

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 Ethan R. Cancell, Office of the Secretary, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 346-3291.

Effective Date

The standards were effective on June 14, 2003, upon publication in the *Pennsylvania Bulletin* of the State Board of Education's (State Board) resolution approving these amendments as provided by section 2603-B(d)(10)(i) of the Public School Code of 1949 (code) (24 P. S. § 26-2603-B(d)(10)(i)).

Statutory Authority

The Department acts under the authority of section 2603-B(d)(10)(i) of the 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, to adopt standards to comply with the provisions of the No Child Left Behind Act of 2001 (NCLB) (Pub. L. No. 107-110, 115 Stat. 1425) to maintain the eligibility of the Commonwealth to receive Federal funding for education programs. Under 2603-B(d)(10)(i) of the code, the State Board approved these amended standards at its meeting of May 22, 2003.

Standards promulgated by the Department under section 2603-B(d)(10)(i) of the code must be deposited with the *Pennsylvania Bulletin* for publication. (See 24 P. S. § 26-2603-B(d)(10)(i).) Standards adopted under section 2603-B(d)(10)(i) of the code on or before June 30, 2003, are exempt from the following laws:

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

(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).

24 P. S. § 26-2603-B(d)(10)(i) (prior to amendment by the act of December 23, 2003 (P. L. 304, No. 48) for standards adopted thereafter, which are subject to review by the Attorney General).

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 September 18, 2002, the Department presented to the State Board two sets of proposed standards necessary to comply with the NCLB. Included in the proposed standards were elements of the State Plan required for compliance with the NCLB. At its September 19, 2002,

meeting, the State Board publicly voted to approve the proposed standards presented by the Department. On September 26, 2002, the chairperson of the State Board signed the two resolutions approved by the State Board. They were published at 32 Pa.B. 5151 (October 12, 2002). As required by section 2603-B(d)(10)(i) of the code, the Department deposited the standards for publication in the *Pennsylvania Bulletin*, see 32 Pa.B. 6096 (December 14, 2002); and the standards now appear in 22 Pa. Code Chapter 403.

On May 21, 2003, the Department presented to the State Board proposed amendments to the State Plan. At its meeting held May 22, 2003, the State Board adopted a resolution approving the changes to the State Plan proposed by the Department and other amendments to the standards proposed by the Department. The resolution of the State Board reflecting its approval of the amendments to the Workbook and the Department standards is published at 33 Pa.B. 2841 (June 14, 2003).

Background and Need for Standards

The President signed the NCLB into law on January 8, 2002. The NCLB, inter alia, amends Titles I and III of the Elementary and Secondary Education Act of 1965 (ESEA) (Pub. L. No. 89-10, 79 Stat. 27) (Improving the Academic Achievement of the Disadvantaged) (20 U.S.C.A. §§ 6301—6578 and 6801—7014). The purpose of Title I of the ESEA 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, Title I of the ESEA provides grants to state education agencies and subgrants to local educational agencies. To remain eligible for funding under Title I of the ESEA, state and local educational agencies must comply with the requirements of the NCLB.

Section 1111(b)(2)(A) of Title I of the ESEA, as added by the NCLB, (20 U.S.C.A. § 6311(b)(2)(A)), requires each state to demonstrate that it has developed and is implementing a single, statewide accountability system that will be of high quality, technically valid and reliable, aligned with the state's academic content and student achievement standards, and based upon the same content expectations for all children. It is further required, by section 1111 of Title I of the ESEA, that the single, statewide accountability system be effective in ensuring that all local education agencies (LEAs), public elementary schools and public secondary schools make adequate yearly progress (AYP), as defined in section 1111(b)(2)(C) of Title I of the ESEA.

In addition, section 1111(b)(3)(A) of Title I of the ESEA requires that, beginning no later than the 2005-06 school year, states assess all students in grades three through eight against the challenging state academic content standards in, at a minimum, math and reading or language arts, or both, and, beginning in the 2007-08 school year, in science for students in grades four, seven and ten.

Section 3121 of Title III of the ESEA, added by the NCLB, (20 U.S.C.A. § 6841), requires that each state approve evaluation measures that are designed to assess the progress of children in attaining English proficiency, including a child's level of comprehension, listening, speaking, reading and writing skills.

Description of Standards

The standards in Chapter 403 provide for a single, Statewide accountability system. More specifically, the standards provide for the fulfillment of the NCLB's assessment requirements and the calculation of an AYP. The standards, as amended by the Department with the approval of the State Board, reflect changes in the State Plan relative to these requirements. Specifically, the amended standard in § 403.3(d)(1)(ii) and (iii) (relating to single accountability system) reduces the number of assessments that will be used for compliance with the NCLB in grades four, six and seven to one Statewide reading and math assessment—the cost of which will be paid by the Department. The amendment to § 403.3(c)(5) decreases the required number of students tested (per building) for purposes of measuring the AYP of the subgroups listed in section 1111(b)(2)(C) of Title I of the ESEA, as amended by the NCLB, from 75 to 40.

