

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 4, 11 AND 12]

Prekindergarten

The State Board of Education (Board) proposes to amend Chapters 4, 11 and 12 (relating to academic standards and assessment; student attendance; and students and student services) to read as set forth in Annex A. The Board acts under the authority of the Public School Code of 1949 (code) (24 P. S. §§ 1-101—27-2702), including section 2603-B of the code (24 P. S. § 26-2603-B).

Purpose

The proposed amendments to Chapters 4, 11 and 12 establish standards for prekindergarten programs that are operated by school districts or contracted by school districts with community providers. Prekindergarten programs are voluntary programs operated by many school districts for children between 3 and 4 years of age. Parents are not required to enroll their children in prekindergarten programs.

The Commonwealth and its school districts invest millions of taxpayer dollars each year to operate prekindergarten programs. It is critical that these resources be used to help prepare children to be fully prepared for school enrollment through high quality educational experiences. This proposed rulemaking, together with other rulemakings being considered by the Board, would assure that these investments would have maximum educational benefit.

Requirements of the Proposed Rulemaking

The proposed amendments to Chapter 4 add a new definition of "prekindergarten" and address new requirements for strategic planning, curriculum and instruction and the scheduling and learning options for prekindergarten programs. The proposed amendments to Chapter 4 also include a provision that would permit the Secretary of Education (Secretary) to approve meritorious programs that do not meet all of the regulatory requirements.

The proposed amendments to Chapter 11 address the minimum required hours for prekindergarten and the school term and instructional time for prekindergarten programs. Language in the proposed amendments also provides flexibility to school districts to make exceptions to the enrollment requirements.

The proposed amendments to Chapter 12 address student services for prekindergarten students and would allow for exceptions to the prekindergarten enrollment requirements.

The Board previously published proposed amendments to Chapter 4 at 35 Pa.B. 6107 (November 5, 2005). The Board is currently considering comments received in response to that proposed rulemaking. Proposed amendments to §§ 4.3 and 4.13 (relating to definitions; and strategic plans) were included in the proposal published at 35 Pa.B. 6107. The proposed amendments to §§ 4.3 and 4.13 included in this proposed rulemaking update and replace the proposed language to these sections published at 35 Pa.B. 6107.

Interested individuals and organizations should carefully review the definition of "prekindergarten" in § 4.3 and strategic planning requirements in § 4.13 as they reflect the Board's most current proposal. The Board intends to delete the definition in § 4.3 and strategic planning language in § 4.13 proposed at 35 Pa.B. 6107 when the rulemaking is submitted for final-form approval and publication.

Specific changes in this proposed rulemaking include the following:

§ 4.3. Definitions. A new definition of "prekindergarten" is added. This definition is different from the version published at 35 Pa.B. 6107.

§ 4.13. Strategic plans. The proposed amendments published at 35 Pa.B. 6107 are repeated here. However, subsection (c)(17) and (18) is added and amendments from 35 Pa.B. 6107 are made to subsections (c)(12) and (16) and (d).

§ 4.20. Prekindergarten education. This section is added to address program requirements for prekindergarten programs. This section makes clear that school districts are not required to offer a prekindergarten and that parents are not required to enroll their children in these programs if offered. This section also provides the Secretary authority to approve a meritorious prekindergarten program that does not meet all regulatory requirements when in the Secretary's judgment the program provides high quality learning opportunities and meets the conditions listed.

§ 4.41. Scheduling. The proposed rulemaking provides that school districts are not required to obtain Department approval of 1/2 day prekindergarten programs. The proposed amendment also provides that prekindergarten programs must provide at least 2 1/2 hours of instruction unless the school district obtains approval of the Department of Education to deviate from that standard.

§ 11.1. School term. Prekindergarten programs are added to the requirements for minimum number of days and hours of instruction.

§ 11.3. Minimum required hours. This section is amended to place the same minimum hourly requirements on prekindergarten programs that already exist for kindergarten programs.

§ 11.8. Definitions. The definition of "instructional activities" is amended to add subparagraph (x) to the list of activities that may be counted as instructional time. Also, the section is amended to add the definition of "prekindergarten."

§ 11.9. Prekindergarten exception. Section 11.9 is added to permit school districts to make exceptions to the age requirements for prekindergarten programs.

§ 12.1. Free education and attendance. Subsection (c) is added to permit school districts to make exceptions to the age requirements for enrollment.

§ 12.16. Definitions. A definition of "prekindergarten" is added.

