

RULES AND REGULATIONS

Title 22—EDUCATION

DEPARTMENT OF EDUCATION

[22 PA. CODE CH. 171]

Interim Standards for Auditing of Approved Private Schools and Chartered Schools for the Education of Deaf and Blind Children

The Secretary of Education (Secretary) amends Chapter 171 (relating to standards for approved private schools) to read as set forth in Annex A. The Secretary is acting under the authority of sections 1376(c.8) and 1376.1(f.5) of the Public School Code of 1949 (code) (24 P. S. §§ 13-1376(c.8) and 13-1376.1(f.5)), which were added by section 5 of the act of July 13, 2005 (P. L. 226, No. 46) (Act 46). Sections 1376(c.8) and 1376.1(f.5) of the code empower the Department of Education (Department) to promulgate interim standards for auditing of approved private schools and the four chartered schools for the education of the deaf and the blind (schools).

Purpose

The objective of these audit standards is to ensure that revenues provided by the Commonwealth for approved students and the expenses of the schools have been presented appropriately in accordance with Generally Accepted Accounting Principles (GAAP).

Section 171.202 (relating to general guidelines) provides general guidelines on how this is accomplished.

Section 171.203 (relating to form of records) updates recordkeeping requirements and allows schools the alternative of maintaining their financial records in electronic form.

Section 171.204 (relating to related party transactions) regulates the disclosure of related party transactions in the school audits. This section defines relevant terms so that proper reporting and recording may take place.

Section 171.205 (relating to exceptions to Generally Accepted Accounting Principles) sets forth the exceptions to the usual criteria of GAAP. The expenses listed in this section are not to be included in the audit report filed with the Department.

Section 171.206 (relating to administrative costs) defines administrative costs and identifies costs that are subject to the 10% cap provided for in statute. It also identifies cost exceptions to the 10% cap.

Section 171.207 (relating to payments in excess of expenditures) sets forth the timelines and process the Commonwealth will utilize in recouping from the schools any unspent revenues provided to the schools for the provision of services to children who have been approved through the PDE-4010 process.

Fiscal Impact and Paperwork Requirements

The interim standards are necessary to ensure that the approved private schools and the chartered schools for deaf or blind children continue to receive predictable funding and to reform the audit structure, thereby enhancing each school's ability to focus on students and programs. The interim standards will result in a 20% to 30% increase in audit cost to the schools. There will be no increase in cost to the Commonwealth. These interim standards do not impose additional paperwork requirements.

Affected Parties

The interim standards affect the approved private schools and the chartered schools for deaf or blind children in this Commonwealth.

Regulatory Review

Under sections 1376(c.8) and 1376.1(f.5) of the code, these interim standards are exempt from the Regulatory Review Act (71 P. S. §§ 745.1—745.15).

Effective Date

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

Sunset Date

The sunset date for these interim standards is June 30, 2007.

Contact Person

Questions regarding these interim standards should be directed to Esther Beck, Chief, Division of Early Intervention and Support Services, Bureau of Special Education, Department of Education, 333 Market Street, Harrisburg, PA 17126-0333. (717) 783-6906.

Findings

The Department finds that:

(1) Proposed rulemaking in advance of the promulgation of standards is not required under sections 1376(c.8) and 1376.1(f.5) of the code, which expressly provides that the standards are exempt from sections 201—205 of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law (71 P. S. §§ 1201—1205).

(2) The promulgation of these interim standards is necessary for compliance with sections 1376(c.8) and 1376.1(f.5) of the code.

Order

The Secretary orders that:

(a) The standards of the Department, 22 Pa. Code Chapter 171, are amended by deleting §§ 171.40—171.43, 171.45, 171.48, 171.50, 171.55, 171.60, 171.65, 171.70, 171.74, 171.80, 171.82, 171.85, 171.90, 171.95, 171.100, 171.105, 171.110, 171.115, 171.120, 171.125, 171.130, 171.135, 171.137, 171.139, 171.140, 171.142, 171.145, 171.147, 171.150, 171.153, 171.155, 171.160, 171.165, 171.170, 171.173, 171.175, 171.177, 171.180, 171.185, 171.190, 171.194 and 171.195 and by adding §§ 171.201—171.207 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) This order is effective upon publication in the *Pennsylvania Bulletin*.

GERALD L. ZAHORCHAK, D.Ed.,
Secretary

Fiscal Note: Fiscal Note 6-299 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART XII. BASIC EDUCATION

CHAPTER 171. STANDARDS FOR APPROVED PRIVATE SCHOOLS

Subchapter B. [Reserved]

§§ 171.40—171.43. (Reserved).

§ 171.45. (Reserved).

§ 171.48. (Reserved).

§ 171.50. (Reserved).

§ 171.55. (Reserved).

§ 171.60. (Reserved).

§ 171.65. (Reserved).

§ 171.70. (Reserved).

§ 171.74. (Reserved).

§ 171.80. (Reserved).

§ 171.82. (Reserved).

§ 171.85. (Reserved).

§ 171.90. (Reserved).

§ 171.95. (Reserved).

§ 171.100. (Reserved).

