

# RULES AND REGULATIONS

## Title 22—EDUCATION

### STATE BOARD OF EDUCATION

#### [22 PA. CODE CH. 11]

#### Student Attendance

The State Board of Education (Board) amends Chapter 11 (relating to student attendance) to read as set forth in Annex A. Notice of proposed rulemaking was published at 33 Pa.B. 4300 (August 30, 2003) with an invitation to submit written comments.

Chapter 11 governs generally the subject of student attendance. The final-form rulemaking affects primarily the sections regarding admission to public schools, absences for temporary periods, excusals from public school attendance, applicability and general provisions.

#### *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 11 sets forth the requirements for student attendance in public schools. The final-form rulemaking generally reflects statutory changes that have been made and court decisions that have been rendered since Chapter 11 was last amended in 1986, as well as existing Department of Education (Department) policies and practices. In addition, the Board is amending some provisions to afford public schools with additional flexibility. Other provisions are being added to standardize requirements Statewide.

#### *Summary of Amendments*

##### *Title*

The title of Chapter 11 is changed from "Pupil Attendance" to "Student Attendance." In all of its regulations in 22 Pa. Code (relating to education), the Board is using the term students, rather than pupils, to conform to common usage.

##### *§ 11.3 (relating to minimum required hours)*

The Board is revising § 11.3 to provide additional flexibility to schools in providing the required minimum annual hours of instruction.

##### *§ 11.5 (relating to part-time attendance for potential graduates)*

The Board is revising § 11.5 to reflect current policies and practices of the Department.

##### *§ 11.6 (relating to part-time enrollment of alternative education students)*

The Board is revising § 11.6 to align it with the act of November 23, 1999 (P. L. 529, No. 48), which added Article XIX-E to the code (24 P. S. §§ 19-1901-E—19-1903-E).

##### *§ 11.7 (relating to religious objections)*

The Board is revising § 11.7 to align it with § 4.4(d)(3) (relating to general policies).

##### *§ 11.11 (relating to entitlement of resident children to attend public schools)*

The Board is revising § 11.11(a) to address student enrollment issues that arise when the parents of a child

who are divorced, separated or live apart for other reasons live in different school districts. The final-form rulemaking also addresses the obligation of school entities for the transportation of these students.

Section § 11.11(b) and (c) is designed to standardize student enrollment procedures in this Commonwealth.

The Board has added subsection (d) to reflect the decision of the Supreme Court of the United States in *Plyler v. Doe*, 457 U.S. 202 (1982), and the requirements of the Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603).

The Board has added subsection (e) to reflect policies and practices of the Department.

##### *§ 11.12 (relating to school age)*

The Board has revised § 11.12 to reflect section 10 of the act of June 28, 2002 (P. L. 524, No. 88) (Act 88), which amended section 1301 of the code (24 P. S. § 13-1301).

##### *§ 11.16 (relating to early admission of beginners)*

The Board is revising § 11.16 to remove mental age as a criteria to be used to determine if a child is to be granted early entry into first grade. That criterion will be replaced with a requirement that the child must "demonstrate a readiness" for entry into school.

##### *§ 11.19 (relating to nonresident child living with a district resident)*

The Board is revising § 11.19 to reflect the provisions of section 12 of the act of June 22, 2001 (P. L. 530, No. 35) (Act 35), which amended section 1302 of the code (24 P. S. § 13-1302).

##### *§ 11.20 (relating to nonimmunized children)*

The Board is revising § 11.20 to clarify existing requirements that prohibit students from attending a public, nonpublic, private, special education or vocational school without required immunizations or without an exemption.

##### *§ 11.25 (relating to temporary excusals due to illness or other urgent reasons)*

The Board is revising § 11.25 to ensure that all students who are excused from school attendance or who are provided homebound instruction are returned to the regular school program as soon as possible.

##### *§ 11.27 (relating to graduation)*

The Board is amending § 11.27 to reflect Department policy and practice. New language is also added to allow school entities to permit students with disabilities to participate in the graduation ceremony with their peers, even though the student might continue his school enrollment as outlined in the student's Individual Education Plan. This final-form rulemaking will allow school entities to continue to count these students in their average daily memberships.

##### *§ 11.31 (relating to students not enrolled in public schools due to private tutoring)*

The Board is amending § 11.31 to incorporate amendments made to section 1327 of the code (24 P. S. § 13-1327) made by the act of December 21, 1988 (P. L. 1321, No. 169). The section is also being revised to align it with the curriculum requirements outlined in Chapter 4 (relating to academic standards and assessment). Finally, subsection (b) is being amended to clarify the role of

school superintendents in addressing complaints about the education of a student who is being privately tutored.

