

RULES AND REGULATIONS

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 4]

Academic Standards and Assessment

The State Board of Education (Board) amends Chapter 4 (relating to academic standards and assessment). Notice of proposed rulemaking was published at 35 Pa.B. 6107 (November 5, 2005) with an invitation to submit written comments.

Chapter 4 sets forth requirements for State academic standards, instruction, assessment, strategic planning and high school graduation requirements in public schools. The overarching purpose of the final-form rulemaking is to align the regulations with State and Federal statutory and regulatory requirements, delete transitional provisions that are no longer needed and to clarify and refine existing Board policy on select issues.

Statutory Authority

The Board takes this action under section 2603-B of the Public School Code of 1949 (code) (24 P. S. § 26-2603-B) and other sections of the code.

Background

Chapter 4 sets forth requirements for State academic standards, State and local assessment systems, strategic planning, world language instruction, high school graduation requirements, HIV/AIDS and other life-threatening and communicable diseases, vocational-technical education and school profiles. The final-form rulemaking updates the regulations to align State assessment policies with those contained in § 403.3 (relating to single accountability system), removes transition provisions designed to smooth changes in State policy under the previous Chapter 5 regulations that were sunset when Chapter 4 was promulgated in January 1999, and clarifies and refines Board policy in a number of other areas.

Summary of Public Comments and Responses to Proposed Rulemaking

The proposed rulemaking was published at 35 Pa.B. 6107. The proposed rulemaking was also available on the Department's website and notice 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 House Education Committee; Independent Regulatory Review Commission (IRRC); Education Law Center; Upper Adams School District; Central Columbia School District; Gettysburg Area School District; Littlestown Area School District; Fairfield Area School District; Colonial Intermediate Unit 20; Teresa A. Prato; a joint letter from the Chief School Administrators in Chester County; Lawrence E. Martin, Assistant Executive Director, Bucks County Intermediate Unit; Pennsylvania Association of School Administrators (PASA); Pennsylvania School Boards Association (PSBA); Senator Raphael Musto; Tom Viviano; Karen L. Hoffman; and a joint letter from State education organizations including: PSBA, PASA, Pennsylvania State Education Association, American Federation of Teachers-Pennsylvania and Pennsylvania Association of Vocational

Administrators. In addition, Harbor Creek School District provided comments that addressed several State education policy issues including a few regarding the proposed Chapter 4 regulations.

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

§ 4.3. Definitions.

Comment: IRRC and PASA shared concerns about the definitions of "prekindergarten" and "school entity." They noted that when taken together the two definitions will permit cyber charter schools to operate prekindergarten programs. They stated cyber school programs would not be appropriate for young children. IRRC added that the definition of "prekindergarten" includes substantive provisions that are not enforceable. IRRC also expressed concern that, in the definition of "school entity," the phrase "that this chapter applies to school entities only to the extent provided by law" is substantive and unnecessary. IRRC also stated that the definition of "world language" appears relevant only to § 4.25 (relating to languages) and suggested it could be moved to that section. Also, the phrase "in this Commonwealth" is not needed. The Education Law Center suggested that the term "school entity" be used uniformly throughout the regulations.

Response: The Board deleted the substantive provisions from the definitions contained in § 4.3 (relating to definitions). Since November 2005, when the proposed Chapter 4 regulations were published, the Board in December 2006 promulgated final-form prekindergarten regulations, which included a new definition of the term "prekindergarten." Therefore, the definition of the term "prekindergarten" contained in the proposed regulations is withdrawn. In response to the Education Law Center, the terms "school entity," "school district" and "area vocational technical school" have different meanings and are used when appropriate in this final-form rulemaking. Therefore, the term "school entity" is not always appropriate as suggested in the comments by the Education Law Center. As suggested by IRRC, the definition of "world language" is revised and has been moved to § 4.25.

§ 4.4. General policies.

Comment: PSBA suggested that it is unfair to schools that the Department of Education (Department) counts students who are given a religious exemption from taking the Pennsylvania System of School Assessment (PSSA) under § 4.4(d) (relating to general policies) against a school's performance when it determines adequate yearly progress. PSBA does not oppose the religious exemption but urges the Board to request the Department to seek a change in policy from the Federal Department of Education.

Response: The Board found that fewer than 500 of the nearly 1 million students who are required to take the PSSA each year are given exemptions under this provision. This is not a significant issue. However, the Board will urge the Department to explore ways to address this matter with the Federal Department of Education.

§ 4.13. Strategic plans.

Comment: IRRC suggested the regulation should provide guidance as to when and where strategic plans must be filed. IRRC also expressed concern about the provision that makes the strategic plan an extension of the regula-

tion and stated this provision is not clear and is unnecessary. IRRC also stated the requirement that the plan can only be changed by the strategic planning committee conflicts with the descriptions in existing subsections (d) and (e).

Comment: The Education Law Center suggested adding “and shall describe how students with disabilities shall be admitted to and supported in its programs” to subsection (b).

Comment: The Harbor Creek School District (District) expressed concerns about the strategic planning committee being required to revise the strategic plan. The District believed this provision challenges the authority of the locally elected school board and the process by which members of the planning committee are selected. The District supported the inclusion of technical school and other certificates.

Comment: PASA expressed concerns the proposed regulation makes the plan more operational than strategic. It also believed the new requirements are unrealistic and burdensome. They require the plan to report in considerable detail what the school entity is doing to educate students rather than on what the entity anticipates doing. PASA also shared concerns about the proposed language that would make the strategic plan an extension of the regulation. PASA also expressed concerns about the requirement that the strategic planning committee approve all amendments to the plan. It also opposes the provision that holds commissioned officers accountable for implementation of the strategic plan.

Comment: PSBA believed the provision that requires strategic plans to be updated as necessary each year is redundant and should be deleted. PSBA also expressed concerns about the proposed regulation that would make the strategic plan an extension of the regulation and the strategic planning committee must approve all changes to the plan. They expressed concerns about the 16 elements required in a strategic plan, as it believes many of the provisions are similar and can be combined. PSBA also has concerns regarding the clarity of the requirement that school entities coordinate with other programs and about the membership requirements for strategic planning committees.

Response: The Board has withdrawn its proposed changes to § 4.13 and will consider updating the strategic planning requirements in the future. This includes issues raised by the Education Law Center. The Board did remove the transition provision contained in § 4.83 regarding the submission and effective dates of strategic plans. To fill the gap established by this deletion, the Board has inserted new language in § 4.13(a) and (b) that requires the Department to notify each school entity by letter at least 1 year in advance of the due date for submission of the plan to the Department. Revisions were also made to subsections (c) and (e) to clarify which school entities must post the strategic plan on the entity web site at least 28 days in advance of the board meeting for public review.

§ 4.21. Elementary education: primary and intermediate levels.

Comment: IRRC questioned provisions in § 4.13(e)(6) and (8), regarding basic movement skills and concepts and principles and strategies of movement. Also, they questioned how they differ?

Response: Both terms are used in the academic standards for Health, Safety and Physical Fitness, which was promulgated through regulation as Appendix D to Chap-

ter 4 in January 2003. The term “principles and strategies of movement” is contained in the title of standard 10.5. The term “basic movement skills and concepts” is used in standard 10.5.3.A. and 10.5.6.A. The Board believes consistent use of these terms of art in the standards and regulations is necessary and appropriate.

§ 4.24. High school graduation requirements.

Comment: PSBA supported the existing language but suggested deleting the transition provisions that are past their effective date.

Response: The Board deleted the transition provisions.

§ 4.25. Languages.

Comment: The House Education Committee recommended the Board consider adding a requirement that would require demonstration of proficiency in a world language by all students. The Committee also suggested the Board consider whether students with disabilities should be required to take a language. Senator Musto questioned whether the requirement that schools offer instruction in at least two world languages, while not requiring that students take world language courses, would create impossible personnel decisions for school districts, as they must have teachers available to teach courses for which students may not enroll. Senator Musto also questioned whether data proves there is a shortage of world language teachers and questions how the Board will resolve the conflict with the Department’s Project 720 initiative, which encourages world language instruction. Finally, Senator Musto questioned how the Board’s position can be rectified with the Administration’s insistence this Commonwealth produce students and workers prepared to join the global economy. PSBA expressed support of the Board position that instruction in two languages be provided with no mandate for students to take the courses.