§ 171.105. (Reserved).

§ 171.110. (Reserved).

§ 171.115. (Reserved).

§ 171.120. (Reserved).

§ 171.125. (Reserved).

§ 171.130. (Reserved).

§ 171.135. (Reserved).

§ 171.137. (Reserved).

§ 171.139. (Reserved).

§ 171.140. (Reserved).

§ 171.142. (Reserved).

§ 171.145. (Reserved).

§ 171.147. (Reserved).

§ 171.150. (Reserved).

§ 171.153. (Reserved).

§ 171.155. (Reserved).

§ 171.160. (Reserved).

§ 171.165. (Reserved).

§ 171.170. (Reserved).

§ 171.173. (Reserved).

§ 171.175. (Reserved).

§ 171.177. (Reserved).

§ 171.180. (Reserved).

§ 171.185. (Reserved).

§ 171.190. (Reserved).

§ 171.194. (Reserved).

§ 171.195. (Reserved).

Subchapter C. INTERIM AUDIT STANDARDS

Sec.

171.201. Purpose and applicability.

171.202. General guidelines.

171.203. Form of records.

171.204. Related party transactions.

171.205. Exceptions to Generally Accepted Accounting Principles.

171.206. Administrative costs.

171.207. Payments in excess of expenditures.

§ 171.201. Purpose and applicability.

(a) The purpose of these audit standards is to ensure that revenues provided by the Commonwealth for students whose placement in the approved private school has been approved by the Department have been spent on the provision of education services, including residential services in some cases, to children who are residents of this Commonwealth and who have been approved by the Department under § 171.16 (relating to assignment).

(b) These interim standards apply to audits conducted after July 1, 2005, and will apply until final standards are promulgated.

§ 171.202. General guidelines.

An approved private school shall maintain an accounting and bookkeeping system in accordance with the following standards:

(1) Accounts shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as modified by § 171.205 (relating to exceptions to Generally Accepted Accounting Principles).

(2) Costs shall be properly assigned to a specific cost objective and indirect costs shall be allocated to direct costs. If multiple cost objectives are involved, financial information shall be segregated by cost objective in the bookkeeping records.

(3) Bookkeeping records must include the following:

(i) Cash receipts journal.

(ii) Cash disbursements journal.

(iii) General ledger.

(iv) Payroll journal.

(v) Fixed asset and depreciation listings.

(4) Adequate documentation to verify postings shall be maintained. The documentation must include the following:

(i) Purchase orders.

(ii) Customer invoices.

(iii) Vendor invoices.

(iv) Cash remittance advices.

(v) Employee expense reports.

(vi) Employee time records.

(5) A payroll shall be prepared and supported by appropriate documentation authorizing the rate of pay and employee time records, when necessary.

(6) A school shall maintain all pertinent financial records, including cost allocation worksheets, for 3 years after submission of the audit report.

(7) Schools shall submit audits to the Department by November 1 of each year.

(8) School audits shall be conducted by an independent certified public accountant.

§ 171.203. Form of records.

The financial records that are required to be created and maintained under these standards may be in electronic form, rather than paper form.

§ 171.204. Related party transactions.

(a) Related party transactions will be presented and disclosed in accordance with Generally Accepted Accounting Principles.

(b) Related parties include the following:

(1) Affiliates of the enterprise.

(2) Entities for which investments are accounted for by the equity method by the enterprise.

(3) Trusts for the benefit of employees, such as pension and profit-sharing trusts that are managed by or under the trusteeship of management.

(4) Principal owners of the enterprise and its management.

(5) Members of the immediate families of principal owners of the enterprise and its management.

(6) Other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

(c) Another party also is a related party if it can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

§ 171.205. Exceptions to Generally Accepted Accounting Principles.

The schedule of expenses prepared by the school shall be presented in accordance with Generally Accepted Accounting Principles, with the exception of the following, which will not be included:

- (1) Bad debts.
- (2) Unsubstantiated related party costs.
- (3) Cost of any individual insurance policies on the lives of officers, executives, administrators and other key staff.
- (4) Expenses paid with funding from another governmental entity, other than funding from the Department for approved students.
- (5) Fines, penalties, costs and damages assessed for failure to comply with Federal, State or local laws.
- (6) Costs related to meal service for staff members who are not involved in direct supervision of students.
- (7) Interest costs on loans from related parties at rates above the fair market rate available to the school.
- (8) Lobbying efforts to influence the outcome of any Federal, State or local election, referendum, initiative or similar activity, or to promote the introduction, enactment, or modification of any current or future Federal or State legislation.
- (9) Gains or losses on the sale of school assets.
- (10) Rental costs in a related party transaction that are found to be above the fair market rental value of the property.
- (11) Scholarships and discounts to students or their parents or other third parties.
- (12) Administrative costs, as defined in § 171.206 (relating to administrative costs), in excess of 10% of total costs.
- (13) Any money judgment, in excess of the deductible under an insurance policy, entered against the school or organization in administrative or court litigation and any settlement amounts, in excess of the deductible under an insurance policy, to avoid litigation.
- (14) Costs associated with medical personnel that are not related to the provision of a student's individualized education plan, except for costs related to a prudent level of oversight of students.