*§ 11.31a (relating to students not enrolled in public schools due to participation in a home education program)*

The Board has added § 11.31a to clarify the role of school superintendents in approving home education programs.

*§ 11.33 (relating to dual enrollment students enrolled part-time in the public schools)*

The Board is revising § 11.33 to permit students who are home educated or privately tutored and who are enrolled part-time in the public schools to be counted in the school's average daily membership for State reimbursement purposes.

*§ 11.41 (relating to school district policies and rules)*

The Board is revising § 11.41 to reflect section 13 of Act 35, which amended section 1329 of the code (24 P. S. § 13-1329).

*Summary of Public Comments and Changes*

The proposed rulemaking was published at 33 Pa.B. 3600 and on the Department's website: [www.pde.state.pa.us](http://www.pde.state.pa.us). The Board accepted formal written comments within a 30-day public comment period after publication of the proposed rulemaking. The Board received comments from members and staff of the Education Committee of the House of Representatives; the Education Law Center; The Children's Home of Easton Services, Inc.; the Conestoga Valley School District; the School District of the City of York; the Pennsylvania School Boards Association (PSBA); Asian Americans United; the Latino Leadership Alliance of Bucks County; the Department of Elementary and Early Childhood Education at Millersville University; the Migrant Education Program at Millersville University; the State College Area School District; Glade Run Lutheran Services Auberle Family Foster Care; the United Methodist Home for Children; Concern, Inc.; and the Independent Regulatory Review Commission (IRRC).

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

*§ 11.1 (relating to school term)*

*Comment:* IRRC recommended that a definition be included for the term "meritorious educational programs."

*Response:* The Board has added the definition in § 11.8 (relating to definitions).

*§ 11.2 (relating to school day)*

*Comment:* IRRC and the House Education Committee (House Committee) recommended that the term "instructional activities" be added.

*Response:* The Board has added the suggested definition in § 11.8.

*§ 11.5*

*Comment:* IRRC recommended that the term "postsecondary institution" be defined.

*Response:* The Board added a definition of postsecondary institution in § 11.8.

*§ 11.11 (relating to entitlement of resident children to attend public schools)*

*Comment:* IRRC expressed concerns about the clarity and reasonableness of the proposed amendment regarding the use of the term "any other documentation specifically

required by law." IRRC also suggested that addressing issues related to nonresident students in the section dealing with resident students is confusing.

*Response:* The Board concurs with IRRC. The section has been revised to focus on resident students. The Board also has added new language to § 11.18 (relating to nonresident children living in facilities or institutions) and § 11.19 to clarify that the enrollment requirements outlined in § 11.11 also apply to children in those settings.

*Comment:* The PSBA recommended that the proposed language be revised to address the issue of student transportation for students whose parents live in different school districts. The PSBA also recommended that parents be limited to selecting one school district each school year. The PSBA also suggested a reference in this section to the Interstate Compact on the Placement of Children (Compact).

*Response:* The Board added subsection (a)(2) to address the transportation issue. However, the Board felt that limiting choice of a school district to once each year would be too restrictive and unrealistic given the realities facing many families and their children in this situation. The Board felt it unnecessary to address the Compact in this final-form rulemaking as the Compact is already addressed in regulations of the Department of Public Welfare.

*Comment:* Fourteen members of the House Committee expressed opposition to the proposed language that prohibits immigration status from being used to determine eligibility for school enrollment. This provision was added to reflect the decision of the United States Supreme Court in *Plyler v. Doe*, *supra*. In their letter, the representatives shared language from the dissenting opinion written by then-Chief Justice Warren Burger, which argued that children who are not legally admitted to the United States should not be entitled to the benefits provided to its citizens and to those legally admitted.

*Response:* The Board is obliged under the Constitutions of the United States and the Commonwealth, the act of July 31, 1968 (P.L. 769, No. 240) (45 P. S. §§ 1201—1204), know as the Commonwealth Documents Law, the Regulatory Review Act (71 P. S. §§ 745.1—745.15), the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506) and the code to promulgate regulations consistent with the United States and Pennsylvania Constitutions, relevant statutes and binding judicial decisions. The final-form rulemaking is consistent with the binding rulings of the Supreme Court of the United States on matters of Federal constitutional law. The views of then-Chief Justice Burger, expressed in *Plyler v. Doe*, *supra*, have not been embraced by the Supreme Court in the more than 2 decades since *Plyler v. Doe*, *supra*, was decided. If the Board defies the holding in *Plyler v. Doe*, *supra*, the General Counsel and the Attorney General of the Commonwealth would be obliged to reject the regulation as contrary to law. The Board and public schools in this Commonwealth are required to adhere to the Supreme Court's rulings. Consequently, the Board has retained the language as proposed.