Response: Since 1966, Board regulations have required school districts to offer world language instruction in at least two languages, with one offered in a 4-year and the other a 2-year sequence. Chapter 4, as currently constructed, would make proficiency in a world language mandatory for every student once the Board issues academic standards for world languages. The Board has reviewed and debated this issue for nearly a decade. The Board held a forum on world languages in 2002 to fully explore the advantages and challenges that the mandate would present. The Board highly values the study of world languages and strongly encourages schools to offer a comprehensive program of world language study and students to enroll in world language study. Nearly 1/2 of this Commonwealth’s secondary students are enrolled in world language instruction. Nearly 76% of college bound students take 2 or more years of world language instruction.

However, two serious barriers exist over which the Board has no authority. They are the issues of cost and supply of qualified world language teachers. The Board calculated that a world language mandate would require school entities to hire at least an additional 2,700 world language teachers at an additional annual cost to taxpayers of at least \$114.5 million. However, even if funding were available a ready supply of highly qualified and certified teachers is not. On average, approximately 300 world language teachers are certified each year by the Department. This includes graduates of Pennsylvania’s teacher preparation programs, teachers transferring from out-of-State and through the issuance of intern certificates. World language teachers must be “highly qualified”

under the Federal No Child Left Behind Act of 2001 meaning they must have a bachelor's degree in the language they teach or pass a rigorous State exam. Given the large number of students already participating in world language instruction together with the challenges of cost and limited teacher supply necessary to provide instruction if mandated, the Board has determined it best to maintain the current requirements with the added provision that the Department establish standards for world language instruction.

Comment: IRRC suggested the regulation should include a cross-reference to the world language standards, or identify where the world language standards issued by the Department can be found.

Response: The Board added language that requires the Department to post the standards for world languages on the Department's web site.

§ 4.29. *HIV/AIDS and other life-threatening and communicable diseases.*

Comment: IRRC stated the Board's recommended use by school entities of guidelines from the Centers for Disease Control is not enforceable. IRRC suggested the Board should either make this a requirement or delete it.

Response: The Board has withdrawn its proposed revisions to this section. The current regulation will remain in force while the Board continues to review this issue.

§ 4.31. *Vocational-technical education.*

Comment: Education Law Center—In subsection (a), the Education Law Center suggested adding language that students with disabilities are entitled to services and accommodations necessary to help them succeed. It also suggested adding that accommodations should be provided to students needing them when taking occupational competency assessments. The Education Law Center also suggested adding language that would prohibit vocational programs from using industry skill standards as the basis for excluding a student with a disability from enrollment on the grounds the student cannot meet the standards if the student can benefit from enrollment in the program with reasonable supports.

Response: The Board revised § 4.31(a) (relating to vocational-technical education) to address accommodation issues raised by the Education Law Center with regard to that section. However, the Board does not believe it is appropriate to enroll students in vocational programs in which a student, even with appropriate support, will not be able to meet industry standards or qualify for industry certification in those occupations when the certification is a vital consideration for employment. Enrolling students who do not have the ability to perform the essential functions necessary to obtain National certification, even with reasonable accommodation, is inappropriate and unfair to the students, providing them with false expectations.

4.33. *Advisory committees.*

Comment: Education Law Center—The Education Law Center recommended that subsection (c) include language that at least one member of each occupational advisory committee include a special education director from one of the school entities served by the AVTS. It also suggested adding a requirement that each committee address how the occupational program can be adapted to meet the needs of students with disabilities.

Response: The Board believes it should not specify the individual membership requirements of the occupational

advisory committees as suggested. In addition, even if a special education director were added to the committee, that person would not necessarily have the knowledge and skills needed to determine how best to adapt the program to meet the needs of students with disabilities.

4.51. *State assessment system.*

Comment: PSBA recommended the specified grade levels be revised to reflect actual current practice.

Comment: IRRC referred to a commentator who suggested the proposed grade levels specified in subsections (b) and (d) are inconsistent with actual practice. IRRC recommended the Board review the grade levels and update them as necessary.

Response: The Board updated the grade levels to reflect actual practice.

4.52. *Local assessment system.*

The Board received more comments regarding this section than any other. Based on these comments, it is clear to the Board that many schools are ignoring the current regulation regarding State high school graduation requirements and are strongly opposed to its enforcement. The current regulation contained in § 4.24 (relating to high school graduation requirements) requires all students, with the exception of certain students with disabilities, as a condition of graduating, to demonstrate proficiency in reading, writing and mathematics on either the PSSA or local assessments aligned with State academic standards at the proficient level established for the PSSA. This means the level of rigor used on local assessments must be equivalent to that established for the PSSA. Under this policy, if a district chooses to use its local assessment, the burden is already on the local school district to align its assessment with the State standards and PSSA proficiency levels. The Board believes that far too many students continue to be awarded high school diplomas without possessing essential reading, writing and mathematics skills necessary for entry level employment or postsecondary enrollment without remediation. This practice shortchanges students and the economic future of this Commonwealth.

Following the summary of comments as follows, the Board provides a statement regarding the proposed regulation and State high school graduation requirements.

Comments:

House Education Committee—The Committee posed a number of questions regarding: allowing the Secretary to require proficiency on the PSSA as a graduation requirement when there is a discrepancy between graduation rates and proficiency rates on the PSSA; the validity of the correlation between local assessments and State assessments, as local assessments use a variety of measures in contrast to a single test in three subject areas; the discrepancy threshold to be used by the Secretary to initiate action; the capacity of the Department to provide assistance to school districts to make their local assessments comparable to the PSSA; and, a threshold as to when a district would be permitted to return to use of its local assessment. The Committee also expresses concerns about the intrusion on Pennsylvania's historic principle of local board control over graduation requirements and concern over the fiscal impact and capacity of the Department to fulfill its obligations under the regulation. The Committee suggested that the PSSA might not be the best means of determining proficiency of State standards.

IRRC claimed the description in the Preamble considerably understates the change in requirements. IRRC

stated that it finds the proposed regulation to add significant changes in requirements and enforcement provisions to local assessment systems and claimed the proposed rulemaking does not contain sufficient information to fully evaluate its requirements and impact. IIRC claimed the regulation imposes new requirements for school entities to monitor, analyze and report on the progress of their students. IIRC questioned whether the regulation would make the PSSA essentially a high school exit exam, whether the PSSA is a valid indicator of proficiency, particularly in special education and English language learner programs. IIRC questioned how the Board will evaluate the PSSA and why is it a valid standard. IIRC also raised several issues regarding clarity or the proposed regulation.

Joint Letter from State Education Groups—The groups opposed the proposed changes because they claim the language is vague, subjective, punitive and counterproductive. They claimed this proposal is one step away from establishing the PSSA as Pennsylvania's mandatory high school exit exam. The groups hold that graduation requirements should remain a local determination; the alignment between local assessments and the academic standards should be the key issue, rather than alignment of local assessments with the PSSA; the sole use of PSSA provides a single snapshot of a student's knowledge of the standards, and the use of a variety of assessments provides a holistic approach that more accurately measures student's abilities. The groups suggested a conflict with § 4.4 that permits a parent to have his child excused from taking the PSSA and questions how the comparability between the PSSA and local assessments will be determined, particularly if multiple assessments are used. The groups questioned what percentage of students will be used to determine when a significant disparity exists; questioned why it is assumed that the PSSA is the only correct way to measure achievement of the standards; expressed concern that significant numbers of African-American students with disabilities and English language learners would not be able to graduate; and stated concerns about the timelines for reporting by school entities and a lack of an appeals process. The groups questioned why there is no provision for the Department to provide technical assistance to school entities to develop local assessments that meet State requirements; and they share concerns about the withholding of State funds by the Secretary of Education.

Central Columbia School District—supported the proposed regulations, with the exception of changes in § 4.52(c) (relating to local assessment system), and believed that the PSSA, as a one-time snapshot assessment, is less valid than local assessments given over the course of a student's high school enrollment.

Harbor Creek School District—The District challenged the premise of the regulation that students who do not pass the PSSA can be attributed to a softer local assessment. The District recommended removing the penalty, and suggests the Department should use an auditing process that would determine whether the local assessments are aligned with the PSSA.

Gettysburg Area School District, Littlestown Area School District, Conewago Valley School District, Fairfield Area School District and Upper Adams School District—The five school districts submitted identical letters. The districts stated the use of single assessments to determine success of the entire secondary education is a disservice to students who have varying needs including English language learners and students with disabilities.

It added the use of a single assessment is contrary to treating students as individuals and discourages students from completing school. The districts suggested allowing school districts to continue to control how best to educate all students in ways that meets their needs and utilize the high quality methods of certifying that students have met the requirements for graduation established by the local school board.