§ 171.206. Administrative costs.

(a) Administrative costs are those costs that have been incurred for the operation of the executive and administrative offices of the organization and do not relate solely to any major function of the organization. This administrative expense category also includes its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances and interest costs.

(b) Costs or expenses related to the following functions are considered as administrative and are subject to the 10% administrative cap except when and to the extent that the costs or expenditures are incurred as a result of providing educational services to children who are residents of this Commonwealth and who have been approved by the Department through the PDE-4010 process. To the extent that the following costs are for educational services, they are not subject to the administrative cap and are reported in the schedule of operating expenses:

- (1) Activities of the board of directors.
- (2) Executive management.
- (3) Staff relations and labor negotiations.
- (4) Activities or programs operated to improve or sustain relations between the community and the school.
- (5) Activities concerned with the fiscal operations and purchasing activities of the school.
- (6) Printing, publishing and duplicating administrative publications such as annual reports, school directories and manuals.
- (7) Conducting and managing programs of planning, research development and evaluation for the school.
- (8) Activities concerned with writing, editing and other preparation necessary to disseminate educational and administrative information to students, staff, managers and the public through direct mailing, the various news media or personal contact.
- (9) Human resources activities, including recruiting, placement and staff transfers.
- (10) Activities concerned with preparing data for storage or storing and retrieving data for management reporting.
- (11) Activities concerned with acquiring, conducting and managing programs or planning, administration, implementation, coordination, reporting or evaluation of programs and projects that are State or Federally funded.
- (12) Activities designed to assist executive management with administrative functions so that they might accomplish the duties quickly and efficiently.

§ 171.207. Payments in excess of expenditures.

(a) If the amount of reportable costs in 2004-05 is less than the amount of revenues received by the schools for 2004-05 from the Commonwealth for the provision of educational services to children who have been approved through the PDE-4010 process, the difference may be retained by the school for use in 2005-06.

(b) Beginning in 2005-06, if the amount of reportable costs in a year is less than the amount of revenues received in that year by the school from the Commonwealth for the provision of educational services to children who have been approved through the PDE-4010 process, the difference will be remitted to the Commonwealth. Those funds shall be deposited in the Audit Resolution Fund for the resolution of previous audits.

[Pa.B. Doc. No. 06-567. Filed for public inspection April 7, 2006, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

DEPARTMENT OF ENVIRONMENTAL PROTECTION

[25 PA. CODE CH. 93]

Corrective Amendment to 25 Pa. Code § 93.9f

The Department of Environmental Protection has discovered a discrepancy between the agency text of 25 Pa. Code § 93.9f (relating to Drainage List F) as deposited with the Legislative Reference Bureau and as published at 31 Pa.B. 3893, 3894 (July 21, 2001), and the official text as published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 323), and as currently appearing in the *Pennsylvania Code*. When the amendments made by the Department at 31 Pa.B. 3893, 3894 were codified, the water quality standards for Bernhart Creek were inadvertently dropped.

Therefore, under 45 Pa.C.S. § 901: The Department of Environmental Protection has deposited with the Legislative Reference Bureau a corrective amendment to 25 Pa. Code § 93.9f. The corrective amendment to 25 Pa. Code § 93.9f is effective as of October 6, 2001, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 25 Pa. Code § 93.9f appears in Annex A, with ellipses referring to the existing text of the regulation.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

DESIGNATED WATER USES AND WATER QUALITY CRITERIA

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania

Schuylkill River

<i>Stream</i>	<i>Zone</i>	<i>County</i>	<i>Water Uses Protected</i>	<i>Exceptions to Specific Criteria</i>
		* * * * *		
3—Bernhart Creek	Basin	Berks	WWF	None
		* * * * *		

[Pa.B. Doc. No. 06-568. Filed for public inspection April 7, 2006, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

[49 PA. CODE CH. 45]

Continuing Education

The State Board of Examiners in Speech-Language and Hearing (Board) amends §§ 45.1, 45.2 and 45.13 (relating to fees; definitions; and renewal; inactive status; required continuing education) and adds Subchapter G (relating to continuing education) to read as set forth in Annex A.

A. Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. Licensees applying to renew their license for the biennial renewal period begin-

ning August 1, 2008, will be required to have completed 20 hours of continuing education as a condition of renewal.

B. Statutory Authority

The final-form rulemaking is authorized under section 5(7) of the Speech-Language and Hearing Licensure Act (act) (63 P. S. § 1705(7)).

C. Background and Purpose

An amendment to section 5(7) of the act authorizes the Board to establish, by regulation, a continuing education requirement for biennial renewal of licenses of speech-language and hearing professionals.

D. Description of Amendments

This final-form rulemaking implements an amendment to section 5(7) of the act of October 18, 2000 (P. L. 536, No. 71) (Act 71) which requires licensed speech-language and hearing professionals to successfully complete 20 clock hours of continuing education as a condition of biennial renewal. The continuing education requirement will be implemented after providing written notice to all licensees in accordance with section 5(7) of the act for the

biennial renewal period beginning August 1, 2008. Upon application for renewal, each licensee will provide verification of successful completion of the required continuing education.