*Comments:* School officials from the Conestoga Valley School District, the School District of the City of York and the State College Area School District wrote in support of the proposed language. In addition, Asian Americans United, the Latino Leadership Alliance of Bucks County, the Department of Elementary and Early Childhood Education at Millersville University, the Migrant Educa-

tion Program at Millersville University and the Education Law Center wrote in support of the proposed language that bars consideration of immigration status in determining eligibility for school enrollment.

*Comment:* Glade Run Lutheran Services, Auberle Family Foster Care, the United Methodist Home for Children, Concern, The Children's Home of Easton and the School District of the City of York wrote in support of the proposed language in § 11.11 designed to remove barriers to school enrollment faced by children in foster care.

§ 11.12

*Comment:* Members of the House Committee expressed concerns about revising the definition of the beginning of "school age" from entrance to kindergarten to the earliest admission age to school entity's educational program.

*Response:* The Board has restored the definition of "school" as beginning with enrollment in kindergarten. The other proposed revision refers to the right of students to continue their education through the end of the school term in which they reach 21 years of age. This revision aligns the regulation with an amendment to section 1301 of the code made by Act 88.

§ 11.16

*Comment:* The PSBA expressed support for eliminating the requirement that schools determine whether a child has a "mental age of 7 years of more" in determining whether a child should be granted early entry into first grade. However, they suggested that some other criteria are needed to replace it and suggested inserting "and has demonstrated readiness for entry."

*Response:* The Board added the suggested language to the final form rulemaking.

§ 11.19

*Comment:* The PSBA raised concerns about the Board's interpretation of the term "gratis" with regard to exempting health insurance coverage from being considered as support for a child.

*Response:* The Board believes that health insurance coverage for children is a vital public policy interest to this Commonwealth. The Commonwealth invests significant resources to provide health care coverage to all children through the Children's Health Insurance Program. The Board believes that health care coverage should not be used as a factor in determining a child's eligibility for school enrollment. However, the Board recognizes the principles outlined in *Brenner v. West Shore School District*, 780 A.2d 726 (Pa. Cmwlth. 2001), and has modified the proposed language to indicate that a child must be fully supported by the nonresident adult.

*Comment:* IRRC recommends that the term "other reasonable information" be replaced with the detailed listing of items outlined in Department of Education Basic Education Circular.

*Response:* The term "other reasonable information" is taken from section 1302(2) of the code. It provides authority to the Department to issue guidelines to address what other reasonable information might be requested by a school district. The Board has decided not to impose upon the Department any additional requirements beyond those required by statute.

§ 11.20

*Comment:* Members of the House Committee expressed concern that this section would increase the recordkeeping burden on public schools and would impose new

burdens on nonpublic school students. In addition, the committee shared an e-mail message from the advisory board of the Pennsylvania Home Educators Association (Association), which expressed the Association's opposition to the proposed language as it applies to home education and students who are privately tutored.

*Response:* The Board has deleted the language that would have expanded this section to apply to home education and privately tutored students. The new language reflects existing Department of Health requirements in 28 Pa. Code § 23.81 (relating to purpose and scope), which includes a requirement that school districts work with private and nonpublic schools to insure that all students attending those schools are properly immunized or exempted from the immunization requirements.

§ 11.25

*Comment:* IRRC recommended that the proposed language be revised to state clearly that the school district, not the parent or guardian, is responsible for seeking Department approval to extend providing a student with homebound instruction beyond 3 months.

*Response:* The Board has revised this section to add the suggested clarification.

§ 11.27

*Comment:* IRRC and the House Committee staff recommended that the proposed language state clearly that it is the option of the school entity, not the parent or student, to permit a student to participate in the graduation ceremony with his peers, though the student plans to continue to be enrolled in school to carry out the program of education outlined in the student's Individual Educational Plan.

*Response:* The Board concurs and has revised this section.

§ 11.28 (relating to out-of-school programs and part-time employment)

*Comment:* IRRC recommended that the Board define "out-of-school program" or include a list of examples.

*Response:* The Board added a definition of "out-of-school programs" in § 11.8.

§ 11.31

*Comment:* Members of the House Committee expressed dismay with the deletion of "loyalty to State and Nation" as one of the areas of instruction that must be provided to privately tutored students.

*Response:* The Board has restored "loyalty to State and Nation" to the final-form rulemaking.

*Comment:* IRRC recommended that the rulemaking be revised to outline clearly the circumstances of when it is appropriate for a superintendent to request additional evidence of satisfactory progress. IRRC also suggested listing the types of evidence that might be required.

*Response:* The Board has added language to address these concerns.

§ 11.31a

*Comment:* IRRC and the PSBA suggested that this section be amended to reference section 1327(d) of the code to recognize the needs of students eligible for special education services.

