

**CHAPTER 403. COMPLIANCE WITH THE NO CHILD LEFT  
BEHIND ACT OF 2001**

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**Authority**

The provisions of this Chapter 403 issued under section 2603-B(d)(10)(i) of the Public School Code of 1949 (24 P. S. § 26-2603-B(d)(10)(i)), unless otherwise noted.

**Source**

The provisions of this Chapter 403 adopted December 13, 2002, effective December 14, 2002, 32 Pa.B. 6096, unless otherwise noted.

**§ 403.1. Purpose and scope.**

This chapter describes the standards of the Department, approved by the State Board, that have been adopted under section 2603-B(d)(10) of the Public School Code (24 P. S. § 26-2603-B(d)(10)) to facilitate compliance by the Commonwealth with the requirements of the No Child Left Behind Act of 2001 (Pub. L. No. 107-110, 115 Stat. 1425).

**§ 403.2. Definitions.**

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

*AYP*—Adequate yearly progress as defined by section 1111(b)(2)(C) of Title I (20 U.S.C.A. § 6311(b)(2)(C)), added by NCLB.

*Associate's degree*—Associate's degree as described in § 31.21(b)(1) (relating to curricula).

*Core academic subjects*—Core academic subjects as defined by section 9101(11) of the ESEA (20 U.S.C.A. § 7801(11) (relating to definitions)), as amended by the NCLB.

*Dangerous incident*—A weapons possession incident resulting in arrest (guns, knives or other weapons) or a violent incident resulting in arrest (homicide, kidnapping, robbery, sexual offenses and assault) as reported on the Violence and Weapons Possession Report (PDE-360).

*Department*—The Department of Education of the Commonwealth.

*ESEA*—The Elementary and Secondary Education Act of 1965 (20 U.S.C.A. §§ 6301—7941), as amended by the NCLB.

*Highly qualified elementary teacher*—Highly qualified elementary teacher as defined by section 9101(23) of the ESEA (20 U.S.C.A. § 7801(23)), as amended by the NCLB.

*Highly qualified middle or secondary teacher*—Highly qualified middle or secondary teacher as defined by section 9101(23) of the ESEA as amended by the NCLB.

*Institution of higher education*—Institution of higher education as defined by section 9101(24) of the ESEA.

*LEA*—A local educational agency.

*NCLB*—The No Child Left Behind Act of 2001 (Pub. L. No. 107—110, 115 Stat. 1425) (20 U.S.C.A. §§ 6053e, 6054b, 6055h, 6056a, 1041—1044, 3427 and 6052).

*PSSA*—The Pennsylvania System of State Assessment.

*Persistently dangerous school*—A public elementary, secondary or charter school that meets one of the following criteria in the most recent school year and in 1 additional year of the 2 years prior to the most recent school year:

- (i) For a school whose enrollment is 250 or less, at least five dangerous incidents.
- (ii) For a school whose enrollment is 251 to 1,000, a number of dangerous incidents that represents at least 2% of the school's enrollment.
- (iii) For a school whose enrollment is over 1,000, 20 or more dangerous incidents.

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

*Safe public school*—A public school that has not been designated as a persistently dangerous school under this chapter or that has had that designation removed by the Department.

*State Board*—The State Board of Education of the Commonwealth.

*Title I*—Title I of the ESEA (20 U.S.C.A. §§ 6301—6578), as amended by the NCLB.

*Two years of study at an institution of higher education*—Completion of 48 credits at an institution of higher education.

*Victim or student victim*—The student against whom a violent criminal offense has been perpetrated while the student was in or on the grounds of the public elementary or secondary school that the student attends.

*Violent criminal offense*—Any of the following offenses that are set forth in 18 Pa.C.S. (relating to Crimes Code):

- (i) Kidnapping.
- (ii) Robbery.
- (iii) Aggravated assault (on the student).
- (iv) Rape.
- (v) Involuntary deviate sexual intercourse.
- (vi) Sexual assault.

- (vii) Aggravated indecent assault.
- (viii) Indecent assault.
- (ix) Attempt to commit any of the following: homicide, murder or voluntary manslaughter.