When the proposed rulemaking was published at 34 Pa.B. 3143 (June 19, 2004), the effective date of the biennial period was left blank. The purpose of leaving § 45.13(g) and § 45.501(a) (relating to credit hour requirements) blank was in anticipation that this final-form rulemaking would have been approved far enough in advance of the 2006 biennial renewal so as to require licensees to complete a prorated amount of clock hours. However, the Board decided, in compliance with Act 71, that, because 20 clock hours are required during a 24-month period, the effective compliance date would be July 31, 2008. This means that the Board would require that each licensee complete 20 hours of continuing education between August 1, 2006, and July 31, 2008.

E. Response to Public Comment and Regulatory Review of Proposed Rulemaking

Publication of proposed rulemaking at 34 Pa.B. 3143 was followed by a 30-day public comment period during which the Board received public comments from the Pennsylvania State Education Association (PSEA), the Pennsylvania Speech-Language-Hearing Association (PSHA) and the Pennsylvania Training and Technical Assistance Network (PTTAN). Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

PSEA objected to the proposed rulemaking because professional educators certified by the Department of Education (Department) who also are licensed by the Board would have two separate continuing education requirements. Section 1205.2 of the Public School Code of 1949 (code) (24 P. S. § 12-1205.2) requires speech language pathologists, audiologists and teachers of the deaf and hard of hearing who are certified public educators to complete 180 hours of collegiate studies, continuing professional education courses or other programs, activities or learning experiences every 5 years to maintain active status. Under the Board's rulemaking, professionals who are also licensed by the Board will be required to complete 20 clock hours of continuing education every 2 years. PSEA and PTTAN suggest that those professionals who hold both Board licensure and Department certification should only have to complete the requirements to maintain active certification to meet the continuing education requirements of the Board.

IRRC suggested that to improve clarity and alleviate any misunderstanding, the Board include the following statement in the preamble of the final-form rulemaking: "The Board has determined that it would accept all credits that conform to its proposed regulation even if a licensee used that same educational experience to fulfill his or her requirements from the Department of Education."

The Board has complied with this recommendation that Department courses, approved by the Department, that are also approved by this Board, can be used to fulfill the requirements under both professional educator certification and license renewal.

However, the Board declines to further amend the regulations as requested by PSEA and PTTAN for the

following reasons. Section 5(7) of the act requires the completion of 20 hours of approved continuing education as a condition of license renewal. Section 13 of the act (63 P. S. § 1713) provides for renewal on a biennial basis, conditioned upon the payment of a fee. This section further provides that licenses not properly renewed "shall be suspended." Conversely, section 1205.2 of the code provides that certified educators may satisfy the continuing education requirement at any time within a 5-year period. Furthermore, all or part of the requirement may be met by continuing education hours unrelated to the area of the professional's certification. The Board views section 5(7) of the act as a legislative mandate that current licensees maintain continued competency. Furthermore, maintenance of competency must be demonstrated biennially. Intrinsic to the concept of continuing education and this final-form rulemaking is that licensees maintain current expertise in their area of specialty. This is consistent with section 2 of the act (63 P. S. § 702) in which the Legislature has declared that it is the policy of the Commonwealth to assure the availability of the highest possible quality of speech language and hearing licensees. The Board also notes that under section 6(b)(2) of the act (63 P. S. § 1706(b)(2)) persons who hold credentials issued by the Department are excluded from the licensure (and the biennial renewal requirement). In summary, because some courses approved by the Department for maintaining certification as a professional educator under section 1205.2 of the code are designed to enhance the continuing competence of educators, they are not necessarily in all cases what the Board perceives would be beneficial or adequate for maintaining State licensure.

Moreover, § 45.505(e) (related to approval of continuing education programs) preapproves the following programs for continuing education credit: (1) programs approved or sponsored by the American Speech-Language-Hearing Association; (2) programs approved or sponsored by the American Academy of Audiology; and (3) courses and programs offered by academic programs in speech-language pathology, audiology or teaching of the hearing impaired associated with institutions accredited by any state's department of education or a regional commission on institutions of higher education. PSHA's website informs its members that "[i]f you maintain both the teaching certification and your state license, it is likely that you will be able to 'count' hours earned for Act 48 IF those hours meet the guidelines that are spelled out in Act 71 and in subsequent regulations." Under circumstances when a professional would like to fulfill the State licensure requirement by using a program that is not preapproved by the Board, but is accepted by the Department, approval may be requested and granted under § 45.505(b) and (c).

PTTAN suggested including in § 45.505(e) preapproval of continuing education providers approved by the Department under section 1205.2 of the code. The Board has rejected this suggestion.

PSHA had no objections or recommendations for changes but raised questions in a number of areas. In response to PSHA's request for clarification of clock hours versus continuing education units (CEU), the Board requires completion of 20 clock hours of continuing education per biennium. One clock hour would be equal to .1 CEU.