*Response:* The Board has added the reference.

§ 11.33

*Comment:* The PSBA recommended adding language to make clear that dual enrollment for some students is not required and is at the discretion of the school entity.

*Response:* Because this section addresses merely whether students who are dually enrolled can be counted for State subsidy purposes, the Board retained the language as proposed.

*Additional Comments*

In addition to these comments, IRRC and the House Committee staff offered a number of technical corrections with their comments, including changing the chapter title from "Pupil Attendance" to "Student Attendance" and revising the numbering of the subsections of § 11.27. The Board has made all of these suggested changes.

*Fiscal Impact and Paperwork Requirements*

Because the final-form rulemaking largely reflects changes in Federal and State statutes, court decisions and regulations, the costs of compliance should be negligible. Schools traditionally update enrollment and attendance policies annually, since they provide their policies to students and their parents each school year.

Some schools might need to improve student recordkeeping and retrieval to comply with the requirement that student records be transmitted within 5 days to the school to which a student has transferred. Costs associated with this policy will depend upon the school's current recordkeeping procedures and support. In cases when a transferred student has a disability, the new school might be required to incur costs in conducting a new evaluation of the student when records are not promptly received. Costs associated with compliance with this change will be outweighed by the benefits provided to students and schools receiving student records.

Amendments to § 11.3 will result in indeterminate cost savings to schools, inasmuch as the final-form rulemaking will permit public schools additional flexibility in meeting the minimum hours of instruction required each year. The current regulation limits this flexibility by establishing minimum daily and weekly hourly requirements. Changes to the requirement that schools provide a minimum number of hours of instruction per day, week and month also will provide additional flexibility to schools in meeting the statutorily established minimum 900 hours of instruction for elementary schools and 990 for secondary schools. The change might affect State subsidy payments made to a small number of school districts.

Schools might need to update their policies regarding enrollment and attendance as a result of the final-form rulemaking. Since many of the changes, such as permitting students to remain in school through the end of the school term in which they turn 21 years of age and allowing students with excused absences to participate in agricultural fairs, are already statutory mandates or requirements imposed by court decisions or Federal law, schools should have already revised their policies to reflect these changes. Schools also normally update their enrollment and attendance policies annually, since this area also is frequently changed due to statutory amendments and court decisions. Consequently, costs associated with updating local policies to reflect the regulations should be negligible.

*Effective Date*

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

*Sunset Date*

In accordance with its policy and practice respecting all regulations promulgated by it, the Board will review the effectiveness of Chapter 11 after 4 years. Thus, no sunset date is necessary.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 30, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 4300, 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 June 30, 2004, the final-form rulemaking was approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

*Contact Person*

The official responsible for information on the 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 Commonwealth Documents Law (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 11, are amended by amending §§ 11.1—11.7, 11.11, 11.12, 11.14—11.16, 11.18—11.28, 11.31, 11.32—11.34 and 11.41 and by adding §§ 11.8 and 11.31a to read as set forth in Annex A.

(*Editor's Note:* The proposal to amend § 11.13 has by withdrawn by the Board.)

(b) The Executive Director of the Board shall 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 34 Pa.B. 4528 (August 14, 2004).)

**Fiscal Note:** Fiscal Note 6-279 remains valid for the final adoption of the subject regulations.

### Annex A

## TITLE 22. EDUCATION

### PART I. STATE BOARD OF EDUCATION

#### Subpart A. MISCELLANEOUS PROVISIONS

#### CHAPTER 11. STUDENT ATTENDANCE

##### GENERAL PROVISIONS

#### § 11.1. School term.

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

#### § 11.2. School day.

Instruction time for students shall be time in the school day devoted to instruction and instructional activities provided as an integral part of the school program under the direction of certified school employees.

#### § 11.3. Minimum required hours.

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

Grade	Hours
K	2 hours, 30 minutes, each day of the school term
1-6	900 hours for the school term
7-12	990 hours for the school term

(b) Schools with grade level configurations that differ from those outlined in subsection (a) (for example, K—8), are required to meet the minimum annual hourly requirements for each specified grade level.

#### § 11.4. Early withdrawal for postsecondary institution attendance.

Students attending a postsecondary institution full-time prior to graduation from high school shall be dropped from the membership roll of the district at the time they stop attending school.

#### § 11.5. Part-time attendance for potential graduates.

(a) Students of school age may qualify for graduation by attending the public school part-time when lawfully employed part-time or when officially enrolled in a postsecondary institution part-time. For reimbursement purposes, membership in the public school shall be calculated by counting the time the students spend in the public school on a pro rata basis.

(b) Public schools that offer students enrollment at a postsecondary institution as part of the high school program and pay the tuition, fees and textbooks on behalf of students may continue to include the students in their average daily membership.