Colonial Intermediate Unit 20 (IU)—The IU claimed that the NCLB requirements make the proposed regulations unnecessary, as NCLB imposes serious sanctions for not meeting adequate yearly progress targets. It argued that use of the PSSA as a graduation test ignores the additional year of instruction and knowledge and skills gained in 12th grade. It claimed that the proposal is contrary to assessment requirements in Chapter 4 that provide for multiple assessment strategies. The IU raised concern about the impact on students with disabilities and English language learners and about the fairness on schools with high transitory populations. It also commented that the proposed regulation places a burden on school districts to prove that local assessments are comparable to the PSSA, which presents an unfunded mandate on school districts.

Teresa A. Prato, teacher at Bucks County Technical High School—Teresa Prato raised concerns about the validity of the PSSA, its use as a graduation test and limitations as a single assessment tool.

Chief School Administrators, Chester County—The Chester County administrators shared concerns about the validity of the PSSA as a graduation test; suggested that multiple and varied measures should be used to assess student learning; a need for timely feedback and the length of time needed to score and report PSSA results is problematic; and, suggested that standardized tests historically discriminate against poor and minority children. The school administrators also requested the Department to provide training, technical assistance and support to develop valid, reliable items for local assessments.

Lawrence E. Martin, Bucks County Intermediate Unit—Lawrence Martin claimed that the PSSA was designed to compare schools, not to provide estimates of proficiency for individual students. He also claimed that the PSSA is more like a norm referenced, rather than criterion referenced assessment. He believed that the proposal dishonors the hard work being done in Pennsylvania's high schools and claimed that the policy would result in unintended consequences, including increased dropout rates, teaching to the test and reduction in use of authentic assessment.

PASA shared its concern that the regulation substantially changes the purpose of the PSSA and the consequences of performance on it from a high-stakes accountability system for schools to a high stakes test for individual students. It suggested that the PSSA was not validated as a high school exit exam and the cut scores were not set for this purpose. It also shares concerns that the PSSA is not a fair or accurate measure of some students' knowledge and skills, particularly those who have disabilities and English language learners. PASA believed that the regulation would push school entities to use PSSA proficiency as the only measure of proficiency. It believed that the regulation would provide the Secretary with too much unguided discretion and that it does not address how a school entity found out of compliance can return to or remain in compliance.

PSBA—As reflected in the joint letter submitted with other State education organizations, PSBA urged the Board to delete the proposed revisions to paragraphs (2), (3) and (4).

Senator Musto—The legislator expressed concerns about whether data supports the use of the PSSA as an evaluation tool and predictor of student success which would justify its use for all purposes assigned to it to the exclusion of local assessment tools.

Tom Viviano—Expressed concerns about the impact of the proposed regulation on special needs students. Tom Viviano suggested it would be more appropriate to measure the rate of improvement combined with industry related exams taken at completion of technical education. Tom Viviano expressed a fear that students who otherwise would not drop out will now be put in a difficult position given the proposed requirements.

Karen L. Hoffman—Shared concerns about proposed use of proficiency on the PSSA as a requirement for high school graduation.

Response: The Board has a long history of establishing State requirements for high school graduation. For example, in 1963 the Board required students to successfully complete 13 credit units of study in grades 10–12 to graduate. Of the 13 credits, at least 3 had to be in English, 1 in mathematics, 1 in science, 2 in social studies and 1 in health and physical education. One credit or course equaled a minimum of 120 hours of classroom instruction. Over the next 3 decades, the Board raised these requirements to the level of requiring students to complete 21 credits in grades 9–12 effective with the class of 1989.

In 1993, the Board eliminated academic credits as a State requirement for high school graduation. It replaced completion of specified course work or seat time with 56 student learning outcomes. The student learning outcomes described what students were to know and be able to do and eliminated seat time as a proxy measure of student learning. The regulations charged school districts with developing assessment systems that would determine whether students met the student learning outcomes. The regulations also established a State assessment system designed to assess the performance of each public school.

In 1999, the Board continued its movement away from using seat time as a proxy measurement of student achievement by issuing Chapter 4, the regulations now in effect. Chapter 4 replaced the 56 student learning outcomes with 13 sets of State academic standards, which provide a much clearer and detailed description of what students were expected to know and be able to do. Another significant revision contained in Chapter 4 involved the PSSA. Chapter 4 directed the PSSA to be aligned with the State academic standards and to be redesigned so it measured both school and individual student achievement of the State academic standards.

Chapter 4 also made significant changes to the State high school graduation requirements. Section 4.24 requires school districts to include in their graduation policies:

- Course completion and grades.
- Completion of a culminating project.
- Results of local assessments aligned with the academic standards.

Also, beginning in 2002-03, the Board required students to demonstrate proficiency in reading, writing and math-

ematics on either the PSSA or local assessment aligned with State academic standards and State assessment at the proficient level or above to graduate.

The Board believes its intent was clear in that, beginning in 2002-03, students shall demonstrate proficiency in reading, writing and math based on the State academic standards and at the proficiency levels established for the PSSA. After several years' administration of the PSSA, analysis of data, visits to schools and discussions with school board members, school administrators, teachers, parents and students, it is clear that many school districts are ignoring the requirement that the local assessments be aligned with State standards and the proficiency levels be aligned to that of the PSSA. The Board, through the proposed changes to Chapter 4, attempted to clarify the existing policy regarding the alignment of local assessments with State standards and proficiency levels.

Many comments received by the Board raised questions about the validity of the PSSA. In 2004, the Board released the results of an independent validity study that demonstrated the PSSA to be a fair, reliable, unbiased and rigorous assessment that produces comparable results to Nationally administered assessments, including the Scholastic Aptitude Test, Metropolitan Achievement Test, CTB Terra Nova, Stanford Achievement Test, New Standards Reference Exam, California Achievement Test and Northwest Evaluation Association assessment. The Board also conducted a supplemental study that compared the PSSA and the freshman college placement exams from three large Pennsylvania postsecondary institutions. Again the PSSA proved itself against the three first-year college placement tests. The results show the PSSA to be as good a predictor of first year college performance as the Scholastic Aptitude Test and the three university placement tests. These reports are available on the Board web pages on the Department web site (www.pde.state.pa.us).

In September 2005, Governor Rendell appointed members to a Commission on College and Career Success. With the establishment of the Commission, the Board deferred further action on its proposed Chapter 4 regulations pending completion of the work by the Commission. The Commission was charged to:

- Define "college and career ready" in mathematics, English and science.
- Examine and make specific recommendations for better alignment of academic standards and assessments across the secondary and postsecondary educational sectors as well as industry in this Commonwealth.
- Encourage local school districts to adopt a core high school curriculum for all this Commonwealth's students.
- Present to the Governor a legislative and regulatory package that would address the needs outlined in their findings.
- Investigate policies and programs that ensure a higher number of prepared students enter and remain in our colleges and universities.

The Commission provided its report to the Governor in December 2006. Like the Board, the Commission expressed concerns about the performance of high schools. To quote from the Commission's report:

[I]n Pennsylvania, as in other states, increased standards have not yielded consistent results at the high school level. Student achievement has clearly improved at the elementary and middle-school level; but these improvements have not translated into across-

the-board increases in high school performance. Approximately one quarter of our students do not graduate from high school on time; and of those that do, less than half enroll in college upon graduation. Only 37% make it to their sophomore year and less than one-third graduate from college on time. In short, Pennsylvania's educational pipeline is leaking with no low skill jobs paying reasonable wage to catch those students who do not make it through.

Given the findings and recommendations of the Commission, the Board has decided to withdraw its proposed changes to § 4.52(c).

The Board will address high school graduation requirements in a separate regulatory package to be developed and submitted to public review and comment in the near future.

4.61. School profiles.

Comment: IRRC referred to the vague reference to Federal or State law and suggested that citations to the applicable laws should be added.

Response: A reference to the State statutory requirement is added. The State statute incorporates the Federal requirements.

General comments:

Comment: PSBA raised concerns about inconsistencies between this draft and proposed early childhood regulations, including the definitions of prekindergarten, elementary education programs including prekindergarten, strategic planning requirements for parent and community involvement and composition of strategic planning committee.

Response: The prekindergarten regulations were promulgated as final-form regulations in December 2006. Wherever inconsistencies between the two sets of proposed regulations exist, the Board is retaining the language used in the prekindergarten regulations.

Fiscal Impact and Paperwork Requirements

Because this final-form rulemaking largely reflects changes in Federal and State statutes and regulations and current policies and practice, costs associated with compliance with the final-form rulemaking should be negligible. The final-form rulemaking is aligned with current statutory provisions and Department practice.