PSHA also questioned the fees required for approval of courses. Approved continuing education providers are not required to submit payment for each approved course. In

addition, the application fee is only required once, regardless of the number of times the course may be offered by the same provider.

PSHA further asked if there will be provider training to assure accurate and complete retention of continuing education participant information. The Board will not require or provide training to course providers. In addition, Board-approved forms for providers and licensees will be available when this final-form rulemaking is published. There will be no electronic format for retention of information. Records will be maintained in a hard-copy format. Questions regarding the audit procedure, course approval numbers and submission format may be directed to the Board administrator.

The HPLC recommended that the definition of "continuing education record" in § 45.2 mirrors the language of § 45.506(b) (relating to provider responsibilities), as the latter section lists the minimum requirements of a "continuing education record." The HPLC suggested the language of § 45.506(b)(6) regarding the course approval number or an indication of preapproved status should be added to the definition of "continuing education record" in § 45.2. IRRC suggested that the definition should cross-reference the requirements of § 45.506(b). The Board has responded to these suggestions by changing the definition of "continuing education record" to "report provided to a participant in a continuing education course or program by the provider which conforms to § 45.506(b) (relating to provider responsibilities)," thereby cross-referencing the requirements of that section in the definition.

The HPLC requested a clarification regarding § 45.506(a)(10) with respect to the "name of the entity that approved the program" because the HPLC understood that the Board approves programs. The HPLC's understanding is correct. The Board does approve the programs. Therefore, the Board has deleted the questioned language in the final-form rulemaking.

With regard to § 45.505(b), the HPLC recommended that if the Board chooses to list entities who may seek approval to offer programs of continuing education, the language be modified so that it reads "An entity, including a college, a university, an association, a professional society or organization, seeking approval to offer programs in continuing education . . ." The Board revised this subsection to make it clear that its provisions would apply to any person, including both an individual licensee as well as entities who seek approval of programs which have not been approved under subsection (a).

In addition, the HPLC recommended that the Board adopt a consistent definition of the term "provider" in §§ 45.2 and 45.505(b). The Board has complied with this recommendation. Moreover, the Board has made other changes to the final-form rulemaking that address miscellaneous drafting concerns raised by the HPLC.

The HPLC also recommended that a reference be made to waiver in § 45.507(b) (related to disciplinary action authorized). That section states that a licensee who fails to complete continuing education requirements may be subject to discipline. However, the HPLC points out that § 45.507 must be read together with § 45.502 (related to exemption and waiver). The Board has complied with this recommendation by adding a cross reference to § 45.502.

The HPLC also recommended that § 45.507(c) and (d), which discusses the Board's ability to revoke approval of a provider, be moved to § 45.505 because that section relates to approval of providers. The Board has complied

with this recommendation by moving those subsections to § 45.505 and by reordering the paragraphs in that section for clarity.

IRRC noted that in §§ 45.13(g) and 45.501(a), the proposed rulemaking published at 34 Pa.B. 3143 indicated that the continuing education requirement will become effective in the biennial period following the effective date of the final-form rulemaking. However, IRRC raised concerns that this indication does not match the language in these same sections in the draft regulation submitted by the Board to the HPLC, the SCP/PLC and IRRC. The Board notes that the editors at the Legislative Reference Bureau edited the proposed rulemaking prior to publication in accordance with the *Pennsylvania Code and Bulletin Style Manual*, which is why the document as delivered may be slightly different when published as a proposed rulemaking. In addition, IRRC commented that Board staff had indicated to it that the hour requirement may be prorated if the regulation becomes effective in the midst of a biennial period. IRRC suggested that the Board clarify how and when the requirement will be implemented in the final-form rulemaking. IRRC also suggested that the Board describe how it will provide adequate and timely notice to all licensees of the effective date and what will be required of licensees. PSHA also questioned the renewal requirements for the upcoming biennial renewal.

Active licenses must be renewed by July 31 of even-numbered years as defined in § 45.2. The next biennial renewal will occur on July 31, 2006. This final-form rulemaking will be effective for the biennial period of August 1, 2006, through July 31, 2008, during which time all licensees will be required to complete 20 clock hours of continuing education to renew their licenses for the 2008-2010 biennial period.

Section 5(7) of the act requires written notice to licensees of the continuing education requirement. Prior to the 2006 licensure renewal, written notice will be sent to licensees, informing them that they will need to complete 20 clock hours of continuing education to renew their licenses on July 31, 2008.

IRRC noted that § 45.501(c) states that the Board will not renew or reactivate a license "until the continuing education required prior to the current biennial renewal period has been completed." IRRC has concerns that this phrase and its application to new licensees is unclear and asked if "the continuing education required prior to the current biennial renewal period" refer to courses taken 3 years earlier during a previous biennium. IRRC suggested that the intent of this subsection be clarified in the final-form rulemaking. PSHA also expressed a concern about how the Board intends to apply the requirements to new licensees, as well as those inactive licensees who seek to reactivate their licenses.

