

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 36]

Foreign Corporation Standards

The State Board of Education (Board) amends Chapter 36 (relating to foreign corporation standards) to read as set forth in Annex A. Notice of proposed rulemaking was published at 36 Pa.B. 3280 (July 1, 2006) with an invitation to submit written comments.

Chapter 36 sets forth requirements for out-of-State based postsecondary degree-granting entities to conduct degree-granting programs within this Commonwealth. These requirements are in addition to other requirements that apply to both foreign corporations and other categories of postsecondary institutions as contained in Chapters 31, 32, 40 and 42.

Statutory Authority

The Board is acting under the authority of section 2603-B of the Public School Code of 1949 (School Code) (24 P. S. § 26-2603-B).

Background

The purpose of amending Chapter 36 is to update the regulations that establish requirements for the approval and operation of postsecondary degree-granting institutions in this Commonwealth.

Chapter 36 sets forth requirements for the corporate commitment, governance, curricula, faculty, admissions requirements, resources and facilities, and evaluation and approval of degree-granting postsecondary institutions either operated or owned by a foreign corporation. A foreign corporation is an entity that is registered or chartered by another state or country.

The rulemaking is designed primarily to align the regulations with section 2601-H of the School Code (24 P. S. § 26-2601-H). Enacted by section 20 of the act of June 25, 1997 (P. L. 297, No. 30), the section authorizes the Department of Education (Department) to authorize for-profit corporations to confer postsecondary degrees in this Commonwealth.

Summary of Public Comments and Responses to Proposed Rulemaking

The proposed rulemaking was published at 36 Pa.B. 3280. The proposed rulemaking was also available on the Department's website and notice was provided to the Board's stakeholder e-mail distribution list. The Board accepted formal written comments during a 30-day public comment period that began upon publication of the proposed rulemaking.

The Board received comments from the Disabilities Law Project (Project) and the Independent Regulatory Review Commission (IRRC).

Following is a summary of the comments and the Board's response to the comments.

General

Comment: The Project commented that Chapter 36 should provide students with disabilities the same level of protection as does Chapter 31.

Response: Chapter 31, in § 31.1 (relating to purpose and scope), clearly states it applies to all postsecondary institutions that operate within this Commonwealth, including foreign corporations, with the exception of community colleges. Therefore, there is no need to incorporate Chapter 31 requirements into Chapter 36.

Comment: IRRC noted numerous uses in the proposed rulemaking of the terms "Commonwealth enterprise" and "Commonwealth endeavor" and that neither term is defined. IRRC suggested that the terms be defined and that there be consistent use of terms in the regulations.

Response: The Board has revised the regulations to use one term throughout the chapter and has made reference to the definition in § 31.2 (relating to definitions).

Section 36.2 (relating to corporate commitment)

Comment: IRRC stated the phrase "provide adequate support to" is vague and should be deleted.

Response: The Board deleted the phrase as suggested.

Comment: IRRC suggested that a cross-reference be made to the section in Chapter 31 that outlines criteria for determining if an accrediting body is acceptable to the Department and questioned whether the Department is to provide a list of acceptable accrediting bodies on its website.

Response: Since Chapter 31 applies to foreign corporations and all other categories of postsecondary institutions, the Board does not believe such a reference is necessary. The Board added language that requires the Department to list acceptable accrediting agencies on its web site.

Section 36.4 (relating to curricula)

Comment: Subsection (d) states that evaluations are "to be conducted periodically, and at least once every 5 years." IRRC suggested that the term "periodically" is not needed and should be deleted.

Response: The Board deleted the term "periodically."

Comment: IRRC suggested the Board include cross-references to the appropriate criteria for Commonwealth approvals in Chapters 31, 36 and 42.

Response: Chapters 31, 32, 33, 40 and 42 apply to foreign corporations and all other categories of postsecondary institutions, except where otherwise provided. The six chapters of regulations do not stand alone; rather they work together to provide the body of regulations that govern postsecondary institutions operating in this Commonwealth. Each type of postsecondary institution, including foreign corporations, shall comply with the appropriate sections of each of the chapters when applicable. The Board believes that to include references to other chapters in Chapter 36 would necessitate doing the same for other categories of institutions, resulting in a jumbled mess of references in all six chapters that would confuse rather than help readers to understand the requirements applicable to a particular type of institution. The result would be confusing and not provide any real benefit to readers. Therefore, the Board did not insert the references as suggested.

Section 36.7(a) (relating to resources and facilities)

Comment: The Project suggested that language be added that facilities must be comparable to the standards prescribed in § 31.43 (relating to buildings and equip-

ment) regarding accessible buildings and equipment and integrated academic and nonacademic programs.