#### § 11.6. Part-time enrollment of alternative education students.

Students may be allowed to attend public school less than full-time because of participation in a Department approved alternative program operated by a public school or a private alternative education institution as provided by section 1903-E of the Public School Code of 1949 (24 P. S. § 19-1903-E). For reimbursement purposes, the students may be counted as in full membership.

#### § 11.7. Religious objections.

Students shall be excused from instruction as provided by § 4.4(d)(3) (relating to general policies).

#### § 11.8. Definitions.

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

*Instructional activities*—The term includes the following:

(i) Classroom instruction and instructional activities provided under the direction of certified school employees.

(ii) Student services, such as guidance and counseling services, psychological services, speech pathology and audiology services and student health services.

(iii) Opening exercises.

(iv) Homeroom periods.

(v) Supervised study halls.

(vi) Assemblies.

(vii) Clubs, student councils and similar activities conducted during school hours.

(viii) School, group or class educational trips, to which admission is not charged to students or parents and a certified school employee accompanies the students.

(ix) Civil defense, fire, bus evacuation and similar drills.

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

(xi) Up to 3 days for graduation preparation by students in graduating classes, so long as the preparation occurs within 60 days of the commencement ceremony and under the supervision of certified school employees.

(xii) Early dismissal and delayed opening due to inclement weather.

*Meritorious educational program*—An educational program that, in the opinion of the Secretary, warrants an exception to the dates and times of school terms and sessions as provided in section 1504(a) of the Public School Code of 1949 (24 P. S. § 15-1504(a)).

*Out-of-school programs*—Programs conducted off school grounds, such as cooperative education, job shadowing, internships, community exploration, registered apprenticeships and community service-learning designed to provide students with real world experiences under the general supervision of professional school staff.

*Postsecondary institution*—A community college, 2-year college, college, university or other authorized degree granting institution approved by the Department in accordance with Chapters 31 and 40 (relating to higher education general provisions; and institutional approval).

**ADMISSION TO PUBLIC SCHOOLS**

**§ 11.11. Entitlement of resident children to attend public schools.**

(a) *Entitlement.*

(1) A school age child is entitled to attend the public schools of the child's district of residence. A child's district of residence is that in which the parents or the guardian resides. When the parents reside in different school districts due to separation, divorce or other reason, the child may attend school in the district of residence of the parent with whom the child lives for a majority of the time, unless a court order or court approved custody agreement specifies otherwise. If the parents have joint custody and time is evenly divided, the parents may choose which of the two school districts the child will enroll for the school year. If the child is an emancipated minor, the resident school district is the one in which the child is then living. For purposes of this section, an emancipated minor is a person under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated.

(2) Transportation for students must be provided consistent with the policy of the school district that the students are attending.

(b) *Enrollment.* A school district or charter school shall normally enroll a child the next business day, but no later than 5 business days of application. The school district or charter school has no obligation to enroll a child until the parent, guardian or other person having control or charge of the student making the application has supplied proof of the child's age, residence, and immunizations as required by law. School districts and charter schools receiving requests for educational records from another school district or charter school shall forward the records within 10 business days of receipt of the request.

(c) *Nonresident children.* The requirement of subsection (b) applies equally to nonresident children who are children living in facilities or institutions as defined in § 11.18 (relating to nonresident child living in facilities or institutions), or foster homes, or with a district resident who is supporting the child without personal compensation as defined in § 11.19 (relating to nonresident child living with a district resident), provided that the person making the application has supplied the documentation required by law.

(d) *Immigration status.* A child's right to be admitted to school may not be conditioned on the child's immigration status. A school may not inquire regarding the immigration status of a student as part of the admission process. This provision does not relieve a student who has obtained an F-1 visa from the student's obligation to pay tuition under Federal law.

(e) *Home language survey.* A school entity shall administer a home language survey to all students seeking first time enrollment in its schools in accordance with requirements of the United States Department of Education's Office for Civil Rights.

**§ 11.12. School age.**

School age is the period of a child's life from the earliest admission age to a school district's kindergarten program until graduation from high school or the end of the school term in which a student reaches the age of 21 years, whichever occurs first.

**§ 11.14. Admission to kindergarten when provided.**

When kindergarten is provided, the board of school directors shall establish the district's minimum entry age to kindergarten. The minimum entry age to kindergarten may not be less than 4 years, no months, before the first day of the school term. The district's maximum entry age to kindergarten must be less than the district's entry age for beginners.

**§ 11.15. Admission of beginners.**

The board of school directors shall establish the district's minimum entry age for beginners, which may not be less than a chronological age of 5 years and 7 months before September 1, nor more than 6 years, no months, before the first day of the school term of the district. The board of school directors shall permit a child of beginners' age to attend the district's first grade and may not require the child to attend kindergarten, pre-first grade, transitional class or other grade or class that is not regular first grade without parental consent.

