworn statement that **[he] the child** is a resident of the district, **[that he] the child** is **[supporting the child] supported** without personal compensation or gain, **[that he] and that the resident** will assume personal obligations for the child relative to school requirements and **[that he]** intends to so keep and support the child continuously and not merely through the school term. The resident's receipt of public payments, such as Supplemental Security Income (SSI), **[Aid to Families of Dependent Children (AFDC) Temporary Assistance for Needy Families (TANF), maintenance on public or private health insurance, preadoptive support or other payments for or on account of the child, may not be deemed to be personal compensation or gain under this section. The school board may require other reasonable information to be submitted by the resident to substantiate the sworn statement in accordance with guidelines established by the Department.**

§ 11.20. Nonimmunized children.

(a) No child may be admitted to or permitted to attend **[the] a public [schools unless the child has received immunizations required by], private, nonpublic, special education, or vocational school or to participate in a home education or private tutoring program in a district unless the immunization, exemption or provisional admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C (relating to immunization) have been met or the child has received from the [or school district superintendent]; chief school administrator of the public, private, nonpublic, special education or vocational school a medical or religious exemption from immunization under 28 Pa. Code § 23.84 (relating to exemption for immunization).**

(b) A child who has not received all doses of the required immunizations or who has not been exempted from immunization, but who has received at least one dose of each of the required immunizations, may be provisionally admitted and attend public school for a period of up to 8 months. Provisional admission or continued attendance shall be conditioned upon the **[parents'] parent's** or guardian's submission to the superintendent of a plan for the **[pupil's] student's** completion of the required immunization doses. The plan shall be reviewed by the school district at least every 60 calendar days. If, after 8 months, the child has not received all doses of the required immunizations, the child thereafter may not be further admitted to or be permitted to attend the public schools until all doses have been received.

[(c) No school age child may be admitted to or permitted to attend a private, nonpublic, special education or vocational school unless the immunization, exemption or provisional admission requirements of the Department of Health at 28 Pa. Code Chapter 23, Subchapter C have been met.

(d)] (c) * * *

ABSENCES FOR TEMPORARY PERIODS

§ 11.21. Religious holidays and religious instruction.

(a) Upon written parental request, and in accordance with the policies of the district's board of school directors, **[pupils] students** may be excused from school for religious holidays observed by bona fide religious groups.

(b) Upon written parental request, a **[pupil] student** shall be excused from school **[in order]** to attend classes for religious instruction under section 1546 of the Public School Code of 1949 (24 P.S. § 15-1546). The excusal shall be limited to a total of not more than 36 hours per school year.

(c) A **[pupil's] student's** absence from school for religious holidays or for religious instruction shall be recorded as an excused absence. **[There shall be] No penalty may be** attached to an absence for religious holidays or instruction.

§ 11.22. Tutorial work.

(a) Upon written parental request, a **[pupil] student** may be excused during school hours for the purpose of receiving tutorial instruction in a field not offered in the district's curricula only if the following requirements are met:

(1) The excusal does not interfere with the **[pupil's] student's** regular program of studies.

* * * * *

§ 11.23. Health care.

Upon written parental request, a **[pupil] student** may be excused during school hours for the purpose of obtaining professional health care or therapy service only if the following requirements are met:

* * * * *

(2) It is not practical or possible for the **[pupil] student** to receive the services outside of school hours.

(3) The time of necessary absence from school involves a minimum of interference with the **[pupil's] student's** regular program of studies.

§ 11.24. Unaccounted absences.

[Children] Students whose names are on the active membership roll, who are at anytime in the school term absent from school for 10 consecutive school days, shall thereafter be removed from the active membership roll unless one of the following **[occurs] should occur:**

* * * * *

§ 11.25. Temporary excusals due to illness or other urgent reasons.

(a) A principal or teacher may, upon receipt of satisfactory evidence of mental, physical or other urgent reasons, excuse a **[child] student** for nonattendance during a temporary period, but the term "urgent reasons" **[is] shall be** strictly construed and does not permit irregular attendance. A school district shall adopt rules and procedures governing temporary excusals **[which] that** may be granted by principals and teachers under this section. **Temporary excusals may not exceed 3 months.**

(b) Students temporarily excused under this section may be provided with homebound instruction, **for a period not to exceed 3 months. Department of**

Education approval is required to extend the provision of homebound instruction and shall be re-evaluated every 3 months. When a student receives homebound instruction, the student may be counted for attendance purposes as if in school. A school district shall be reimbursed for homebound instruction provided to a student under section 2510.1 of the Public School Code of 1949 (24 P. S. § 25-2510.1).

(c) A school district shall adopt policies **[which]** that describe **[its]** the instructional services that are available to students who have been excused under this section. The policies shall include statements **[which]** that define the responsibilities of both the district and the **[pupil]** student with regard to these instructional services.

§ 11.26. Nonschool district sponsored educational tours and trips.