The elimination of the mandate that every student be proficient in the yet to be promulgated world language academic standards will save local taxpayers more than \$114 million in staffing costs. It will also save the additional costs of recruitment, training and support of new teachers and for additional classroom space, instructional materials, language laboratory expenses and associated instructional costs. School entities will need to align world language instruction with Department issued world language standards. This can be done as part of their regular process of periodic curriculum review so there should not be any additional costs associated with implementation of this requirement.

Effective Date

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

Sunset Date

In accordance with its policy and practice, the Board will review the effectiveness of Chapter 4 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 September 26, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 6107, to IRRC and the Chairpersons of the House and Senate Committees on Education for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on January 9, 2008, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on January 10, 2008, 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 or 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 code.

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 4, are amended by amending §§ 4.3, 4.4, 4.11—4.13, 4.21—4.25, 4.27, 4.29, 4.31, 4.33, 4.51, 4.52, 4.61, 4.81 and 4.82 and by deleting § 4.83 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 final-form 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 38 Pa.B. 562 (January 26, 2008).)

Fiscal Note: 6-295 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter 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:

AVTS—Area vocational-technical school—A public school that provides vocational-technical education to secondary school students, out-of-school youth and adults in a geographical area comprised and operated by one or more school districts and established under sections 1840—1853 of the School Code (24 P. S. §§ 18-1840—18-1853).

Academic standard—What a student should know and be able to do at a specified grade level.

Assessment—A valid and reliable measurement of student performance on a set of academic standards in a subject area that captures student understanding of the set as a whole and the central concepts, knowledge and skills of each content area.

Apprenticeship program—A competency-based program that coordinates and integrates classroom instruction with a structured work-based employment experience designed for students.

Board—The State Board of Education established by sections 2601-B—2606-B of the School Code (24 P. S. §§ 26-2601-B—26-2606-B).

Cooperative vocational-technical education—A planned method of instruction developed through a signed cooperative arrangement among school representatives, students, parents and employers in the community to provide students with an opportunity to alternate in-school academic and vocational-technical instruction in entry-level paid employment in an occupational field, in which the student's total occupational work experience is planned, coordinated and supervised by the school in close cooperation with the employer.

Curriculum—A series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.

Department—The Department of Education of the Commonwealth.

ESOL—English to speakers of other languages.

Employment area—A geographic area where vocational-technical education program completers are most likely to be employed.

Individuals with Disabilities Education Act—20 U.S.C.A. §§ 1400—1482.

Intermediate unit—A regional educational service agency established under sections 951—974 of the School Code (24 P. S. §§ 9-951—9-974), which provides educational services to participating school districts as part of the public school system of this Commonwealth.

PSSA—Pennsylvania System of School Assessment.

Parent or guardian—A person legally responsible for a student's care.

Planned instruction—Instruction offered by a school entity based upon a written plan to enable students to achieve the academic standards under § 4.12 (relating to academic standards) and additional academic standards determined in strategic plans under § 4.13 (relating to strategic plans).

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.

School Code—The Public School Code of 1949 (24 P. S. §§ 1-101—27-2702).

School entity—A local public education provider (for example, public school district, charter school, cyber charter school, AVTS or intermediate unit).

Secretary—The Secretary of Education of the Commonwealth.

School organization—The organization of a school district's programs into kindergarten, primary, intermediate level, middle level and high school programs, including programs operated at AVTSs.

Strategic plan—A comprehensive plan for education developed under § 4.13.

Tech-prep program—A combined secondary and postsecondary program which leads to an associate degree or certificate and employment by providing technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health or business, including development of competence in mathematics, science and communications through a sequential course of study.

Vocational-technical education—Programs under public supervision and control which provide an organized process of learning experiences designed to develop integrated academic and occupational skills, knowledge, attitudes, work habits and leadership ability for entry into and advancement within various levels of employment in occupational areas of agriculture, business, marketing and distribution, health, home economics and trade and industry and for participation in postsecondary education and training.

§ 4.4. General policies.

(a) It is the policy of the Board that the local curriculum be designed by school entities to achieve the academic standards under § 4.12 (relating to academic standards) and additional academic standards designated in strategic plans under § 4.13 (relating to strategic plans).

(b) It is the policy of the Board that local school entities have the greatest possible flexibility in curriculum planning consistent with providing quality education and in compliance with the School Code, including requirements for courses to be taught (24 P. S. §§ 15-1501 and 16-1605); subjects to be taught in the English language (24 P. S. § 15-1511); courses adapted to the age, development and needs of the pupils (24 P. S. § 15-1512); minimum school year of 180 days and minimum of 900 hours of instruction at the elementary level and 990 hours of instruction at the secondary level (24 P. S. §§ 15-1501 and 15-1504); employment of sufficient numbers of qualified professional employees (24 P. S. § 11-

1106) and superintendents to enforce the curriculum requirements of State law (24 P. S. § 10-1005); and this part.

(c) Access to educational programs shall be provided without discrimination on the basis of a student's race, sex, color, religion, disability, sexual orientation or national origin.

(d) School entities shall adopt policies to assure that parents or guardians have the following:

(1) Access to information about the curriculum, including academic standards to be achieved, instructional materials and assessment techniques.

(2) A process for the review of instructional materials.

(3) The right to have their children excused from specific instruction that conflicts with their religious beliefs, upon receipt by the school entity of a written request from the parents or guardians.

(4) The right of the parent or guardian to review the State assessments in the school entity, at least 2 weeks prior to their administration, during convenient hours for parents and guardians. Necessary security requirements to maintain the validity of the assessment shall be taken in accordance with the State assessment administration instructions.

(5) If upon inspection of State assessments parents or guardians find the assessments in conflict with their religious belief and wish their students to be excused from the assessment, the right of the parents or guardians will not be denied upon written request to the applicable school district superintendent, charter school chief executive officer or AVTS director.

(6) Opportunity for involvement in the strategic planning process under § 4.13.

(7) The right to have their children excluded from research studies or surveys conducted by entities other than a school entity unless prior written consent has been obtained.

ACADEMIC STANDARDS AND PLANNING

§ 4.11. Purpose of public education.

(a) This section and §§ 4.12 and 4.13 (relating to academic standards; and strategic plans planning) describe the purpose of public education, the academic standards, their relationship with one another and strategic plans.

(b) Public education prepares students for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible. In conjunction with families and other community institutions, public education prepares students to become self-directed, life-long learners and responsible, involved citizens.

(c) Together with parents, families and community institutions, public education provides opportunities for students to:

- (1) Acquire knowledge and skills.
- (2) Develop integrity.
- (3) Process information.
- (4) Think critically.
- (5) Work independently.
- (6) Collaborate with others.
- (7) Adapt to change.

(d) The academic standards describe the knowledge and skills which students will be expected to demonstrate before graduating from a public school.

(e) Achievement of high academic standards in public education is dependent upon the quality of instruction in schools and student effort supported by the involvement of family and community.

(f) Assessment in public education is designed to determine student attainment of State and local academic standards.

(g) Public schools provide instruction throughout the curriculum so that students may develop knowledge and skills in the following areas:

- (1) Reading, writing, speaking and listening.
- (2) Mathematics.
- (3) Science and technology.
- (4) Environment and ecology.
- (5) Social studies (civics and government, geography, economics and history).
- (6) Arts and humanities.
- (7) Career education and work.
- (8) Health, safety and physical education.
- (9) Family and consumer science.

(h) Public education provides planned instruction to enable students to attain academic standards under § 4.12. Planned instruction consists of at least the following elements:

- (1) Objectives of a planned course, instructional unit or interdisciplinary studies to be achieved by all students.
- (2) Content, including materials and activities, and estimated instructional time to be devoted to achieving the academic standards. Courses, instructional units or interdisciplinary studies of varying lengths of time may be taught.

(3) The relationship between the objectives of a planned course, instructional unit or interdisciplinary studies and academic standards specified under § 4.12 and to those determined in the school district's (including charter schools) or AVTS's strategic plan under § 4.13.

(4) Procedures for measurement of the objectives of a planned course, instructional unit or interdisciplinary studies.

§ 4.12. Academic standards.

(a) School entities may develop, expand or improve existing academic standards in the following content areas:

(1) *Science and technology.* Study of the natural world and facts, principles, theories and laws in the areas of biology, chemistry, physics and earth sciences. Technology is the application of science to enable societal development, including food and fiber production, manufacturing, building, transportation and communication. Science and technology share the use of the senses, science processes, inquiry, investigation, analysis and problem solving strategies.