**§ 11.16. Early admission of beginners.**

The board of school directors of a school district may, upon parental request and when recommended by a public school psychologist and approved by the district superintendent of schools, admit as a beginner a child with a chronological age of 5 years and who has demonstrated readiness for entry as of the first day of the district's school term. A board of school directors is not required to admit a child as a beginner whose chronological age is less than the district's established admission age for beginners.

**§ 11.18. Nonresident children living in facilities or institutions.**

(a) The board of school directors of a school district in which there is located a licensed shelter, group home, maternity home, residence, facility, orphanage or other institution for the care or training of children or adolescents, shall admit to the district's public schools school-age children who are living at or assigned to the facility or institution and who are residents of the district or another school district in this Commonwealth.

(b) The board of school directors of a school district in which a day treatment program, operated under approval from the Department of Public Welfare by a private children and youth agency, is located may purchase educational services for a child referred to the program under section 1310(b) of the Public School Code of 1949 (24 P. S. § 13-1310(b)).

(c) If the school district of residence of a child living at or assigned to a facility or institution, as described in subsection (a) or (b), cannot be determined, but it is decided by the Secretary that the child is a resident of this Commonwealth, the child shall be permitted to attend the public schools of the district. A child covered by this subsection shall include a child whom the Secretary finds to have been placed by the child's resident parents or guardian in the care or custody of a Commonwealth facility and subsequently abandoned or deserted.

(d) The enrollment requirements outlined in § 11.11 (relating to entitlement of resident children to attend public schools) also apply to nonresident children living in facilities or institutions.

**§ 11.19. Nonresident child living with a district resident.**

(a) A nonresident child is entitled to attend the district's public schools if that child is fully maintained and

supported in the home of a district resident as if the child were the resident's own child and if the resident receives no personal compensation for maintaining the student in the district. Before accepting the child as a student, the board of school directors of the district shall require the resident to file with the secretary of the board of school directors either appropriate legal documentation to show dependency or guardianship or a sworn statement that the child is a resident of the district, the child is supported fully without personal compensation or gain, and that the resident will assume all personal obligations for the child relative to school requirements and intends to so keep and fully support the child continuously and not merely through the school term. The resident's receipt of public payments, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), maintenance on public or private health insurance, pre-adoptive support or other payments for or on account of the child, may not be deemed to be personal compensation or gain under this section. The school board may require other reasonable information to be submitted by the resident to substantiate the sworn statement in accordance with guidelines established by the Department, as authorized by section 1302(2) of the Public School Code of 1949 (24 P. S. § 13-1302(2)).

(b) The enrollment requirements outlined in § 11.11 (relating to entitlement of resident children to attend public schools) also apply to a nonresident child living with a district resident.

#### **§ 11.20. Nonimmunized children.**

(a) A child may not be admitted to or permitted to attend a public, private, nonpublic, special education or vocational school in a district unless the immunization, exemption or provisional admission requirements of the Department of Health, at 28 Pa. Code Chapter 23, Subchapter C (relating to immunization), have been met or the child has received from the chief school administrator of the public, private, nonpublic, special education or vocational school a medical or religious exemption from immunization under 28 Pa. Code § 23.84 (relating to exemption from immunization).

(b) A child who has not received all doses of the required immunizations or who has not been exempted from immunization, but who has received at least one dose of each of the required immunizations, may be provisionally admitted and attend public school for a period of up to 8 months. Provisional admission or continued attendance shall be conditioned upon the parent or guardian's submission to the superintendent of a plan for the student's completion of the required immunization doses. The plan shall be reviewed by the school district at least every 60 calendar days. If, after 8 months, the child has not received all doses of the required immunizations, the child thereafter may not be further admitted to or be permitted to attend the public schools until all doses have been received.

(c) A child who has been admitted to school or permitted attendance in violation of this section may not be counted toward receipt of Commonwealth reimbursement for the period of the admission or attendance.

#### **ABSENCES FOR TEMPORARY PERIODS**

#### **§ 11.21. Religious holidays and religious instruction.**

(a) Upon written parental request, and in accordance with the policies of the district's board of school directors, students may be excused from school for religious holidays observed by bona fide religious groups.

(b) Upon written parental request, a student shall be excused from school to attend classes for religious instruction under section 1546 of the Public School Code of 1949 (24 P. S. § 15-1546). The excusal shall be limited to a total of not more than 36 hours per school year.

(c) A student's absence from school for religious holidays or for religious instruction shall be recorded as an excused absence. A penalty may not be attached to an absence for religious holidays or instruction.