(a) A school district may excuse a **[pupil]** student from school attendance **[in order]** to participate in a nonschool district sponsored educational tour or trip, if the following conditions are met:

(1) The **[pupil's]** student's parents or guardian prior to the trip submits to the school district a written request for the excusal.

(2) The **[pupil's]** student's participation on the **[trip or]** tour or trip has been approved by the district superintendent or a designee.

(3) There is an adult who is directing and supervising the **[pupil]** student during the **[trip or]** tour or trip who is acceptable to both the parents or guardian and the district superintendent.

(b) A school district may limit the number and duration of **[trips or]** tours or trips for which excused absences may be granted **[pupils]** students during the school term.

§ 11.27. Graduation.

The intent of this section is to specify the effect of graduation on membership for the purpose of calculating school subsidies **[and not to impose limits on the right to a free and appropriate public education for special education students who participate in graduation ceremonies but who are not being graduated]**.

(1) A **[pupil's]** student's graduation from high school signifies both the **[pupil's]** student's fulfillment of the high school graduation requirements set forth in Chapter **[5 (Reserved)]** 4 (relating to academic standards and assessment) and the end of the **[pupil's]** student's membership in a school district for the purpose of State subsidy reimbursement. A graduating **[pupil's]** student's date of graduation shall be that of the commencement ceremony of the **[pupil's]** student's high school.

(2) This subsection applies to a graduating high school **[pupil]** student who is attending an area vocational technical school (AVTS). If the AVTS instructional calendar extends beyond the **[pupil's]** student's high school commencement date, for purposes of determining whether the **[pupil]** student has received 180 days of instruction and for purposes of determining State subsidy com-

putation, the **[pupil]** student may be maintained in membership at the AVTS until the end of the AVTS calendar.

(3) Graduating **[pupils]** students may be counted as in attendance for no more than 3 days of commencement preparation. **Commencement preparation may be held on Saturdays within 60 days of the commencement ceremony.** During commencement preparation days, **[pupils]** students shall be under the supervision of certificated school district **[employees]** employees.

(4) **School districts, AVTSs and charter schools may include in their average daily membership count students with disabilities identified under Chapter 14 (relating to special education services and programs) who choose to participate in graduation ceremonies with their graduating class and continue to receive education services but are not awarded a diploma.**

§ 11.28. Out-of-school programs and part-time employment.

(a) **[Cooperative education and community exploration programs]** *Out-of-school programs.* For reimbursement purposes, **[pupils]** students engaged part-time in **[a cooperative education or community exploration]** an out-of-school program shall be counted as if in regular school attendance. The programs shall be arranged as an integral part of the school curricula and shall be properly supervised by a certificated **[employee of the district]** employee. **[Pupils]** Students attending school and enrolled in supervised programs may be counted as in full membership.

(b) **[Work experience programs]** *Part-time employment.* A **[pupil]** student may be excused on a part-time basis from public school attendance **[in order]** to pursue non-school district supervised outside employment. For reimbursement purposes, membership in the public schools shall be calculated by counting the **[pupils]** students only for those periods while they are in school. Excusal of **[pupils in order]** students to pursue nonschool district supervised outside employment shall be consistent with the applicable provisions of section 1330 of the Public School Code of 1949 (24 P. S. § 13-1330) as they relate to excusals from compulsory attendance for purposes of employment and with the school district's rules governing excusals. **[Pupils]** Students excused on a full-time basis may not be counted as in membership.

EXCUSALS FROM PUBLIC SCHOOL ATTENDANCE

§ 11.31. [Pupils] Students not enrolled in public schools due to private tutoring.

(a) **[Private tutoring by a properly qualified tutor shall be subject to the annual approval of the district superintendent of schools.]** The instruction of students not enrolled in public schools due to private tutoring by a qualified tutor under section **1327 of the Public School Code of 1949 (24 P. S. § 13-1327)** shall include for elementary school level students: English, including spelling, reading and writing[,]; arithmetic[,]; geography[,]; the history of the United States and Pennsylvania[,]; science[,]; civics[,], **including loyalty to the State and National Government,];** safety education, **[and the humane treatment**

of birds and animals,] including regular and continuous instruction in the dangers and prevention of fires; health, including physical education and physiology[,]; music; and art. For secondary school level students, the instruction shall include: art[,]; English[,]; health[,]; mathematics[,]; music[,]; physical education[,]; science; and social studies, including civics, world history, United States and Pennsylvania history. The instruction may include, at the discretion of the tutor, economics, biology, chemistry, foreign languages, trigonometry, or other age appropriate planned instruction as contained in Chapter 4 (relating to academic standards and assessment). The instruction shall be given during the school year for a minimum of 180 days of instruction or for a minimum of 900 hours of instruction for an elementary level student and a minimum of 990 hours of instruction for a secondary level student as the equivalent of 180 days of instruction.

(b) [The superintendent's approval of the tutor shall be by acceptable evidence of the tutor's ability to teach the program to the pupil and by written assurance from the parent that the instructional requirements listed in this section shall be met. If approval is granted, the] School district approval is not required to commence private tutoring. The parent shall provide written assurance that the instructional requirements listed in this section have been met. The superintendent may [afterwards also] require evidence deemed necessary to demonstrate that the [pupil] student is making satisfactory progress in the tutoring program and that the required subjects are being taught for the time prescribed.