**Source**

The provisions of this § 403.2 amended December 27, 2002, effective December 28, 2002, 32 Pa.B. 6359; amended June 27, 2003, effective June 28, 2003, 33 Pa.B. 2980. Immediately preceding text appears at serial pages (295085) to (295086).

**§ 403.3. Single accountability system.**

(a) *Requirement of NCLB.* Section 1111 of Title I, added by NCLB (20 U.S.C.A. § 6311), requires each state to develop and implement a single, state-wide state accountability system that will be effective in ensuring that all LEAs, public elementary schools and public secondary schools make AYP as defined in section 1111(b)(2)(C) of Title I.

(b) *Proficiency as a measure of student progress.*

(1) As the starting point for calculating the AYP, the Department will use the proficient level of student performance, as adopted by the State Board on May 10, 2001. See 31 Pa.B. 2763 (May 26, 2001).

(2) Using data from the 2001-02 school year as the baseline, the Department will determine the number of students meeting or exceeding the proficient level of achievement on State assessments.

(c) *Adequate yearly progress.*

(1) The Department will calculate the AYP by using the “intermediate method” of calculation, involving “stepped goals.”

(2) The Department will provide yearly targets to assist the LEAs in measuring progress within the intermediate method.

(3) The Department will use graduation rates as an additional indicator of the AYP for secondary schools and students.

(4) The Department will use child attendance rates as an additional indicator of the AYP for elementary schools and students.

(5) The Department will use 40 as the required number of students tested per building to form a group for the purposes of measuring the AYP of students with disabilities, limited English proficient students and students who are members of economically disadvantaged, major racial and ethnic groups.

(d) *Assessments.*

(1) Section 1111(b)(3)(A) of Title I specifically requires that, beginning no later than the 2005-06 school year, states must assess all students in grades three through eight against the challenging state academic content standards in, at a minimum, math and reading or language arts, or both. In addition, beginning in the 2007-08 school year, states must assess all students at least once in each of the intermediate, middle and high school levels against the challenging state academic content standards for science.

(i) To accomplish the mandates described in paragraph (1), the LEAs shall continue to use the PSSA to assess students in grades three, five, eight

and eleven in reading and mathematics and to assess students at least once in each of the intermediate, middle and high school levels in writing.

(ii) The Department will supplement the PSSA with a single assessment for reading and mathematics that will be administered to students in each of grades four, six and seven.

(iii) The Value Added Assessment System shall be implemented as a component of the Commonwealth's assessment system to provide the LEAs with analyses and reports to offer valuable information for focused program improvement to increase performance.

(2) Section 3121 of Title III of the ESEA, added by the NCLB (20 U.S.C.A. § 6841), requires that each state approve evaluation measures that are designed to assess the progress of children in attaining English proficiency, including a child's level of comprehension, listening, speaking, reading and writing skills in English.

(i) To accomplish the mandates described in paragraph (2), the Commonwealth will serve as the leader in a consortium of states seeking to develop a language proficiency assessment that will meet the needs of the NCLB.

(ii) The Department may use the consortium's assessment to evaluate the progress of students in attaining English proficiency, including a child's level of comprehension, listening, reading and writing skills in English.

(iii) The Department will identify commercially developed language proficiency assessment that the LEAs shall administer.

#### Source

The provisions of this § 403.3 amended June 4, 2004, effective retroactively to June 14, 2003, 34 Pa.B. 2975; amended June 25, 2004, effective June 26, 2004, 34 Pa.B. 3355. Immediately preceding text appears at serial pages (304049) to (304050).

#### Cross References

This section cited in 22 Pa. Code § 19.1a (relating to general provisions).

### § 403.4. Highly qualified teachers.

(a) *Requirements of NCLB.* With the exception of teachers teaching in a public charter school who are exempt from certification under section 1724-A of the Public School Code of 1949 (Public School Code) (24 P. S. § 17-1724-A):

(1) Section 1119(a) of Title I (20 U.S.C.A. § 6319(a) (relating to teacher qualifications and measurable objectives)), added by the NCLB, requires LEAs receiving assistance under the NCLB to ensure that, beginning with the 2002-2003 school year, all newly hired teachers supported with Title I funds are highly qualified.