In response, the Board notes that § 45.502(a) states that "[a]n individual applying for initial licensure shall be exempted from the continuing education requirement for the biennial period in which the license is granted." Using PSHA's example, a new licensee who obtains a license with 6 months left in a biennial period would be exempt from the continuing education requirements during those 6 months and would be able to renew without certifying completion of continuing education. However, that licensee would then be required to complete the full 20 hours for the next biennial renewal. Regarding reactivated licenses, the Board will require that an inactive licensee demonstrate completion of 20 hours of continuing education as a condition of reactivation.

Section 45.504(a) (relating to reporting completion of continuing education) requires licensees to provide “. . . on forms provided by the Board, a signed statement certifying that the continuing education requirement has been met.” IRRC suggested that the Board consider describing the required content of these forms in the final-form rulemaking. There is a uniform format that is used by all licensing boards that require continuing education within the Bureau of Professional and Occupational Affairs. A licensed speech-language and hearing professional will be required to certify on the license renewal application that the licensee has successfully completed at least 20 hours of continuing education during the preceding biennial period. The Board routinely provides the form renewal application and will include this certification on the form.

In § 45.505(d)(3), denial of program approval can be based on faculty being “deemed not qualified to present the program.” IRRC suggested that the Board explain in the preamble of the final-form rulemaking how faculty qualifications will be determined. As provided in § 45.505(c)(3), the Board will review faculty names and credentials and, if requested by the Board, curriculum vitae. The Board will review applications for course approval on a case-by-case basis to determine whether courses and faculty are qualified to impart educational information that would be beneficial to the licensee’s continued professional education.

Section 45.507(b) provides that a licensee who fails to complete the required continuing education requirement within any biennial renewal period may be subject to discipline. IRRC suggested that the Board explain in the preamble to the final-form rulemaking what disciplinary actions the Board will take if the continuing education requirements are not met. Section 10(2) of the act (63 P.S. § 1710(2)) authorizes the Board to suspend or revoke a license for a violation of the act or noncompliance with the rules and regulations promulgated by the Board under the act. Also, under case law interpreting the disciplinary authority of other professional licensing boards, the Board may impose a lesser discipline such as a reprimand or probation. *McCarl v. Commonwealth, State Board of Nurse Examiners*, 396 A.2d 866 (Pa. Cmwlth. 1979).

F. Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have a limited fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will require the Board to review all applications for compliance with the continuing education requirement and additional costs will be incurred during the audit process. The costs incurred in the audit will include the cost of postage for inquiry letters, the administrative costs of reviewing the responses and any additional disciplinary action to be taken against those who have not complied with the continuing education requirement. It is impossible to estimate the number of licensees who might not comply with the required amount of continuing education, and therefore the Board cannot estimate any increased enforcement costs at this time. There are no other costs or savings to state government associated with implementation of the regulation.

G. Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 8, 2004, the Board submitted a

copy of the notice of proposed rulemaking, published at 34 Pa.B. 3143, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on February 14, 2006, the final-form rulemaking was approved by the HPLC. On March 20, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2006, and approved the final-form rulemaking.

I. Contact Person

Further information may be obtained by contacting Sandra Matter, Board Administrator, State Board of Examiners in Speech-Language and Hearing, P. O. Box 2649, Harrisburg, PA 17105-2649, samatter@state.pa.us.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to the final rulemaking do not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 3143.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this preamble.

K. Order

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 45, are amended by amending §§ 45.1, 45.2 and 45.13 and by adding §§ 45.501—45.507 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

KAREN GOLTZ STEIN,
Chairperson

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 1555 (April 1, 2006).)

Fiscal Note: Fiscal Note 16A-6802 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 45. STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

Subchapter A. GENERAL PROVISIONS

§ 45.1. Fees.

(a) The following are the fees set by the State Board of Examiners in Speech-Language and Hearing:

- (1) Initial license—speech-language pathologist, audiologist or teacher of the hearing impaired \$20
- (2) Certification of licensure \$15
- (3) Biennial renewal \$46
- (4) Examination for teacher of the hearing impaired \$87
- (5) Application for continuing education course approval \$40

(b) The Board will require payment of the initial license fee by individuals who were issued licenses without fee prior to July 30, 1988.

§ 45.2. Definitions.

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

Act—The Speech-Language and Hearing Licensure Act (63 P. S. §§ 1701—1719).

Biennial renewal period—The period from August 1 of an even-numbered year to July 31 of the next even-numbered year.

Board—The State Board of Examiners in Speech-Language and Hearing of the Commonwealth.

Business entity—A lawful form of organization, including a corporation, partnership, trust, association, company or other similar form of organization.

Clock hour—Consists of 50 to 60 minutes of instruction or participation in an approved continuing education course or program.

Continuing education record—Report provided to a participant in a continuing education course or program by the provider which conforms to § 45.506(b) (relating to provider responsibilities).

Direct supervision—The personal, on-premises observation of activities performed by personnel working under the licensee or qualified training supervisor.

Inactive license—A license status in which the licensee notifies the Board that the licensee no longer requires an active license to practice.

Lapsed license—A license status in which the license has not been currently renewed.

Licensees—Speech-language pathologists, audiologists and teachers of the hearing-impaired.