(2) *Environment and ecology.* Understanding the components of ecological systems and their interrelationships with social systems and technologies. These components incorporate the disciplines of resource management, agricultural diversity, government and the impact of human actions on natural systems. This interaction leads to the

study of watersheds, threatened and endangered species, pest management and the development of laws and regulations.

(3) *Social studies.*

(i) *History.* Study of the record of human experience including important events; interactions of culture, race and ideas; the nature of prejudice; change and continuity in political systems; effects of technology; importance of global-international perspectives; and the integration of geography, economics and civics studies on major developments in the history of the Commonwealth, the United States and the world.

(ii) *Geography.* Study of relationships among people, places and environments, of geographic tools and methods, characteristics of place, concept of region and physical processes.

(iii) *Civics and government.* Study of United States constitutional democracy, its values and principles, study of the Constitution of the Commonwealth and government including the study of principles, operations and documents of government, the rights and responsibilities of citizenship, how governments work and international relations.

(iv) *Economics.* Study of how individuals and societies choose to use resources to produce, distribute and consume goods and services. Knowledge of how economies work, economic reasoning and basic economic concepts, economic decision making, economic systems, the Commonwealth and the United States economy and international trade.

(4) *Arts and humanities.* Study of dance, theatre, music, visual arts, language and literature including forms of expression, historical and cultural context, critical and aesthetic judgment and production, performance or exhibition of work.

(5) *Career education and work.* Understanding career options in relationship to individual interests, aptitudes and skills including the relationship between changes in society, technology, government and economy and their effect on individuals and careers. Development of knowledge and skill in job-seeking and job-retaining skills and, for students completing vocational-technical programs, the skills to succeed in the occupation for which they are prepared.

(6) *Health, safety and physical education.* Study of concepts and skills which affect personal, family and community health and safety, nutrition, physical fitness, movement concepts and strategies, safety in physical activity settings, and leadership and cooperation in physical activities.

(7) *Family and consumer science.* Understanding the role of consumers as a foundation for managing available resources to provide for personal and family needs and to provide basic knowledge of child health and child care skills.

(8) *Reading, writing, speaking and listening.*

(i) *Reading.* The application of phonemic awareness, phonics and word study, vocabulary, fluency and text comprehension in reading critically across subject areas; the interpretation and analysis of literary expression with analysis of the origins and structures of the English language and learning how to search a variety of texts to conduct research.

(ii) *Writing.* Narrative, informational and persuasive formal writing for an audience, including spelling and

editing skills; and informal writing to capture and organize information for individual use.

(iii) *Speaking and listening.* Participation in conversation and formal speaking presentations.

(9) *Mathematics.* The understanding of fundamental ideas and the development of proficient mathematical skills in numbers, computation, measurement, statistics and data analysis, probability and predictions, algebra and functions, geometry, trigonometry and concepts of calculus. Using this content, students will learn to think, reason and communicate mathematically.

(b) In designing educational programs, school entities shall provide for the attainment of the academic standards under subsections (a) and (c) and any additional academic standards that they describe in their strategic plans under § 4.13(c) (relating to strategic plans). Attaining the academic standards in this section requires students to demonstrate the acquisition and application of knowledge.

(c) School entities shall prepare students to attain academic standards in mathematics, reading, writing, speaking and listening as contained in Appendix A and incorporated here by reference and additional standards as may be adopted by the Board and promulgated as amendments to this chapter.

(d) A school entity's curriculum shall be designed to provide students with planned instruction needed to attain these academic standards.

(e) School entities shall apply academic standards for students in all areas described under subsections (a) and (c). The local assessment plan under § 4.52 (relating to local assessment system) must include a description of how the academic standards will be measured and how information from the assessments is used to assist students having difficulty meeting the academic standards.

(f) School entities shall assess the attainment of academic standards developed under subsections (a) and (c) and any other academic standards that they develop and describe in their strategic plans under § 4.52(c) for purposes of high school graduation and strategies for assisting students to attain them. Plans for assessment developed by school entities must take into account that academic standards in subsections (a) and (c) may be attained by students in various ways and shall be assessed in various ways. Children with disabilities may attain the academic standards by completion of their individualized education programs under the Individuals with Disabilities Education Act and this part.

(g) In planning any revision of the academic standards in subsection (a) content areas, the Secretary will consult with educators, business and community leaders and parents.

(h) School entities are responsible under subsections (a), (c) and (g), and § 4.13(c)(5) for assessing individual student attainment of academic standards and for assisting those students having difficulty attaining them. Upon request by a school entity, the Department will provide the requestor with technical assistance in the development of academic standards and assessments that are sufficient to assure that students are making progress toward the attainment of standards required for high school graduation under subsection (f) and those identified in the strategic plan under § 4.13(c)(3).

(i) Every 3 years, the Board will review the State academic standards and State assessments under this

section to determine if they are appropriate, clear, specific and challenging, and will make revisions as necessary by revising this chapter.

§ 4.13. Strategic plans.

(a) Every school district (including a charter school) shall develop and file with the Department a strategic plan once every 6 years and review that plan for revision at the mid-point according to an implementation schedule developed by the Department. The Department will notify each school district, by letter, of the due date for submission of the school district's plan to the Department at least 1 calendar year prior to its due date. A school district plan must incorporate appropriate components of the plan submitted under subsection (b) by an AVTS in which the district participates. In the development of a strategic plan, a school district (including a charter school) will, upon request, receive technical assistance from the Department

(b) Every AVTS, in conjunction with and with the approval of the majority of its participating school districts, shall develop and file with the Department a strategic plan once every 6 years and review that plan at the mid-point according to an implementation schedule developed by the Department. The Department will notify each AVTS, by letter, of the due date for submission of the AVT's plan to the Department at least 1 calendar year prior to its due date. The strategic plan must incorporate appropriate components of the strategic plan submitted under subsection (a) by participating districts. In the development of the strategic plan, an AVTS will, upon request, receive technical assistance from the Department.

(c) The strategic plan must be based upon an analysis of internal and external needs, leading to the specifications of priorities for action and action plans. 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 ability to conduct a continuous strategic planning process. The plan must include the following components in addition to others the school district (including charter schools) or AVTS 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 must 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) 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 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.

(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.

(d) Strategic plans, the 6-year plan, mid-term review report, annual updates and other revisions to the plan, shall be developed through active participation by parents, students, school directors, teachers, school administrators, other school personnel and business and community representatives. Teacher representatives shall be chosen by teachers and 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.

(e) Prior to its approval by the board of directors, the strategic plan and revisions of it shall be made available for public inspection in the school district's or AVTS's offices, on the school district's or AVTS's web site and nearest public library until the next regularly scheduled board meeting or a minimum of 28 days whichever comes first. The plan shall be filed with the Department after it is recommended by the school superintendent of record or chief executive officer and is approved by the school district's or AVTS's board of directors or charter school's board of trustees. If the board of directors or trustees alters the proposed strategic plan developed under subsection (d), it shall consult with the committee which developed it to reach the greatest possible consensus prior to its submission and include any minority report which is developed.

(f) A locally approved strategic plan shall remain in effect until it is superseded by a locally approved revision or a new strategic plan developed under this section.

CURRICULUM AND INSTRUCTION

§ 4.21. Elementary education: primary and intermediate levels.

(a) The primary program shall ordinarily be completed by children who are approximately 8 years of age. School

districts shall provide opportunities for individualized rates of learning and social and emotional development that reflect differing rates of development and learning styles of young children.

(b) Curriculum and instruction in the primary program must be standards-based and focus on introducing young children to formal education, developing an awareness of the self in relation to others and the environment, and developing skills of communication, thinking and learning. Literacy skills, including phonemic awareness, phonological awareness, fluency, vocabulary and comprehension and developmental writing will begin in prekindergarten and kindergarten, if offered, and developed appropriately for the primary grade level.

(c) The intermediate level program shall ordinarily be completed by children who are approximately 11 years of age.

(d) Standards-based curriculum and instruction in the intermediate level must enable all students to reach the proficient level on the local assessment system and the Statewide assessment system. Academic standards will guide the focus on learning specific subject matter content.

(e) Planned instruction aligned with academic standards in the following areas shall be provided to every student every year in the primary program. Planned instruction may be provided as separate course or other interdisciplinary activity.

(1) Language arts, integrating reading, writing, phonics, spelling, listening, speaking, literature and grammar, and information management, including library skills.

(2) Mathematics, including problem-solving and computation skills.

(3) Science and technology education, involving active learning experiences for students.

(4) Environment and ecology education, involving active learning experiences for students.

(5) Social studies (civics and government, economics, geography and history).