§ 12.41. Student services. Subsection (a) is amended to add a requirement that the prekindergarten program be addressed in the school district strategic plan. Subsection (b)(1) is amended to require that for prekindergarten students, the school district's student services program includes nutritional services or referrals.

§ 12.42. *Student assistance program.* Section 12.42 is amended to make a technical correction to a statutory reference unrelated to this proposed rulemaking.

Affected Parties

The proposed rulemaking will affect the students and professional employees of public schools in this Commonwealth.

Cost and Paperwork Estimates

Since this proposed rulemaking is consistent with existing program grant standards for prekindergarten programs supported through the Accountability Block Grant program schools will already be in compliance with this proposed rulemaking. Therefore, the incurrence of any additional operating program costs beyond those specified in the regulations will be at the discretion of the school district and its elected board of directors. Complying with this proposed rulemaking will not add costs beyond those necessary to regular program operation.

Effective Date

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

Sunset Date

In accordance with the Board's policy and practice respecting all regulations, the Board will review the effectiveness of Chapters 4, 11 and 12 after 4 years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 2, 2006, the Board submitted a copy of this proposed rulemaking and a copy of a 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 rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, 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 proposed rulemaking to Jim Buckheit, 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 Jim Buckheit at (717) 787-3787 or TDD (717) 787-7367

JIM BUCKHEIT,
Executive Director

Fiscal Note: 6-301. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 4. ACADEMIC STANDARDS AND ASSESSMENT

GENERAL PROVISIONS

§ 4.3. Definitions.

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

* * * * *

***Prekindergarten*—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten.**

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ACADEMIC STANDARDS AND PLANNING

§ 4.13. Strategic plans.

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(c) The strategic plan [**shall**] **must** be based upon an analysis of internal and external needs, leading to the specifications of priorities for action and action plans. **The analysis of needs and the specifications of priorities must address student achievement; the school entity's core purpose; the quality of teaching and learning; the quality of leadership; the use of infrastructure; and continuous professional learning and education.** The requirement in subsections (a) and (b) to develop plans every 6 years and revisions every 3 years does not limit a school [**district's (including charter schools) or AVTS's**] **entity's** ability to conduct a continuous strategic planning process. **Each plan, as received and filed by the Department, becomes an extension of this chapter uniquely adapted to each school entity and can only be changed by the strategic planning committee approved by the local school board.** The plan [**shall**] **must** include the following components in addition to others the school [**district (including charter schools) or AVTS**] **entity** determines to include:

- (1) [**A mission statement.**
- (2) **A listing of the school district's (including charter schools) or AVTS's educational and organizational goals as they relate to student achievement and high school graduation requirements.**
- (3) **A description of academic standards for student achievement which shall be consistent with those under § 4.12 (relating to academic standards).**
- (4) **The planned instruction to be offered and the instructional and assessment practices to be used to strive for the academic goals and attain academic standards under paragraph (3) and the high school graduation requirements under § 4.24 (relating to high school graduation requirements).**
- (5) **An assessment plan under § 4.52 (relating to local assessment system) designed to determine the degree to which students are achieving academic standards under paragraph (3) including descriptions of methods and measures used to determine**

achievement, how information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher and how information from the assessments shall be made available to the public.

(6) A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals shall demonstrate a connection to the academic standards under § 4.12 including but not limited to annual improvement goals for student scores on State and local assessments.

(7) The professional development plan under section 1205.1 of the School Code (24 P. S. § 12-1205.1) and § 49.17 (relating to continuing professional development) and the induction plan under § 49.16 (relating to approval of induction plans).

(8) A description of the school district's (including charter schools) or AVTS's organization and organizational goals and their relationship to differing student needs within the school district's (including charter schools) or AVTS's goals under paragraph (2) and the attainment of academic standards under paragraph (3).

(9) A description of the professional personnel, school library, classroom and other resources the school district (including charter schools) or AVTS plans to devote to the attainment of academic standards.

(10) A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(11) A plan for additional instructional opportunities for students not achieving at the proficient level including identification procedures, alternate instructional strategies, monitoring of assessment procedures and opportunities for extended learning time.]

Core purpose. A summary of the school entity's mission statement, educational vision and shared values.

(2) *Results for students.* A listing of the school entity's educational and organizational goals as they relate to student achievement including high school graduation requirements and for having students meet or exceed proficiency levels established for State academic standards in § 4.12 (relating to academic standards).