Practice of audiology—The evaluation, counseling, habilitation and rehabilitation of individuals whose communication disorders center in whole or in part in the hearing function, including the prevention, identification, examination, diagnosis and treatment of conditions of the

human auditory system, and including the examination for, and adapting and fitting of amplification or assistive devices.

Practice of speech-language pathology—The evaluation, counseling, habilitation and rehabilitation of individuals whose communicative disorders involve the functioning of speech, voice or language, including the prevention, identification, examination, diagnosis and treatment of conditions of the human speech-language system, and including the examination for, and adapting and use of assistive devices.

Practice of teaching the hearing-impaired—The evaluation and instruction in curriculum-based material and communication skills appropriate for individuals affected primarily by impaired hearing sensitivity, including the prevention, identification, assessment, diagnosis and remediation of conditions affecting the educational and vocational development of deaf or hearing-impaired persons, and including the examination for the adapting and use of assistive devices.

Practicum—

(i) All aspects of a training program related to the practice of speech-language pathology, audiology or teaching of the hearing-impaired which is recognized by an accredited academic institution, and which during the total practicum experience brings the student into direct contact with a person identified as having a communication or oral/motor problem, an individual, such as a family member, spouse or close friend, who has a significant personal relationship with a person identified as having a communication or oral/motor problem, and an allied professional for the purpose of providing services to a person identified as having a communication or oral/motor problem.

(ii) The term may include hours spent in externship, student teaching or directed clinical teaching experience.

Provider—An agency, organization, institution, college, university, professional society, association or center approved by the Board to offer an organized continuing education course or program.

Qualified training supervisor—A person supervising a student in practicum or an applicant in the year of supervised professional experience, and who also holds one of the following:

(i) A current Pennsylvania license in the appropriate area of specialization for the applicant or student.

(ii) Equivalent licensure in the appropriate area of specialization from a state with which the Board has reciprocity.

(iii) A current Certificate of Clinical Competence in speech-language pathology or audiology issued by the American Speech-Language and Hearing Association, or a current professional certificate issued by the Council on Education of the Deaf, whichever is applicable to the applicant's area of specialization and is a nonresident of this Commonwealth or is exempt from licensure under section 6(b)(2) of the act (63 P. S. § 1706(b)(2)).

YSPE—Year of supervised professional experience.

Subchapter B. LICENSURE

§ 45.13. Renewal; inactive status; required continuing education.

(a) Unless renewed for the upcoming biennium, licenses issued under this subchapter expire at the end of the current biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to

the last mailing address given to the Board by the licensee. Whenever the licensee changes his mailing address of record, the licensee shall notify the Board in writing within 10 days after making the address change.

(c) The licensee shall renew his license in the manner prescribed by the Board and pay the required fee, as provided by § 45.1 (relating to fees).

(d) When a license is renewed after the expiration date, a late fee, as provided for by section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225), will be charged for each month or part of a month that the licensee has engaged in practice beyond the expiration date. A licensee who practices under an expired license may be subject to criminal prosecution under section 18 of the act (63 P. S. § 1718).

(e) A licensee who does not intend to practice in this Commonwealth may make written request that his license be placed on inactive status.

(f) A licensee who fails to pay the biennial renewal fee or who requests to be placed on inactive status will not be sent biennial renewal forms for following biennial renewal periods unless the licensee requests the Board, in writing, to reactivate the license.

(g) Beginning with the renewal period commencing August 1, 2008, an application for renewal of a speech-language pathologist, audiologist or teacher of the hearing impaired license will not be granted unless the licensee has certified that the licensee has completed the required continuing education hours under § 45.501 (relating to credit hour requirements). If requested by the Board, an application for renewal must also include the documentation required by § 45.504 (relating to reporting completion of continuing education).

(h) An application for reactivation of an inactive or lapsed speech-language pathologist, audiologist or teacher of the hearing impaired license must also include the documentation required by § 45.504 (relating to reporting completion of continuing education) for the preceding biennial period.

Subchapter G. CONTINUING EDUCATION

Sec.
 45.501. Credit hour requirements.
 45.502. Exemption and waiver.
 45.503. Continuing education requirement for biennial renewal of inactive and lapsed licenses.
 45.504. Reporting completion of continuing education.
 45.505. Approval of continuing education programs.
 45.506. Provider responsibilities.
 45.507. Disciplinary action authorized.

§ 45.501. Credit hour requirements.

(a) Each speech-language pathologist, audiologist or teacher of the hearing impaired shall have completed 20 clock hours of continuing education during each preceding biennial renewal period, beginning with the renewal period commencing August 1, 2008.

(b) Up to 10 clock hours of approved continuing education credit per biennial renewal period may be granted on a case-by-case basis for services as a lecturer or speaker, and for publication of articles, books and research relating to the practice of speech-language pathology, audiology or teaching of the hearing impaired. A licensee seeking continuing education credit under this subsection shall submit a written request with a copy of the lecture, presentation, article, book or research. The request shall be submitted 180 days prior to the expiration of the biennial renewal period for which the licensee is seeking credit.

(c) Unless granted a waiver under § 45.502 (relating to exemption and waiver), the Board will not renew or reactivate any speech-language pathologist, audiologist or teacher of the hearing impaired license until the continuing education requirement for the current biennial renewal period has been completed.