§ 11.31a. Students not enrolled in public schools due to participation in a home education program.

Students of compulsory school age participating in a home education program are subject to section 1327.1 of the Public School Code of 1949 (24 P. S. § 13-1327.1). School district approval is not required to commence home education programs.

§ 11.32. [Pupils] Students attending nonpublic or private schools.

A child of compulsory school age regularly attending full-time a nonpublic school [which] that is in compliance with [§ 5.14 (reserved)] section 1327(b) of the Public School Code of 1949 (24 P. S. § 13-1327(b)) or an accredited or licensed private school, in which the instruction prescribed by statute and this part is taught, shall be in compliance with the compulsory attendance requirements.

§ 11.33. Dual enrollment [—nonpublic school pupils] students enrolled part-time in the public schools.

For reimbursement purposes, membership and attendance of nonpublic school [pupils] students, students in a private tutoring program under section 1327 of the Public School Code of 1949 (24 P. S. § 13-1327), and students in a home education program under section 1327.1 of the Public School Code of 1949 (24 P. S. § 13-1327.1), lawfully enrolled part-time in the public schools, shall be calculated by counting the time the [pupils] students spend in the public school program on a pro rata basis.

§ 11.34. Excusals from attendance for other than temporary reasons.

* * * * *

(b) Prior to seeking excusal and the Secretary's approval, the school district shall provide the child's parents with written notice of both the proposed excusal, including the reasons for the excusal, and an opportunity to be heard. For a child enrolled in special education, the notice and opportunity to be heard shall be governed by §§ [14.61 and 14.64 (Reserved)] 14.161 and 14.162 (relating to prehearing conferences; and impartial due process hearing and expedited due process hearing).

APPLICABILITY

§ 11.41. School district policies and rules.

(a) Each school board shall adopt written policies concerning district child accounting, attendance, admission, excusal and program procedures as necessary to implement this chapter. The policies shall be a matter of public record.

(b) Each school [district] board shall adopt, and distribute yearly to parents, written rules governing [pupil] student admissions, attendance, absences and excusals, that are in conformity with this chapter.

(c) Each school board shall adopt a written policy permitting students to be excused for participation in agricultural fairs in conformity with section 1329(b) of the Public School Code of 1949 (24 P. S. § 13-1329(b)).

[Pa.B. Doc. No. 03-1692. Filed for public inspection August 29, 2003, 9:00 a.m.]

[22 PA. CODE CH. 14]

Special Education Services and Programs

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

Purpose

The State Board proposes to amend § 14.162(c) (relating to impartial due process hearing and expedited due process hearing). The purpose of amending § 14.162(c) is to align the Commonwealth's special education regulations with the requirements imposed by the United States Department of Education's Office of Special Education Programs (OSEP) relating to parental consent and the initiation of educational services.

Requirements of the Proposed Amendment

The OSEP sent correspondence to the Department of Education (Education) indicating that § 14.162(c) is inconsistent with Federal regulatory requirements. The OSEP is requiring all states to revise conflicting regulations to remain eligible for Federal grant funds under the Individuals with Disabilities Education Act (IDEA). The OSEP maintains that when the requisite written parental consent is not forthcoming for an evaluation and initial education placement, under Federal regulations a local education agency (LEA) may not seek the approval of an impartial hearing officer to initiate the services and

override the parents' withholding of consent. In short, OSEP contends that the LEA may not invoke the hearing process when the parents do not want special education services initiated for their child.

To align with Federal regulations and continue the Commonwealth's eligibility for the IDEA grant funds, the State Board proposes to amend § 14.162(c) so that it will no longer allow an "initial educational placement" when the district has not obtained written parental consent.

Affected Parties

The proposed regulations affect the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools).

Cost and Paperwork Estimates

Without proper alignment with Federal requirements, the Department might lose its Federal funding for special education, the current total exceeding \$310 million.

Effective Date

The proposed amendment will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all of its regulations, the State Board will review the effectiveness of Chapter 14 every 4 years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 18, 2003, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department,

the General Assembly and the Governor, of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia A. White, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333. Comments, suggestions or objections must be received by the State Board within 30 days following publication in the *Pennsylvania Bulletin*.

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

PATRICIA A. WHITE,
Executive Director

Fiscal Note: 6-287. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

§ 14.162. Impartial due process hearing and expedited due process hearing.

* * * * *

(c) A school district may request a hearing to proceed with an initial evaluation[, **an initial educational placement**] or a reevaluation when the district has not obtained parental consent as required by 34 CFR 300.505(c) (relating to parental consent). When a parent rejects the district's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, **other than the initial placement**, the school district may request an impartial due process hearing.

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[Pa.B. Doc. No. 03-1693. Filed for public inspection August 29, 2003, 9:00 a.m.]