(3) *Academic standards.* A description of academic standards for student achievement, which must be consistent with those under § 4.12.

(4) *Measurable annual improvement targets.* A plan for improving students' achievement, including specific, measurable goals for student growth and plans (including those listed in this section) that are designed to attain students' achievement goals. Achievement goals must demonstrate a connection to the academic standards under § 4.12, including, but not limited to, annual improvement goals for student scores on State and local assessments.

(5) *Curriculum, instruction and instructional materials.* A plan for providing all students access to a rigorous education program, including:

(i) The Curriculum that is aligned to the academic standards.

(ii) The planned instruction to be offered and the instructional practices and instructional materials to be used to strive for the academic goals and attain academic standards under paragraph (3).

(iii) The high school graduation requirements under § 4.24 (relating to high school graduation requirements).

(6) *Assessments and public reporting.* An assessment plan that describes the local assessment system as required under § 4.52 (relating to local assessment system), including methods and measures used to determine the degree to which students are achieving academic standards under paragraph (3).

(i) The plan must include the following:

(A) Descriptions of methods and measures used to determine achievement.

(B) How information from the assessments shall be used to assist students who have not demonstrated attainment of the academic standards at a proficient level or higher.

(C) How all students as well as significant student subgroups are achieving as compared to the standards and annual improvement targets.

(D) How information from the assessments shall be made available to the public and the parents or guardians of each student.

(ii) This plan must address how assessment data, including value-added assessment data provided under § 403.3(d)(1)(iii) (relating to assessments), is shared with and used by district-level administrators, school administrators and professional educators to change instructional practice in order to address the learning needs of students.

(7) *Targeted assistance for struggling students.* A plan for additional instructional opportunities for students not achieving at the proficient level, including identification procedures, alternative instructional strategies, monitoring of assessment procedures and opportunities for extended learning time (including tutoring). This plan must describe how grade-level learning plans for students who have not achieved proficiency in reading and mathematics during their primary grades (K–3) under § 4.21(j) (relating to elementary education: primary and intermediate levels) have been implemented and specify the instructional opportunities for students who have not achieved proficiency in reading and mathematics by the end of grade 5 under § 4.21(k).

(8) *Qualified, effective teachers and capable instructional leaders.* A description of the school entity's goals, strategies and performance measures regarding provision of teachers and school leaders designed to ensure that all students attain the academic standards at a proficient level or higher. This description must specifically address how the school entity deploys its most effective and highly

qualified teachers to meet the learning needs of students who are below proficiency or are at risk of not graduating.

(9) *Continuous professional education.* A professional education plan, including:

(i) Requirements under section 1205.1 of the School Code (24 P. S. § 12-1205.1) and § 49.17 (relating to continuing professional education).

(ii) The induction plan under § 49.16 (relating to approval of induction plans).

(iii) Professional education programs linked to the academic standards under § 49.12.

(iv) How to promote professional collaboration regarding continuous improvement of instruction and student achievement.

(10) *Organization and goals.* A description of the school entity's organization and organizational goals and their relationship to differing student needs within the school entity's goals under paragraph (2) and the attainment of academic standards under paragraph (3).

(11) *Utilization of resources.* A description of the resources the school entity plans to devote to the attainment of academic standards, including professional personnel, school library, classroom materials, educational technology, school facilities, budget and other resources available to the school entity.

(12) *Parent and community participation.* A description of the school entity's approaches for involving:

(i) Parents or guardians, including those of children with disabilities.

(ii) Community groups.

(iii) Representatives of infants and toddlers, early intervention preschool programs and early childhood representatives (for example—community providers of early childhood education, prekindergarten programs and early childhood researchers).

(iv) Business.

(v) Institutions of higher education.

(vi) Other parent and community representatives as appropriate.

(13) *Support for struggling schools.* A description of the school district's or AVTS with multiple campuses' process for assisting schools that do not meet the annual student achievement improvement targets and school experiencing other challenges that deter student attainment of the academic standards at a proficient level or higher.

(14) *Milestones of progress.* A listing of the specific goals, tasks and initiatives that must be accomplished by a specified date within each year of the planning cycle. The goals, tasks and initiatives must be derived from the priorities described in the strategic plan, as locally appropriate benchmarks that ensure consistent monitoring and midcourse correction.

(15) *Planning process.* A brief description of the process used to develop the strategic plan, including a list of persons involved in its development.