§ 45.502. Exemption and waiver.

(a) An individual applying for initial licensure shall be exempt from the continuing education requirement for biennial renewal in the period following that in which the license is granted.

(b) The Board may waive all or part of the continuing education requirement for a biennial renewal period upon request of a licensee. The request must be made in writing, with supporting documentation, and include a description of circumstances sufficient to show why compliance is impossible. Waiver requests will be evaluated by the Board on a case-by-case basis. Waivers may be granted for serious illness, military service or other demonstrated hardship. The Board will send written notification of its approval or denial of a waiver request.

§ 45.503. Continuing education requirement for biennial renewal of inactive and lapsed licenses.

A licensee seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennial period.

§ 45.504. Reporting completion of continuing education.

(a) Applicants at the time of license renewal shall provide, on forms provided by the Board, a signed statement certifying that the continuing education requirement has been met and information to support the certification which includes the following:

- (1) Dates attended.
- (2) Continuing education hours claimed.
- (3) Title of course and description of content.
- (4) Location of course.

(b) The Board will utilize a random audit of renewals to determine compliance with the continuing education requirement. Applicants selected for audit shall provide the Board the certified continuing education record, as described in § 45.506(b) (relating to provider responsibilities), for each continuing education program completed to prove compliance with the continuing education requirement.

(c) Individuals shall retain the certified continuing education records for courses completed for a minimum of 4 years.

§ 45.505. Approval of continuing education programs.

(a) Credit for continuing education may be obtained for any program approved in advance by the Board. Preapproval is contingent upon compliance with § 45.506 (relating to provider responsibilities).

(b) Any person or entity, including an agency, organization, institution, college, university, professional society, association or center, seeking approval of continuing education programs shall:

- (1) Apply for approval of the program on forms provided by the Board.
- (2) File the application at least 90 days prior to the first scheduled date of the program.

- (c) An application must contain:
- (1) The full name and address of the provider.
 - (2) The title of the program.
 - (3) Faculty names and credentials, and, if requested by the Board, curriculum vitae.
 - (4) A schedule of the program, including the title and description of each subject, the name of the lecturers and the time allotted.
 - (5) The total number of clock hours of credit to be awarded.
 - (6) A method of certifying participation.
 - (7) The program coordinator who is responsible for certifying participation and compiling an official list of Pennsylvania licensees in attendance at the continuing education program.
 - (8) A fee as required by § 45.1 (relating to fees).
- (d) The following programs are deemed approved for continuing education credit:
- (1) Continuing education programs approved or sponsored by the American Speech-Language—Hearing Association.
 - (2) Continuing education programs approved or sponsored by the American Academy of Audiology.
 - (3) Courses and programs offered by academic programs in speech-language pathology, audiology or teaching of the hearing impaired associated with institutions accredited by any state's department of education or a regional commission on institutions of higher education.
- (e) The Board may deny approval of a program of continuing education based on the following grounds:
- (1) The provider failed to comply with § 45.506 for other programs.
 - (2) The provider made one or more false or misleading material statements on the application.
 - (3) The identified faculty is deemed not qualified to present the program.
 - (4) The course content is in office management or practice building.
 - (5) The method of certifying participation is not verifiable.
 - (f) The Board may revoke the approval of a provider on the following grounds:
 - (1) Failure of the provider to comply with § 45.506.
 - (2) Falsification of a continuing education record by a program provider.

§ 45.506. Provider responsibilities.

- (a) For each program, the provider shall:
- (1) Disclose to prospective participants in advance the objectives, content, teaching method and number of hours of continuing education credit.
 - (2) Open each course to licensees.
 - (3) Provide adequate facilities for the number of anticipated participants and the teaching methods to be used.
 - (4) Provide appropriate instructional materials.
 - (5) Utilize a verifiable method of certifying participation.
 - (6) Employ qualified instructors who are knowledgeable in the subject matter.
 - (7) Evaluate the program through the use of questionnaires of the participants.
 - (8) Issue a certified continuing education record to each participant.
 - (9) Retain participation records, written outlines and a summary of evaluations for 5 years.
 - (10) Provide the Board, upon request, verification of licensee's participation in a continuing education program, including the date of approval of the program.
- (b) Each continuing education record must include at a minimum:
- (1) The name of the participant.
 - (2) The dates of participation in the program.
 - (3) The name of the program.
 - (4) The provider's name.
 - (5) The number of clock hours of continuing education credit.
 - (6) The course approval number or an indication of the provider's status as a preapproved provider.

§ 45.507. Disciplinary action authorized.

- (a) A licensed speech-language pathologist, audiologist or teacher of the hearing impaired who submits fraudulent continuing education records may be subject to discipline under section 10 of the act (63 P. S. § 1710).
- (b) A licensed speech-language pathologist, audiologist or teacher of the hearing impaired who fails to complete the required continuing education requirement within any biennial renewal period may be subject to discipline unless the licensee is exempt or has been granted a waiver under § 45.502 (relating to exemption and waiver).

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