Fiscal Impact

The standards in Chapter 403 are necessary to ensure that the State and its LEAs remain eligible to receive Federal funding under Titles I and III of the ESEA. The amended standards may result in additional costs to the State and LEAs, but these costs will be offset, at least partially, by Federal funds. For example, the Department will continue to utilize Title I funds to meet some of these costs, as well as the \$11.6 million in implementation funding provided under Title VI of the ESEA (Flexibility and Accountability), as amended by the NCLB. Moreover, the amended standards eliminate the augmentation costs that would have been required to ensure that the several assessments permitted under the existing standards all satisfied the NCLB.

Paperwork Requirements

These amended standards do not impose additional paper work requirements.

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 act of July 31, 1968 (P. L. 769, No. 240).

(2) The State Board approved the amendments to the proposed standards by public vote at its May 22, 2003, meeting.

(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 Chapter 403, are amended by amending § 403.3 to read as set forth in Annex A.

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

(c) This order is effective retroactively to June 14, 2003, in accordance with the resolution of the State Board published at 33 Pa.B. 2841.

VICKI L. PHILLIPS, Ed.D.,
Secretary

Fiscal Note: 6-290. (1) General Fund; (2) Implementing Year 2003-04 is \$1.8 million; (3) 1st Succeeding Year 2004-05 is \$4.4 million; 2nd Succeeding Year 2005-06 is \$8.3 million; 3rd Succeeding Year 2006-07 is \$8.4 million; 4th Succeeding Year 2007-08 is \$8.6 million; 5th Succeeding Year 2008-09 is \$8.6 million; (4) 2002-03 Program—\$N/A; 2001-02 Program—\$N/A; 2000-01 Program—\$N/A; the testing requirements addressed in the regulation are not required until the 2004-2005 school year; therefore, there is no history of funding this program; (7) Title IV Federal Assessment; (8) recommends adoption.

Annex A**TITLE 22. EDUCATION****PART XVI. STANDARDS****CHAPTER 403. COMPLIANCE WITH THE NO CHILD LEFT BEHIND ACT OF 2001****§ 403.3. Single accountability system.**

(a) *Requirement of NCLB.* Section 1111 of Title I, added by NCLB (20 U.S.C.A. § 6311), requires each state to develop and implement a single, statewide state accountability system that will be effective in ensuring that all LEAs, public elementary schools and public secondary schools make AYP as defined in section 1111(b)(2)(C) of Title I.

(b) *Proficiency as a measure of student progress.*

(1) As the starting point for calculating the AYP, the Department will use the proficient level of student performance, as adopted by the State Board on May 10, 2001. See 31 Pa.B. 2763 (May 26, 2001).

(2) Using data from the 2001-02 school year as the baseline, the Department will determine the number of students meeting or exceeding the proficient level of achievement on State assessments.

(c) *Adequate yearly progress.*

(1) The Department will calculate the AYP by using the "intermediate method" of calculation, involving "stepped goals."

(2) The Department will provide yearly targets to assist the LEAs in measuring progress within the intermediate method.

(3) The Department will use graduation rates as an additional indicator of the AYP for secondary schools and students.

(4) The Department will use child attendance rates as an additional indicator of the AYP for elementary schools and students.

(5) The Department will use 40 as the required number of students tested per building to form a group for the purposes of measuring the AYP of students with disabilities, limited English proficient students and students who are members of economically disadvantaged, major racial and ethnic groups.

(d) *Assessments.*

(1) Section 1111(b)(3)(A) of Title I specifically requires that, beginning no later than the 2005-06 school year, states must assess all students in grades three through eight against the challenging state academic content

standards in, at a minimum, math and reading or language arts, or both. In addition, beginning in the 2007-08 school year, states must assess all students in grades four, seven and ten against the challenging state academic content standards for science.

(i) To accomplish the mandates described in paragraph (1), the LEAs shall continue to use the PSSA to assess students in grades three, five, eight and eleven in reading and mathematics and to assess students in grades six, nine and eleven in writing.

(ii) The Department will supplement the PSSA with a single assessment for reading and mathematics that will be administered to students in each of grades four, six and seven.

(iii) The Value Added Assessment System shall be implemented as a component of the Commonwealth's assessment system to provide the LEAs with analyses and reports to offer valuable information for focused program improvement to increase performance.

(2) Section 3121 of Title III of the ESEA, added by the NCLB (20 U.S.C.A. § 6841), requires that each state approve evaluation measures that are designed to assess

the progress of children in attaining English proficiency, including a child's level of comprehension, listening, speaking, reading and writing skills in English.

(i) To accomplish the mandates described in paragraph (2), the Commonwealth will serve as the leader in a consortium of states seeking to develop a language proficiency assessment that will meet the needs of the NCLB.

(ii) The Department will use the consortium's assessment to evaluate the progress of students in attaining English proficiency, including a child's level of comprehension, listening, reading and writing skills in English.

(iii) The Department will identify one or more commercially developed language proficiency assessments that the LEAs shall administer until the assessment developed by the consortium is available.

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