(16) *Coordination with other programs.* A description of how the school district will accomplish coordination with community operated infant and toddlers and preschool early intervention programs and the following before or after school programs and services for all grade levels, including prekindergarten, if offered, through 12:

(i) Child care.

(ii) After school programs.

(iii) Youth workforce development programs.

(iv) Tutoring.

(17) *Prekindergarten program.* A school district that offers prekindergarten shall describe the prekindergarten program and explain how the district will coordinate with agencies that serve preschool age children with disabilities. The plan must address coordination activities designed to identify and serve children with disabilities and the supports and accommodations available to ensure both physical and programmatic access. The plan must address prekindergarten programs operated directly by the school district and those operated by community agencies under contract from the school district.

(18) *Transition to prekindergarten and from prekindergarten to school-aged programs.* A brief description of how the school district will provide for a smooth transition for prekindergarten students, when prekindergarten is offered, from the home setting and any early childhood care or education setting the students attend, to the school setting. This description must include how the district will coordinate with the infants and toddlers and preschool early intervention agencies that serve children with disabilities to ensure a smooth transition for those children to the school district's prekindergarten program.

(d) Strategic plans, the 6-year plan, mid-term review report, annual updates and all other revisions to the plan, shall be developed through active participation by parents, students, school directors, teachers from prekindergarten and preschool early intervention programs, elementary schools, middle/junior high schools, senior high schools and AVTSs, educational specialists (for example, school nurses and guidance counselors), school administrators, other school personnel, and business and community representatives. Teacher representatives shall be chosen by teachers[, and]; educational specialists shall be chosen by educational specialists; administrative representatives shall be chosen by the administrative personnel[,]; and school director representatives shall be chosen by the board of the school district or AVTS.

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CURRICULUM AND INSTRUCTION

§ 4.20. Prekindergarten education.

School districts are not required to offer a prekindergarten program, and parents are not required to enroll their children in those programs if offered. Prekindergarten programs shall be designed so that students complete the program prior to their reaching the school district's entry age for kindergarten. The program, when offered, must provide a comprehensive program appropriate for the age, developmental level, and individual needs

of each child, based on how young children develop and learn, and include instruction to support each child's development in the following areas: approaches to learning; creative expression; language and literacy; math, logic and science; social-personal development; and physical development and health. The programs must be open to children with disabilities.

(1) The Secretary will provide academic standards, appropriate for early learning at the prekindergarten level, as guidance for the use of school districts that offer prekindergarten programs.

(2) Curriculum and instruction in the prekindergarten program must be standards-based.

(3) Prekindergarten programs may be offered to all 3 and 4 year olds or may be targeted to children who are most in need of prekindergarten services who reside in the district. Targeted programs may serve children who are at risk of school failure because of limited English proficiency, community factors, economic disadvantage, but may not exclude or be limited exclusively to children with disabilities. If a program is limited to an attendance area, children with disabilities shall live in that attendance area to participate in the program.

(4) The Secretary will issue guidance to school districts on developmentally appropriate curriculum, instruction and assessments for prekindergarten.

(5) Each school district that provides prekindergarten shall design an assessment system that includes prekindergarten and uses a variety of assessment strategies, which may include those listed in § 4.52(d) (relating to local assessment system), as appropriate.

(6) Prekindergarten programs must have a student/teacher ratio of no more than 20 students for one teacher and one teacher aide in a classroom (2 adults in a classroom for every 20 students). Programs of high quality ordinarily have a student/teacher ratio of 17 students for one teacher and one teacher aide in a classroom (2 adults for every 17 students). Programs operating under contract with community providers shall comply with staffing qualifications as required by § 49.85(c) (relating to limitations).

(7) Beginning in the 2009-2010 school year, a teacher aide in a prekindergarten program shall meet one of the following criteria:

(i) Completion of a least 2 years of postsecondary study.

(ii) Possession of an associate's degree or higher.

(iii) Ability to meet a rigorous standard of quality and demonstration through a formal State or local academic assessment of knowledge in and ability to assist in instructing reading, writing and mathematics.

(8) The Secretary may approve a meritorious prekindergarten program that does not meet all regulatory requirements for the programs including, but not limited to, days and hours of operation, when in the Secretary's judgment the program provides high quality learning opportunities for students and meets the following conditions:

(i) The school district has submitted to the Secretary a written request that provides justification for the waiver or waivers and includes a description of how the meritorious program will provide high quality learning opportunities for students.

(ii) The written request includes a timeline for bringing the program into full compliance with prekindergarten program requirements.