(6) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, the prevention of alcohol, chemical and tobacco abuse, knowledge and practice of lifetime physical activities, personal fitness, basic movement skills and concepts, motor skill development, principles and strategies of movement, and safety practices in physical activity settings.

(7) The arts, including active learning experiences in art, music, dance and theatre.

(f) Planned instruction in the following areas shall be provided to every student every year in the intermediate level program. Planned instruction may be provided as a separate course or as an instructional unit within another course or other interdisciplinary instructional activity:

(1) Language arts, integrating reading, writing, spelling, listening, speaking, literature and grammar.

(2) Mathematics, including problem-solving and computation skills.

(3) Science and technology, including instruction about agriculture and agricultural science.

(4) Environment and ecology, including instruction about agriculture and agricultural science.

(5) Social studies (civics and government, economics, geography and history).

(6) The arts, including art, music, dance and theatre.

(7) Understanding and use of library and other information sources.

(8) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, the prevention of alcohol, chemical and tobacco abuse, knowledge and practice of lifetime physical activities, personal fitness, basic movement skills and concepts, motor skill development, principles and strategies of movement and safety practices in physical activity settings.

(g) Planned instruction aligned with academic standards in the following areas shall be provided to every student at least once by the end of elementary school. Planned instruction may be provided as a separate course or as an instructional unit within another course or other interdisciplinary instructional activity. See section 1511 of the School Code (24 P. S. § 15-1511).

(1) History of the United States.

(2) History of the Commonwealth.

(3) Geography.

(4) Civics.

(h) This section does not preclude the teaching of other planned instruction designed to achieve a school entity's mission, goals and academic standards.

(i) School districts, including charter schools, shall determine the most appropriate way to operate their primary and intermediate level elementary programs to achieve the purposes under subsections (b) and (d) and the mission, goals and academic standards in their strategic plans under § 4.13 (relating to strategic plans).

(j) Students who have not achieved proficiency in reading and mathematics during their primary grades (K—3), as determined by the school entity, shall be afforded additional instructional opportunities through a grade-level learning plan developed by the school entity. The plan will assist the student in acquiring the knowledge and skills necessary to achieve at the proficient level. Assessments to measure proficiency shall be described in the local assessment system under § 4.52 (relating to local assessment system).

(k) Students who have not achieved proficiency in reading and mathematics by the end of grade 5 as determined on State assessments under § 4.51 (relating to State assessment system) shall be afforded instructional opportunities to develop knowledge and skills necessary to achieve the proficient level.

§ 4.22. Middle level education.

(a) The middle level planned instruction aligned with academic standards serves children who are approximately 11—14 years of age. School entities may modify the grouping of students based upon student needs identified in their strategic plans under § 4.13 (relating to strategic plans).

(b) Curriculum and instruction in the middle level program must be standards-based and focus on mastery of academic subjects, the development of critical and creative thinking, information literacy, good health and encourage active participation in the school and community.

(c) Planned instruction aligned with academic standards in the following areas shall be provided to every student in the middle level program. Planned instruction may be provided as a separate course or as an instructional unit within a course or other interdisciplinary instructional activity:

(1) Language arts, integrating reading, writing, listening, speaking, literature and grammar.

(2) Mathematics, including mathematical reasoning, algebra and problem-solving.

(3) Science and technology, which involves active learning experiences and which may include laboratory experiments and instruction in agriculture and agricultural science.

(4) Social studies (civics and government, economics, geography and history, including the history and cultures of the United States, the Commonwealth, and the world).

(5) Environment and ecology, including social, political and economic aspects of ecology, and instruction in agriculture and agricultural science.

(6) Information skills, including access to traditional and electronic information sources, computer use and research.

(7) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, physical fitness, movement concepts, motor skill development, safety in physical activity settings, and the prevention of alcohol, chemical and tobacco abuse.

(8) The arts, including art, music, dance and theatre.

(9) Career education, including exposure to various career options and the educational preparation necessary to achieve those options.

(10) Technology education, emphasizing practical application of academic skills and problem-solving experiences facilitated by technology.

(11) Family and consumer science, including principles of consumer behavior and basic knowledge of child health and child care skills.

(d) This section does not preclude the teaching of other planned instruction designed to achieve a school entity's academic standards.

(e) School entities shall determine the most appropriate way to operate their middle level programs to achieve the purposes under subsection (b) and the academic standards in their strategic plans under § 4.13.

§ 4.23. High school education.

(a) Instruction in the high school program must focus on the development of abilities needed to succeed in work and advanced education through planned instruction.

(b) Curriculum and instruction in the high school must be standards-based and provide all students opportunities to develop the skills of analysis, synthesis, evaluation and problem-solving and information literacy.

(c) Planned instruction aligned with academic standards in the following areas shall be provided to every student in the high school program. Planned instruction may be provided as a separate course or as an instructional unit within a course or other interdisciplinary instructional activity:

(1) Language arts, integrating reading, writing, listening, speaking, literature and grammar.

(2) Mathematics, including problem-solving, mathematical reasoning, algebra, geometry and concepts of calculus.

(3) Science and technology, including participation in hands-on experiments and at least one laboratory science chosen from life sciences, earth and space sciences, chemical sciences, physical sciences and agricultural sciences.

(4) Social studies (civics and government, economics, geography and history, including the history and cultures of the United States, the Commonwealth and the world).

(5) Environment and ecology, including scientific, social, political and economic aspects of ecology.

(6) The arts, including art, music, dance, theatre and humanities.

(7) Use of applications of microcomputers and software, including word processing, database, spreadsheets and telecommunications; and information skills, including access to traditional and electronic information sources, computer use and research.

(8) Health, safety and physical education, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, physical fitness, movement concepts, motor skill development, safety in physical activity settings, and the prevention of alcohol, chemical and tobacco abuse.

(9) Family and consumer science, including principles of consumer behavior and basic knowledge of child health, child care and early literacy skill development.

(d) The following planned instruction shall be made available to every student in the high school program:

(1) Vocational-technical education under §§ 4.3 and 4.31—4.35 (relating to definitions; and vocational-technical education).

(2) Business education, including courses to assist students in developing business and information technology skills.

(3) World languages under § 4.25 (relating to languages).

(4) Technology education, incorporating technological problem-solving and the impacts of technology on individuals and society.

(e) College-level advanced placement courses may be offered as planned instruction in the high school curriculum.

(f) This section does not preclude the teaching of other planned instruction designed to achieve a school district's, including a charter school's, academic standards.

(g) School districts, including a charter school, shall determine the most appropriate way to operate their high school programs to achieve the purposes under subsection (a) and the academic standards in their strategic plans under § 4.13 (relating to strategic plans).

§ 4.24. High school graduation requirements.

(a) Each school district, including a charter school, shall specify requirements for graduation in the strategic plan under § 4.13 (relating to strategic plans). Requirements must include course completion and grades, completion of a culminating project and results of local assessments aligned with the academic standards. Students shall demonstrate proficiency in reading, writing and mathematics on either the State assessments administered in grade 11 or 12 or local assessment aligned with

academic standards and State assessments under § 4.52 (relating to local assessment system) at the proficient level or better to graduate. The purpose of the culminating project is to assure that students are able to apply, analyze, synthesize and evaluate information and communicate significant knowledge and understanding.

(b) Beginning in the 2002-2003 school year, students who attain a score at the proficient level on any State assessed discipline administered in grade 10, 11 or 12 shall be granted a Pennsylvania Certificate of Proficiency for that discipline. Students with disabilities who meet the required proficiency level on State assessments with appropriate accommodations shall be granted a Pennsylvania Certificate of Proficiency.

(c) Beginning in the 2002-2003 school year, students who attain a score at the advanced level of proficiency on any State assessed discipline administered in grade 10, 11 or 12 shall be granted a Pennsylvania Certificate of Distinction for that discipline. Students with disabilities who meet the required proficiency level on State assessments with appropriate accommodations shall be granted a Pennsylvania Certificate of Distinction.

(d) Each school district, including a charter school, shall describe in its strategic plan under § 4.13 how its planned instruction is designed to prepare students to meet the requirements of subsection (a).

(e) Children with disabilities who satisfactorily complete a special education program developed by an Individualized Education Program team under the Individuals with Disabilities Education Act and this part shall be granted and issued a regular high school diploma by the school district of residence. This subsection applies if the special education program of a child with a disability does not otherwise meet all requirements of this chapter. Children with disabilities who meet the required proficiency level on State assessments shall be granted the appropriate Certificate of Proficiency or Distinction.