(2) Section 1119(a) of Title I, added by NCLB, requires each state to ensure that all teachers teaching in core academic subjects within the state are highly qualified by the end of the 2005-2006 school year.

(b) *Current certification system.*

(1) The Department may continue to utilize the intern certification program described in Chapters 49 and 354 (relating to certification of professional personnel; and preparation of professional educators), which culminates in the issuance of an Instructional I Certificate (see §§ 49.91, 49.92 and 354.24(5) and (6) (relating to criteria for eligibility; term of validity; and academic performance)) to provide flexible and accelerated pedagogical training to teachers who have demonstrated competency in a subject area, provided that the first year of teaching includes intensive supervision by an approved institution.

(2) In accordance with Chapter 49, the student teaching semester is structured to include assessment of the pedagogical skills of teacher candidates.

(c) *Additional certification avenues.* Provided that at the time of application for Pennsylvania instructional certification, the applicant satisfies the basic certification requirements of the Public School Code (see 24 P. S. §§ 11-1109, 12-1202 and 12-1209 (relating to qualifications; State certificates; and disqualifications)), and all other requirements in Chapters 49 and 354 which are not contrary to paragraphs (1)—(3):

(1) Teachers holding an Instructional certificate issued under the Public School Code (24 P. S. §§ 1-101—14-1411) may add an instructional area to the certificate by passing an appropriate content area test in the area to be certified without meeting further academic and testing requirements.

(2) Candidates holding a valid and current instructional certificate issued by one of the states party to the Interstate Certification Agreement with Pennsylvania may be eligible for certification if they meet the requirements outlined in § 49.65 (relating to out-of-state and Nationally-certified applicants).

(3) Teachers successfully completing a National teacher-training program approved by the State Board that requires a candidate to demonstrate mastery of the subject area to be taught and professional knowledge needed for classroom effectiveness may be certified to teach in this Commonwealth without meeting further academic and testing requirements.

(i) To the extent that the approved National teacher-training program involves a classroom teaching component requiring certification, the Department may issue an intern certificate to the teacher for use during the program.

(ii) The American Board for Certification for Teacher Excellence and Teach for America were approved by the State Board by means of resolution on November 14, 2002. See 32 Pa.B. 6030 (December 7, 2002).

(iii) National teacher-training programs identified for State Board consideration after December 28, 2002, may be approved by State Board resolution without the need to amend this chapter.

(d) *NCLB Bridge Certificates.*

(1) Teachers holding a level I or II certificate issued prior to July 1, 2004, and who are employed in one of the following listed circumstances may be awarded an NCLB Bridge Certificate if qualified therefore under paragraph (4):

(i) Teaching in grades seven, eight or nine in a middle/junior high school.

(ii) Teaching in a Department-approved Alternative Education Program.

(iii) Teaching direct core academic content on the secondary level and possess either an English as a Second Language or Special Education certificate.

(2) NCLB Bridge Certificates will not be issued to applicants after July 1, 2005. The Secretary of Education may extend this deadline on an individual, case-by-case basis, when exceptional situations warrant.

(3) The NCLB Bridge Certificate is valid for 3 years or until an earlier time at which the individual is awarded an Instructional I Certificate under paragraph (5). The NCLB Bridge Certificate cannot be renewed.

(4) Qualification for issuance of an NCLB Bridge Certificate shall be based on an evaluation system developed by the Department. The evaluation system shall be used to determine whether the applicant is highly qualified in the academic discipline or disciplines in which the applicant is teaching using the following criteria:

(i) Satisfactory teaching experience in delivering instruction in the academic content area at the appropriate level.

(ii) Professional education activities credited under section 2603-B(d) of the Public School Code of 1949 (24 P. S. § 2603-B(d)) (Act 2003-48) in the direct academic content area in which the applicant teaches. This may include college credit, postsecondary degrees and approved continuing professional education hours.

(iii) College credits earned in the academic subject area in which the applicant teaches.

(iv) Academic scholarship in the academic content area in which the applicant teaches, including the following:

(A) Recognition as school district or State teacher-of-the year.

(B) Recipient of a State or National teaching award.

(C) Authorship of an article in a peer review journal.

(D) Authorship of a published textbook.

(E) Teaching a credit-based course at an approved postsecondary institution.