(iii) The approval of the meritorious prekindergarten program is valid only for 1 school year.

(iv) Requests for renewals include evidence of positive student outcomes.

(9) A school district may make individual exceptions to the age of prekindergarten students based upon local policy in order to permit the enrollment of children under age 3 and over age 5.

(10) A school district planning to offer or contract with a community agency to offer a prekindergarten program shall develop an implementation plan that describes the program and its target population consistent with paragraph (c). The plan must identify the facilities, staffing needs and other resources that it will use to deliver the program. In years subsequent to the initial year of the program, the implementation plan must become part of the strategic plan described in § 4.13 (relating to strategic plans) and included in the mid-term review and annual updates described in § 4.13.

SCHEDULING AND LEARNING OPTIONS

§ 4.41. Scheduling.

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(b) A school district, including charter schools, shall obtain approval of the Department prior to scheduling 1/2-day sessions other than in kindergarten under subsection (a). A school district is not required to obtain approval of the Department prior to scheduling 1/2 day sessions for prekindergarten under subsection (e).

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(e) School districts with prekindergarten programs shall provide prekindergarten students with at least 2 1/2 hours of instruction each day for the full school term unless the school district obtains prior Department approval for an alternative prekindergarten program.

CHAPTER 11. STUDENT ATTENDANCE

GENERAL PROVISIONS

§ 11.1. School term.

Public prekindergartens, when offered, and kindergartens, elementary and secondary schools shall be kept open each school year for a minimum of 180 days of instruction for students. Days may not be counted as days taught on which the schools are closed, and time may not be counted as a student session for an activity to which admission is charged. However, when a meritorious educational program warrants, the Secretary may, upon request, approve a school term containing a minimum of 990 secondary or 900 elementary and 450 kindergarten hours of instruction as the equivalent of 180 school days.

§ 11.3. Minimum required hours.

(a) Minimum hours of instruction time students shall be as follows:

Grade	Hours
PreK—K	2 hours, 30 minutes, each day of the school term
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§ 11.8. Definitions.

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

Instructional activities—The term includes the following:

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(x) [Kindergarten] Prekindergarten or kindergarten orientation, snack-time and play-time if they are an integral part of the curriculum.

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Prekindergarten—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten.

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§ 11.9 Prekindergarten exception.

A school district may make individual exceptions to the age of prekindergarten students based upon local policy to permit the enrollment of children under age 3 and over age 5.

CHAPTER 12. STUDENTS AND STUDENT SERVICES

STUDENT RIGHTS AND RESPONSIBILITIES

§ 12.1. Free education and attendance.

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(c) For a prekindergarten program defined in § 12.16 (relating to definitions) as a program for children who are at least 3 year olds and completed prior to the school district's entry age for kindergarten, a school district may make individual exceptions to the age of prekindergarten students based upon local policy to permit the enrollment of children under age 3 and over age 5.

§ 12.16. Definitions.

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

* * * * *

Prekindergarten—A program operated by a school district or by a community agency under contract from a school district that is open to children who are at least 3 years of age and completed prior to the school district's entry age for kindergarten.

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SERVICES TO STUDENTS

§ 12.41. Student services.

(a) Each school entity shall prepare a written plan for the implementation of a comprehensive and integrated K-12 program of the student services based on the needs of its students. The plan shall be prepared and revised in accordance with the time frames and procedures described in §§ 4.13(a), (b), (d), (e) and (f) (relating to strategic plans). Services offered by community agencies in public schools shall be coordinated by and under the general direction of the school entity. The plan [shall] **must** include policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) and guidelines issued by the Department of Health. The Department of Health guidelines are available from the Division of School Health, Department of Health, P. O. Box 90, Harrisburg, Pennsylvania 17108. **A school district that operates a prekindergarten program shall address its prekindergarten program in its strategic plan.**

(b) Though the variety of student services offered will differ from school to school depending upon its size and the needs of its students, the following categories of services shall be provided by each school entity in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school. Developmental services include guidance counseling, psychological services, health services, home and school visitor services and social work services that support students in addressing their academic, behavioral, health, personal and social development issues. **For prekindergarten students, these services must include nutritional services or referrals.**

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§ 12.42. Student assistance program.

School entities shall plan and provide for a student assistance program under [the Early Intervention Services System Act (11 P. S. §§ 875-101—875-503)] section 1547(g) of the Public School Code of 1949 (24 P. S. § 15-1547(g) regarding alcohol, chemical and tobacco abuse program.

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