(f) The Department will develop Pennsylvania Certificates of Proficiency and Distinction for each of the State assessed disciplines. The Department will distribute the certificates to each school district in sufficient quantity for the school district to issue to its students who have earned the Certificates. School districts shall enter student names on the appropriate certificate as described in subsections (b) and (c) and present the certificates to the student.

(g) The Department will develop, or cause to be developed, Certificates of Proficiency to acknowledge and recognize those students who attain a level of at least proficient in all State assessed disciplines. The certificates will be distinctive and differentiated from the certificates described in subsection (f). The certificates shall be awarded to students as appropriate in lieu of those prescribed in subsection (b).

(h) The Department will develop, or cause to be developed, Certificates of Distinction so as to acknowledge and recognize those students who attain a score at the advanced level of proficiency in all State assessed disciplines. The certificates will be distinctive and differentiated from the certificates described in subsection (f). The certificates shall be awarded to students as appropriate in lieu of those prescribed in subsection (c).

(i) Beginning in the 2003-04 school year, PSSA scores in each assessed discipline shall be included on student transcripts and may be released only with the permission of the student and parent or guardian, or the student only if the student is 18 years of age or older.

(j) This section does not allow for the release of individual student PSSA scores to the Department or other Commonwealth entities in accordance with § 4.51(c) (relating to State assessment system).

§ 4.25. Languages.

(a) World language programs must prepare students to be proficient in meeting the World Language Standards issued by the Department and available on its web site. Every school district shall provide planned instruction in at least two languages in addition to English, at least one of which shall be a modern language, and at least one of which shall be offered in a minimum 4-year sequence in the secondary program (middle level and high school).

(b) World language planned instruction under subsection (a) may be offered beginning at any grade level, including the elementary grades.

(c) World Language Standards issued by the Department will address the ability of students to communicate in a language other than English, including the ability to understand and interpret written and spoken language on a variety of topics and to develop knowledge and understanding of other cultures.

(d) As used in this section, the term "world language" means the study of the language, cultures, traditions and histories of different communities of people who communicate in languages other than English. American sign language is a world language.

§ 4.27. Physical education and athletics.

(a) Physical education shall be taught as required under §§ 4.21(e)(5) and (f)(8), 4.22(c)(7) and 4.23(c)(9) (relating to elementary education: primary and intermediate levels; middle level education; and high school education).

(b) The physical education program must be adapted for students who are medically unable to participate in the regular physical education program.

(c) The physical education program shall provide co-educational instruction, except that separation by sex may be permitted in courses involving contact sports. Separation by sex may not be used to exclude students of either sex from participating in any physical education instruction.

(d) In addition to physical education instruction under subsections (a)–(c), students of both sexes shall have equal access in interscholastic and intramural athletic programs to all of the following:

- (1) School facilities.
- (2) Coaching and instruction.
- (3) Scheduling of practice time and games.
- (4) Number of activities at each level of competition.
- (5) Equipment, supplies and services.
- (6) Funding appropriate to the sport.

(e) School districts may sponsor coeducational teams in interscholastic and intramural sports programs.

(f) Interscholastic and intramural teams playing contact sports may be separated by sex, but this subsection may not be used to exclude students of either sex from participating in a sport.

§ 4.29. HIV/AIDS and other life-threatening and communicable diseases.

(a) Instruction regarding prevention of human immunodeficiency virus (HIV) infection/acquired im-

munodeficiency syndrome (AIDS) and other life-threatening and communicable diseases shall be given for primary, intermediate, middle school and high school education and shall follow the requirements of subsections (b) and (c).

(b) Educational materials and instruction shall be determined by the local school district and be appropriate to the age group being taught. The program of instruction must include information about the nature of the diseases, treatments and cures, methods of transmission and how infection can be prevented. The school district may omit instruction in the elementary grades on transmission of disease through sexual activity. Programs discussing transmission through sexual activity must stress that abstinence from sexual activity is the only completely reliable means of preventing sexual transmission. Programs must stress that avoidance of illegal drug use is the only completely reliable means of preventing transmission of disease through shared drug paraphernalia.

(c) A school entity shall excuse a pupil from HIV/AIDS instruction when the instruction conflicts with the religious beliefs or principles of the pupil or parent or guardian of the pupil and when excusal is requested in writing. Prior to the commencement of instruction, a school district shall publicize that detailed curriculum outlines and curricular materials used in conjunction with the instruction are available to parents and guardians during normal school hours or at teacher-parent conferences. Curricular materials, if practical, shall be made available by the school entity for home instructional use by a parent or guardian if the student has been excused from the school entity's HIV/AIDS instruction.

VOCATIONAL-TECHNICAL EDUCATION

§ 4.31. Vocational-technical education.

(a) Vocational-technical education courses shall be developed in the planned instruction format and be accessible to all high school students attending those grades in which vocational-technical education courses are offered. All students and their parents or guardians shall be informed of the students' rights to participate in vocational-technical education programs and courses and that students with disabilities enrolled in the programs are entitled to services under Chapter 14 (relating to special education services and programs). Students who complete approved vocational-technical education programs shall have their occupational competency assessed by completion of the appropriate assessment under the Pennsylvania Skills Certificate Program or by completion of another occupational competency assessment approved by the Department. A student with a disability shall be provided appropriate accommodations when provided for in the student's individualized education program. Students shall also demonstrate proficiency in meeting academic standards as required under § 4.24(a) (relating to high school graduation requirements), including § 4.12(f) (relating to academic standards) and § 4.24(e) for students with disabilities with an individualized education program.

(b) Vocational-technical education courses may be taught at AVTSs or other high schools.

(c) Vocational-technical education programs must consist of a series of planned academic and vocational-technical education courses that are articulated with one another so that knowledge and skills are taught in a systematic manner. When appropriate, vocational-technical education programs must adopt, in program areas for which they are available, industry recognized

skills standards and may also include cooperative vocational-technical education and participation in vocational student organizations to develop leadership skills.

(d) Vocational-technical education courses must include content based upon occupational analysis, clearly stated performance objectives deemed critical to successful employment and assessment of student competencies based upon performance standards. In listing planned instruction in its strategic plan under § 4.13 (relating to strategic plans), a school district or AVTS shall indicate which courses meet the requirements of this section.

(e) The record of a student enrolled in a vocational-technical education program must include the student's educational and occupational objectives and the results of the assessment of student competencies under subsection (d).

(f) Safety education, consisting of safety practices, accident prevention, occupational health habits and environmental concerns shall be integrated into the instruction and practices in vocational-technical education programs.

(g) School districts and AVTSs administering vocational-technical education programs shall develop written policies regarding admissions. Course announcements, guidance materials and other communications must convey the philosophy of equal access to students considering enrolling in AVTSs and include a description of admissions policies. The policies must assure that when admissions to AVTSs must be limited, the admissions shall be on a nondiscriminatory basis.

§ 4.33. Advisory committees.

(a) A school district or AVTS administering or planning to administer vocational-technical education programs shall appoint a local advisory committee. Membership on the committee shall consist of business and industry representatives, public sector employers, agriculture, labor organizations, community organizations, postsecondary education institutions and the general public. The appointed advisory committee shall meet at least once each year and give advice to the board and the administration concerning the program of the school, including its general philosophy, academic and other standards, strategic plans, course offerings, support services, safety requirements and the skill needs of employers. An advisory committee may serve multiple institutions where employment areas overlap.

(b) An administrative committee, composed of chief school administrators representing participating school districts, shall be included in the organization of each AVTS. The committee shall play an integral part in the development of the AVTS strategic plan under § 4.13 (relating to strategic plans) and advise the AVTS board and the administration concerning the educational program and policies of the school.

(c) An occupational advisory committee shall be established for each vocational-technical education program or cluster of related programs offered by a school district or AVTS. The committee shall be appointed by the board of directors, and a majority of the members of the committee shall be employees and employers in the occupation for which training is provided. The committee shall meet at least twice each year to advise the board, administration and staff on curriculum, equipment, instructional materials, safety requirement, program evaluation and other related matters and to verify that the programs meet industry standards and, if appropriate, licensing board criteria and that they prepare students with occupation related competencies.

ASSESSMENT**§ 4.51. State assessment system.**

(a) The State assessment system shall be designed to serve the following purposes:

(1) Provide students, parents, educators and citizens with an understanding of student and school performance consistent with the No Child Left Behind Act of 2001 the act of January 8, 2002 (Pub. L. No. 107-110, 115 Stat. 1425).

(2) Determine the degree to which school programs enable students to attain proficiency of academic standards under § 4.12 (relating to academic standards).