(v) Tutoring students in the academic content area in which the NCLB Bridge certificateholder seeks full certification in a satisfactory manner on a sustained basis in a structured, Department-approved tutoring program.

(5) An individual who holds an NCLB Bridge Certificate, awarded through the procedure outlined in paragraph (1), may be awarded an Instructional I

Certificate based on evaluation of the applicant's experience, professional education and related professional criteria while engaged in teaching under the NCLB Bridge Certificate. The evaluation shall include the following:

(i) Satisfactory teaching experience in delivering instruction in the content area or areas at the appropriate level since receipt of their NCLB Bridge Certificate.

(ii) Professional education activities credited under sections 1205.1 and 1205.2 of the Public School Code of 1929 (24 P. S. §§ 12-1205.1 and 12-1205.2) in the direct content area or areas since receipt of their NCLB Bridge Certificate. This may include college credit, postsecondary degrees and approved continuing professional education hours directly in the content area or areas in which the applicant seeks certification.

(iii) College credits achieved in the academic subject area being taught or assessed.

(iv) Academic scholarship in the academic content area that one teaches including:

(A) School district or State teacher-of-the-year.

(B) Recipient of a State or National teaching award.

(C) Authorship of a published textbook in the content area.

(D) Authorship of an article within the academic field the individual instructs published in a peer review journal.

(E) Teaching the content area in a credit-based postsecondary institution.

(F) National board certification during the period in which the individual held the NCLB Bridge Certificate.

(6) The Department will develop and submit for the approval of the State Board the applicant evaluation and NCLB Bridge Certificateholder evaluation systems described in paragraphs (3) and (4) prior to November 1, 2004.

(7) Notwithstanding the timelines in paragraphs (1) and (2), teachers holding a level I or II certificate issued prior to July 1, 2005, and who are employed in one of the following circumstances may apply for an NCLB Bridge Certificate no later than July 30, 2006, if qualified therefore under paragraph (4):

(i) A teacher who is certified in and teaching special education.

(ii) A teacher who is only certified in elementary education and is teaching two or more subjects in grades seven, eight or nine in a middle/junior high school, provided that the following conditions are also met:

(A) The teacher is required to become highly qualified for the position held.

(B) If teaching Math or English, or both, the teacher uses the Bridge I process to become highly qualified in those areas.

**Source**

The provisions of this § 403.4 adopted December 27, 2002, effective December 28, 2002, 32 Pa.B. 6359; amended June 25, 2004, effective June 26, 2004, 34 Pa.B. 3355 and 3358; amended July 1, 2005, effective July 2, 2005, 35 Pa.B. 3662. Immediately preceding text appears at serial pages (304364) to (304367).

**§ 403.5. Paraprofessionals.****(a) Requirements of NCLB.**

(1) Section 1119(f) of Title I (20 U.S.C.A. § 6319(f)) added by NCLB, requires that all Title I funded instructional paraprofessionals hired by an LEA to hold a high school diploma or GED.

(2) Section 1119(c) of Title I (20 U.S.C.A. § 6319(c)), added by NCLB, requires that all Title I funded instructional paraprofessionals hired by an LEA after January 8, 2002, to have one of the following:

(i) An associate's degree.

(ii) Completed at least 2 years of study at an institution of higher education.

(iii) Met a rigorous standard of quality demonstrated through a state or local assessment.

(3) Section 1119(d) of Title I (20 U.S.C.A. § 6319(d)) requires that all Title I funded instructional paraprofessionals hired by an LEA prior to January 8, 2002, meet the requirements of paragraph (2) by January 8, 2006.

**(b) Local assessments.**

(1) To accomplish the mandates described in subsection (a)(2)(iii), LEAs may utilize a local assessment.

(2) The Department will develop a process for reviewing local assessments to determine that they satisfy the requirements of the NCLB.

**Source**

The provisions of this § 403.5 adopted December 27, 2002, effective December 28, 2002, 32 Pa.B. 6359.

**§ 403.6. Unsafe school choice option.**

(a) *Requirement of the NCLB.* The Department adopts these standards as required by the Unsafe School Choice Option provision of section 9532 of the NCLB (Section 9532) (20 U.S.C.A. § 7912).