#### **§ 11.22. Tutorial work.**

(a) Upon written parental request, a student may be excused during school hours for the purpose of receiving tutorial instruction in a field not offered in the district's curricula only if the following requirements are met:

(1) The excusal does not interfere with the student's regular program of studies.

(2) The qualifications of the instructor are approved by the district superintendent.

(b) A school district may adopt additional conditions for excusal that it deems reasonable.

#### **§ 11.23. Health care.**

Upon written parental request, a student may be excused during school hours for the purpose of obtaining professional health care or therapy service only if the following requirements are met:

(1) The health or therapeutic services are to be rendered by Commonwealth licensed practitioners.

(2) It is not practical or possible for the student to receive the services outside of school hours.

(3) The time of necessary absence from school involves a minimum of interference with the student's regular program of studies.

#### **§ 11.24. Unaccounted absences.**

Students whose names are on the active membership roll, who are at anytime in the school term absent from school for 10 consecutive school days, shall thereafter be removed from the active membership roll unless one of the following occurs:

(1) The district has been provided with evidence that absence may be legally excused.

(2) Compulsory attendance prosecution has been or is being pursued.

#### **§ 11.25. Temporary excusals due to illness or other urgent reasons.**

(a) A principal or teacher may, upon receipt of satisfactory evidence of mental, physical or other urgent reasons, excuse a student for nonattendance during a temporary period, but the term "urgent reasons" shall be strictly construed and does not permit irregular attendance. A school district shall adopt rules and procedures governing temporary excusals that may be granted by principals and teachers under this section. Temporary excusals may not exceed 3 months.

(b) A school district, area vocational technical school, charter or independent school may provide students temporarily excused under this section with homebound instruction for a period not to exceed 3 months. A school district, area vocational technical school, charter or independent school may request approval from the Department to extend the provision of homebound instruction, which shall be reevaluated every 3 months. When a student receives homebound instruction, the student may

be counted for attendance purposes as if in school. A school district shall be reimbursed for homebound instruction provided to a student under section 2510.1 of the Public School Code of 1949 (24 P. S. § 25-2510.1).

(c) A school district shall adopt policies that describe the instructional services that are available to students who have been excused under this section. The policies must include statements that define the responsibilities of both the district and the student with regard to these instructional services.

**§ 11.26. Nonschool district sponsored educational tours and trips.**

(a) A school district may excuse a student from school attendance to participate in a non-school district sponsored educational tour or trip, if the following conditions are met:

- (1) The student's parent or guardian prior to the tour or trip submits to the school district a written request for the excusal.
- (2) The student's participation on the tour or trip has been approved by the district superintendent or a designee.
- (3) There is an adult who is directing and supervising the student during the tour or trip who is acceptable to both the parents or guardian and the district superintendent.

(b) A school district may limit the number and duration of tours or trips for which excused absences may be granted to a student during the school term.

**§ 11.27. Graduation.**

The intent of this section is to specify the effect of graduation on membership for the purpose of calculating school subsidies.

(1) A student's graduation from high school signifies both the student's fulfillment of the high school graduation requirements set forth in Chapter 4 (relating to academic standards and assessment) and the end of the student's membership in a school district for the purpose of State subsidy reimbursement. A graduating student's date of graduation shall be that of the commencement ceremony of the student's high school.

(2) This paragraph applies to a graduating high school student who is attending an area vocational technical school (AVTS). If the AVTS instructional calendar extends beyond the student's high school commencement date, for purposes of determining whether the student has received 180 days of instruction and for purposes of determining State subsidy computation, the student may be maintained in membership at the AVTS until the end of the AVTS calendar.

(3) Graduating students may be counted as in attendance for no more than 3 days of commencement preparation. Commencement preparation may be held on Saturdays within 60 days of the commencement ceremony. During commencement preparation days, students shall be under the supervision of certificated school district employees.

(4) School districts, AVTSs and charter schools may permit students with disabilities identified under Chapter 14 (relating to special education program and services) to participate in graduation ceremonies with their graduating class, even though they will not be awarded a diploma and will continue to receive educational services under Chapter 14. The participation of those students in gradu-

ation ceremonies does not preclude the school district from counting those students in its membership for subsidy purposes.

**§ 11.28. Out-of-school programs and part-time employment.**

(a) *Out-of-school programs.* For reimbursement purposes, students engaged part-time in an out-of-school program shall be counted as if in regular school attendance. The programs must be arranged as an integral part of the school curricula and shall be properly supervised by a certificated employee. Students attending school and enrolled in supervised programs may be counted as in full membership.