(3) Provide results to school entities for consideration in the development of strategic plans under § 4.13 (relating to strategic plans).

(4) Provide information to State policymakers including the General Assembly and the Board on how effective schools are in promoting and demonstrating student proficiency of academic standards.

(5) Provide information to the general public on school performance.

(6) Provide results to school entities based upon the aggregate performance of all students, for students with an Individualized Education Program (IEP) and for those without an IEP.

(b) State assessment instruments administered in reading, writing and mathematics in grades 5, 8 and 11 will be standards-based and criterion referenced and include essay or open-ended response items in addition to other item formats. The proportion of type of items will vary by grade level. Neither State assessments nor academic standards under § 4.12 may require students to hold or express particular attitudes, values or beliefs. The Department will make samples of assessment questions, instrument formats, and scoring guides available to the public after each administration of State assessments. The criteria for judging performance on State assessments are as follows:

(1) Performance on State reading assessments shall be demonstrated by students' responses to comprehension questions about age-appropriate reading passages and by their written responses to in-depth comprehension questions about the passages.

(2) Performance on State mathematics assessments shall be demonstrated by students' responses to questions about grade-appropriate content and by the quality of their responses to questions that require a written solution to a problem.

(3) Performance on State writing assessments shall be demonstrated by the quality of students' written compositions on a variety of topics and modes of writing.

(4) Levels of proficiency shall be advanced, proficient, basic and below basic. In consultation with educators, students, parents and citizens, the Department will develop and recommend to the Board for its approval specific criteria for advanced, proficient, basic and below basic levels of performance.

(c) The Department will develop or cause to be developed State assessments based on academic standards in mathematics, reading and writing under § 4.12 and contained in Appendix A. In developing assessments, the Department will consult with educators, students, parents and citizens regarding the specific methods of assessment. To ensure that information regarding student per-

formance is available to parents and teachers, State assessments developed under this section shall include student names. Individual test results shall be used in planning instruction only by parents, teachers, administrators and guidance counselors with a need to know based upon local board policy on testing and in reporting academic progress. The Department or other Commonwealth entities are prohibited from collecting individual student test scores, and may only collect aggregate test scores by school and district.

(d) The State assessments shall be administered annually and include assessments of the State academic standards in mathematics and reading at grades 3—8 and 11; in writing at grades 5, 8 and 11; and in science at grades 4, 8 and 11.

(e) Students not achieving at the proficient level in the administration of State assessments in grade 11 shall be provided one additional opportunity in grade 12 to demonstrate a proficient level on State assessments.

(f) The Board will authorize the expansion of the State assessment system through a revision of this chapter.

(g) The Department will implement provisions for security of the State assessment system, including the following provisions:

(1) Action by a professional employee or commissioned officer that is willfully designed to divulge test questions, falsify student scores or in some other fashion compromise the integrity of the State assessment system as determined by the school entity shall be subject to disciplinary action under the Professional Educator Discipline Act (24 P. S. §§ 2070.1a—2070.18a).

(2) Cheating by students or employees other than those covered in paragraph (1) shall be subject to disciplinary action by the school district.

(3) Cheating or breaches of assessment security shall be reported to the Secretary as soon as detected.

(h) The Secretary has the authority to establish guidelines for the administration of the State assessment system.

(i) The Secretary will report each September to the Board and the General Assembly information and pertinent data relating to the State assessment system. The Secretary will also provide each school entity information and pertinent data for the school entity and its students.

(j) Children with disabilities and children with limited English proficiency shall be included in the State assessment system as required by Federal law, with appropriate accommodations, when necessary. As appropriate, the Commonwealth will develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in the State assessment as determined by each child's Individualized Education Program team under the Individuals with Disabilities Education Act and this part.

§ 4.52. Local assessment system.

(a) Each school entity shall design an assessment system to do the following:

(1) Determine the degree to which students are achieving academic standards under §§ 4.12 and 4.13(c)(3) (relating to academic standards; and strategic plans). The school entity shall provide assistance to students not attaining academic standards at the proficient level or better and the assistance to be provided shall be indicated in the strategic plan under § 4.13.

(2) Use assessment results to improve curriculum and instructional practices, to guide instructional strategies and to develop future strategic plans under § 4.13.

(3) Provide information requested by the Department regarding the achievement of academic standards, which does not include student names, identification numbers or individually identifiable information.

(4) Provide summary information including results of assessments under this section to the general public regarding the achievement of students, which does not include student names, identification numbers or individually identifiable information.

(b) The local assessment system shall be implemented no later than 1 year after its strategic plan or revision is approved by the board of school directors under § 4.13.

(c) The local assessment system shall be described in the school entity's strategic plan under § 4.13(c)(5).

(d) The local assessment system shall be described in the district's (including a charter school's) or AVTS's strategic plan under § 4.13(c)(5), including industry certifications earned by vocational-technical students, Pennsylvania skill certificates earned by vocational technical education students, and projects completed by vocational-technical education students which demonstrate their occupational competency.

(e) The local assessment system shall be designed to include a variety of assessment strategies which may include the following:

- (1) Written work by students.
- (2) Scientific experiments conducted by students.
- (3) Works of art or musical, theatrical or dance performances by students.
- (4) Other demonstrations, performances, products or projects by students related to specific academic standards.
- (5) Examinations developed by teachers to assess specific academic standards.
- (6) Nationally-available achievement tests.
- (7) Diagnostic assessments.
- (8) Evaluations of portfolios of student work related to achievement of academic standards.
- (9) Other measures as appropriate, which may include standardized tests.

(f) Individual test information shall be maintained in a student's educational record in a manner consistent with section 438 of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A § 1232g) and 34 CFR Part 99 (relating to family educational rights and privacy).

(g) Children with disabilities shall be included in the local assessment system, with appropriate accommodations, when necessary. As appropriate, the school district, including charter schools, or AVTS shall develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in the local assessment as determined by each child's Individualized Education Program team under the Individuals with Disabilities Education Act and this part.

SCHOOL PROFILES

§ 4.61. School profiles.

(a) School profiles developed by the Secretary will include information as required under section 220 of the School Code (24 P. S. § 2-220).

(b) In compiling school profiles under this chapter, the Department will provide school entities interpretive information to assist in using the profiles for strategic planning under § 4.13 (relating to strategic plans).

(c) The Secretary will prescribe procedures for reporting State assessment data to schools and communities.

(d) The Secretary will make available to the public, and report to the public with the same frequency and in the same detail as for children who are nondisabled, all data as required under the Individuals with Disabilities Education Act.

ENFORCEMENT AND IMPLEMENTATION

§ 4.81. Allegations of deficiencies.

(a) The Secretary will receive and investigate allegations of curriculum deficiencies from professional employees, commissioned officers, parents of students or other residents of a school entity.

(b) The Secretary will notify the school entity's superintendent or chief executive of allegations and may require the superintendent or chief executive to submit one or more of the following:

- (1) Relevant descriptions of planned instruction.
- (2) A series of written articulated courses of instructional units.
- (3) Relevant student assessment information.
- (4) Information on staff assignments.
- (5) Other information pertinent to investigating a specific allegation.

(c) If the Secretary determines that a curriculum deficiency exists, the school entity shall be required to submit to the Secretary for approval a plan to correct the deficiency.

(d) Within 1 year of the implementation of a corrective action plan under subsection (c), the Secretary will review the actions taken to correct the deficiency. If the deficiency remains uncorrected, the Secretary will send a formal notice of deficiency to the governing board of the school entity, and the notice shall be announced at the meeting of the school entity's governing board immediately following its receipt.

(e) If the school entity does not take appropriate actions to correct the deficiency after the notice of deficiency is announced, the Secretary will take action under State law.

§ 4.82. Exceptions.

(a) The Secretary may grant exceptions to specific provisions of this chapter when it is necessary to adapt them to the curriculum needs of individual school entities or to facilitate transition to the revised provisions of this chapter. Specific exception may be made for school entities that develop or implement academic standards that are comparable to or exceed those found in § 4.12 (relating to academic standards). Exceptions may be granted under the following conditions:

- (1) The request for an exception must be in writing and include relevant information supporting the need for the exception.
- (2) The exception will be valid for a limited term not to exceed 2 years.
- (3) The request shall be made prior to initiating the action requiring approval and shall have the prior approval of the board of school directors.

(b) The Secretary will report annually to the Board on the nature and status of requests for exceptions under this section.

§ 4.83. (Reserved).

[Pa.B. Doc. No. 08-259. Filed for public inspection February 15, 2008, 9:00 a.m.]