Response: Chapter 31, including § 31.43, already applies to foreign corporations. Therefore, adding the reference would merely duplicate the existing regulation.

Comment: The Project suggested that language be added that websites and Internet-delivered instruction be accessible to persons with disabilities in accordance with Federal and State laws and guidelines for accessibility established by the World Wide Web Consortium.

Response: The Board believes that since Federal and State laws for accessibility address delivery of educational services, it is not necessary to include this language in the regulation.

Comment: The Project suggested adding a new subsection that would require that student services for students with special needs be comparable to student services prescribed in § 31.33(b)(7) (relating to student records and services).

Response: Since § 31.33(b)(7) already applies to foreign corporations, there is no need to repeat the provision in Chapter 36.

Section 36.8 (relating to evaluation and approval)

Comment: IRRC suggested that subsection (g) be clarified as to when an objection received by the Department is considered timely. IRRC also suggested that the regulation include procedures that address how the Department will address objections raised regarding an institution's application to operate in this Commonwealth.

Response: The Board added language to address the manner in which the Department must handle a protest or objection.

Miscellaneous

In its letter regarding the Chapter 36 regulations, the Project shared that it had previously commented that Chapter 31 be strengthened to reflect the rights and protections to students with disabilities are entitled and attached a copy of its letter regarding Chapter 36. The comments were provided to the Board after it had already submitted the final form regulations for consideration and action by the House and Senate Education Committees and IRRC. A second jointly signed letter from the Project and Education Law Center was sent to the Board after IRRC approved Chapter 31 on June 1, 2006. The Project asserts that the Board committed to incorporate the recommendations made by the Project in a future review of Chapter 31.

The letter misrepresents the commitment the Board made at the IRRC meeting. The Project alleges the Board gave IRRC its assurance that "our proposed changes would be timely incorporated into a future form of the Chapter 31 regulations." The Board immediately replied to the letter refuting the statements made by the Project, stating that the Board had merely agreed to review the concerns expressed by the Project when it next reviews Chapter 31.

Fiscal Impact and Paperwork Requirements

Since the rulemaking clarifies current requirements, it does not impose any new costs or savings to the Department of Education or to postsecondary institutions.

Effective Date

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

Sunset Date

In accordance with its policy and practice respecting all regulations promulgated by the Board, every 4 years the Board will review the effectiveness of Chapter 36. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on June 19, 2006, the Board submitted a copy of the notice of proposed rulemaking, published at 36 Pa.B. 3280, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the act, IRRC and the Committees 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 Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the act (71 P. S. § 745.5a(j.2)), on December 5, 2007, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the act, IRRC met on December 6, 2007, and approved the final-form rulemaking.

Contact Person

The official responsible for information on this final-form rulemaking is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787, TDD (717) 787-7367.

Findings

The Board finds that:

(1) Public notice of the intention to adopt this final-form 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 final-form rulemaking is necessary and appropriate for the administration of the School Code.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 36, are amended by amending §§ 36.2—36.8 to read as set forth in Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

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

(d) This order is effective upon publication in the *Pennsylvania Bulletin*.

JIM BUCKHEIT,
Executive Director

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 37 Pa.B. 6859 (December 22, 2007).)

Fiscal Note: Fiscal Note 6-302 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter C. HIGHER EDUCATION

CHAPTER 36. FOREIGN CORPORATION STANDARDS

§ 36.2. Corporate commitment.

A foreign corporation having operations in this Commonwealth shall ensure compliance with the requirements of an accrediting body recognized by the United States Department of Education and acceptable to the Department, as well as with applicable Pennsylvania statutes and regulations. The Department will post a list of acceptable accrediting bodies on its website. The education enterprise shall be consistent with the statement of philosophy and objectives and equivalent to the commitment to similar programs conducted by the corporation on its main campus or as approved by the Department. The term "education enterprise" is defined in § 31.2 (relating to definitions).

§ 36.3. Governance.

(a) The board of trustees shall have approved the education enterprise of the institution and shall have authorized the request for approval of an educational enterprise in this Commonwealth.

(b) Planning, administration and evaluation of the education enterprise shall be an integral and continuous part of the corporation's normal procedures.

(c) If the educational enterprise includes course work creditable to a degree, an education program advisory committee of at least three persons shall be established and maintained, shall be based in this Commonwealth and consist of appropriately qualified Commonwealth residents who are not employed by the corporation. This committee shall assist the corporation in establishing quality off-campus educational activities and conduct periodic quality assessments.

(d) Institutional policies that govern the education enterprise must be in written form and, when applicable, have the approval of the education program advisory committee.