(b) *Part-time employment.* A student may be excused on a part-time basis from public school attendance to pursue non-school district supervised outside employment. For reimbursement purposes, membership in the public schools shall be calculated by counting the students only for those periods while they are in school. Excusal of students to pursue non-school district supervised outside employment shall be consistent with the applicable provisions of section 1330 of the Public School Code of 1949 (24 P. S. § 13-1330) as they relate to excusals from compulsory attendance for purposes of employment and with the school district's rules governing excusals. Students excused on a full-time basis may not be counted as in membership.

**EXCUSALS FROM PUBLIC SCHOOL ATTENDANCE**

**§ 11.31. Students not enrolled in public schools due to private tutoring.**

(a) *Private tutoring requirements.*

(1) The instruction of students not enrolled in public schools due to private tutoring by a qualified tutor under section 1327 of the Public School Code of 1949 (24 P. S. § 13-1327) must include for elementary school level students: English, including spelling, reading and writing; arithmetic; geography; the history of the United States and Pennsylvania; science; civics, including loyalty to the State and National government; safety education, including regular and continuous instruction in the dangers and prevention of fires; health, including physical education and physiology; music; and art.

(2) For secondary school level students, the instruction must include: art; English; health; mathematics; music; physical education; science; and social studies, including civics, world history, United States and Pennsylvania history.

(3) The instruction may include, at the discretion of the tutor, economics, biology, chemistry, foreign languages, trigonometry or other age appropriate planned instruction as contained in Chapter 4 (relating to academic standards and assessment).

(4) The instruction must be given during the school year for a minimum of 180 days of instruction or for a minimum of 900 hours of instruction for an elementary level student and a minimum of 990 hours of instruction for a secondary level student as the equivalent of 180 days of instruction.

(b) *Documentation regarding private tutoring.*

(1) School district approval is not required to commence private tutoring.

(2) The parent shall provide written assurance that the instructional requirements listed in this section have been met.



(3) When a superintendent receives a complaint that a student is not being provided instruction for the time prescribed or that a student is not making satisfactory progress in the tutoring program, the superintendent may request evidence of student academic progress and documentation that instruction is provided for the required number of days and hours.

(4) Evidence of satisfactory progress may include samples of student work, assessments, progress reports, report cards and evaluations.

(5) Documentation of instructional time may include logs maintained by the tutor or parent, attendance records or other records indicating the dates and time instruction was provided.

**§ 11.31a. Students not enrolled in public schools due to participation in a home education program.**

Students of compulsory school age participating in a home education program are subject to sections 1327(d) and 1327.1 of the Public School Code of 1949 (24 P. S. §§ 13-1327(d) and 1327.1). School district approval is not required to commence home education programs.

**§ 11.32. Students attending nonpublic or private schools.**

A child of compulsory school age regularly attending full-time a nonpublic school that is in compliance with section 1327(b) of the Public School Code of 1949 (24 P. S. § 13-1327(b)) or an accredited or licensed private school, in which the instruction prescribed by statute and this part is taught, shall be in compliance with the compulsory attendance requirements.

**§ 11.33. Dual enrollment students enrolled part-time in the public schools.**

For reimbursement purposes, membership and attendance of nonpublic school students, students in a private tutoring program under section 1327 of the Public School Code of 1949 (24 P. S. § 13-1327), and students in a home education program under section 1327.1 of the Public School Code of 1949 (24 P. S. § 13-1327.1), lawfully enrolled part-time in the public schools, shall be calcu-

lated by counting the time the students spend in the public school program on a pro rata basis.

**§ 11.34. Excusals from attendance for other than temporary reasons.**

(a) A school district may excuse a school age child from compulsory school attendance upon recommendation of the school physician and a psychiatrist or public school psychologist, or both, and with the approval of the Secretary. The excusal, which shall be reevaluated every 3 months, may be extended upon the recommendation of the school physician and with the approval of the Secretary. Children so excused shall be entered on the inactive roll.

(b) Prior to seeking excusal and the Secretary's approval, the school district shall provide the child's parents with written notice of both the proposed excusal, including the reasons for the excusal, and an opportunity to be heard. For a child enrolled in special education, the notice and opportunity to be heard shall be governed by §§ 14.161 and 14.162 (relating to prehearing conferences; and impartial due process hearing and expedited due process hearing).

**APPLICABILITY**

**§ 11.41. School district policies and rules.**

(a) Each school board shall adopt written policies concerning district child accounting, attendance, admission, excusal and program procedures as necessary to implement this chapter. The policies shall be a matter of public record.

(b) Each school board shall adopt, and distribute yearly to parents, written rules governing student admissions, attendance, absences and excusals, that are in conformity with this chapter.

(c) Each school board shall adopt a written policy permitting students to be excused for participation in agricultural fairs in conformity with section 1329(b) of the Public School Code of 1949 (24 P. S. § 13-1329(b)).

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