(e) Appropriately qualified, full-time administrative or supervisory personnel, or both, shall be employed and delegated responsibility for operating the education enterprise in this Commonwealth. The employees, the number depending on the size of the operation, shall be available onsite for academic advisement and consultation with enrollees and prospective enrollees.

§ 36.4. Curricula.

(a) Curricula shall have the approval of the faculty of the parent institution in the same manner as curricula offered at the parent campus and, when applicable, shall have the approval of the education program advisory committee.

(b) An educational enterprise which deals with the certification of professional personnel for Commonwealth public schools shall be in compliance with Chapter 49 (relating to certification of professional personnel).

(c) Graduate programs, courses and offerings must include the study of research techniques and results; and curricula beyond the master's level must include scholarly studies in the design, conduct and publication of research.

(d) The quality of each program, course or offering shall be evaluated at least once every 5 years by the education enterprise for compliance with Subpart C (relating to higher education) and institutional accreditation.

§ 36.5. Faculty.

(a) Faculty shall have experience and qualifications which are no less than those required of faculty at the parent institution and which are appropriate for the level of instruction.

(b) The total faculty load and related assignments of part-time faculty may not exceed the generally accepted standards for institutions of higher education.

(c) Full- and part-time faculty shall, in addition to classroom instruction, be available for academic advisement and interaction with students. Graduate programs shall be planned by faculty members and approved by a faculty committee. Guidance of thesis or dissertation studies shall be the responsibility of faculty members with appropriate specialization.

§ 36.6. Admissions requirements.

Admissions standards must be comparable to the standards for admissions prescribed by § 31.31 (relating to admissions requirements).

§ 36.7. Resources and facilities.

(a) Appropriate physical facilities and instructional equipment shall be adequate to initiate and continue the program, course or offering.

(b) Library and research resources shall be provided onsite by the education enterprise or by contract, or both, for each educational endeavor in accordance with standards of professional associations and learned societies.

(c) Library, learning and research resources must be sufficient in quality, number and currency to serve the program, course or offering at the required level of instruction. Records of materials provided and usage statistics shall be maintained to determine the adequacy and accessibility of library resources.

§ 36.8. Evaluation and approval.

(a) The chief administrative officer or designee of the applying institution shall be recognized by the Department as the liaison person. Negotiations for approval to operate in this Commonwealth shall be conducted with that person.

(b) The Department reserves the right to conduct an evaluation of the parent institution or, when applicable, its off-campus enterprises, or both.

(c) Following the initial approval to operate in this Commonwealth under this chapter and applicable provisions of this subpart, and after the issuance by the Department of State of a certificate of authority to operate, the institution shall be permitted to recruit and register students and begin its operation.

(d) During the first year of operation, a site visit shall be conducted by an evaluation committee in accordance with this chapter and this subpart.

(e) Materials relating to a site visit shall be received by the Department at least 60 calendar days prior to the site visit.

(f) Department site visits may be conducted jointly with other accrediting or approving agencies, but decisions and recommendations must be arrived at indepen-

dently by the Department evaluation committee. Site visit costs pertinent to the request of the applicant shall be borne by the applicant.

(g) Following submission of the evaluation committee's report to the institution, the institution shall within 60-calendar days of the receipt of the report file its response with the Department. Upon receiving a response satisfactory to the Department, the Department will publish its intent to approve the enterprise in the *Pennsylvania Bulletin* at least 30 days before the date of approval. The decision of the Secretary regarding approval of the enterprise will be rendered within 60-calendar days of publication of the notice in the *Pennsylvania Bulletin*. If a protest or objection is received, the Department will conduct hearing procedures in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) before making a final determination regarding the application.

(h) If an enterprise is not approved, the institution shall close its operation on a timetable to be established by the Department. The Department will take appropriate legal action against a foreign corporation operating an

educational enterprise in this Commonwealth without the express written approval of the Secretary.

(i) If an institution is approved to operate an educational enterprise in this Commonwealth, it shall file periodic progress reports as deemed necessary by the Department. The educational enterprise may be evaluated for cause at any time and will be reevaluated every 5 years in accordance with this subpart and this chapter. If the institution fails to maintain its enterprise according to this subpart and this chapter, authority to operate in this Commonwealth will be revoked as provided by 24 Pa.C.S. § 6506(a) (relating to visitation of institutions and revocation of authority).

(j) To withdraw from its approved enterprise in this Commonwealth, a foreign corporation shall have the approval of the Secretary and shall be in compliance with §§ 31.71 and 31.72 (relating to notification; obligations).

[Pa.B. Doc. No. 08-89. Filed for public inspection January 18, 2008, 9:00 a.m.]