(b) *Definition.* For purposes of this section, "local educational agency" or "LEA" means a school district, an area vocational-technical school, an intermediate unit or a charter school.



- (c) *Student opportunity to transfer.*
- (1) *Victim of a violent criminal offense.*
- (i) Except as provided as follows, a student who becomes a victim of a violent criminal offense while in or on the grounds of the public elementary or secondary school that the student attends, shall be offered the opportunity to transfer to a safe public school within the LEA, including a charter school.
- (ii) For a student victim to be entitled to transfer to another school under this chapter, the violent criminal offense first must be reported to law enforcement authorities by the student, the student's parent or guardian, or school officials.
- (iii) A student victim (or the student's parent or guardian) may apply to the LEA to transfer to another school within 30 calendar days after the incident is reported to school authorities.
- (2) *Student who attends a persistently dangerous school.*
- (i) Except as provided as follows, a student who attends a persistently dangerous school shall be offered the opportunity to transfer to a safe public school within the LEA, including a charter school.
- (ii) A student who attends a persistently dangerous school may apply to transfer at any time while the school maintains that designation.
- (d) *Responsibilities of LEAs.*
- (1) *Toward victims of violent criminal offenses.*
- (i) Within 10 calendar days of receiving notice of the violent criminal offense, the LEA shall notify the student victim that the student has the right to transfer to a safe public elementary or secondary school within the LEA, including a public charter school.
- (ii) The notification and offer to transfer shall state that no student is required to transfer to another school.
- (iii) Upon receipt of an application to transfer, the LEA shall transfer the student as soon as possible, and shall transfer the student within 10 calendar days after receiving the application.
- (iv) When considering a student's request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent.
- (v) To the extent possible, the LEA shall allow the student to transfer to a school that is making adequate yearly progress, and one that is not identified as being in school improvement, corrective action or restructuring.
- (vi) A charter school only has to accept a student who meets its admission criteria if space is available.
- (vii) If there is not another safe school within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students.
- (2) *Toward students who attend a persistently dangerous school.*

(i) Under the act of June 30, 1995 (P. L. 220, No. 26) known as the Pennsylvania's Safe Schools Act, all school entities as defined by the act shall report to the Department incidents involving acts of violence; possession of a weapon; or the possession, use, or sale of a controlled substance, alcohol or tobacco by any person on school property or at school-sponsored events or on school transportation to and from school or school-sponsored activities.

(ii) Within 10 school days of receiving notification by the Department, an LEA shall notify the parent or legal guardian of each student who attends the school that the Department has identified the school as persistently dangerous.

(iii) The LEA shall offer the students who attend the school the opportunity to transfer to a safe public school, including a charter school, within the LEA.

(iv) The notification and offer to transfer shall state that no student is required to transfer to another school.

(v) Upon receipt of an application to transfer, the LEA shall transfer the student within 30 calendar days.

(vi) When considering a student's request to transfer to another school, the LEA shall take into account the particular needs of the student and the parent.

(vii) To the extent possible, the LEA shall allow the student to transfer to a school that is making adequate yearly progress, and one that is not identified as being in school improvement, corrective action or restructuring.

(viii) A charter school only has to accept a student who meets its admission criteria if space is available.

(ix) If there is not another safe school within the LEA to which students may transfer, the LEA is encouraged, but not required, to establish an agreement with a neighboring LEA to accept the transfer of students.

(x) The LEA shall submit a corrective action plan to the Department within 30 calendar days of receiving notification that a school has been identified as persistently dangerous.

(xi) The LEA shall receive approval from the Department for its corrective action plan and shall implement all steps contained in its corrective action plan within the time periods specified in that plan.

(xii) After the Department has notified an LEA that a school is no longer identified as a persistently dangerous school, the LEA is encouraged to permit students who transferred to complete their education at their new school. LEAs may not require students to return to their original school if the students are enrolled in a charter school.

(e) *Responsibilities of Department.*

(1) The Department will identify those schools that meet or exceed the criteria for a persistently dangerous school by analyzing the Annual Report on

School Violence and Weapons Possession (PDE-360). In identifying persistently dangerous schools, the Department will use the most recent data available to it from the reporting LEA, and will take all reasonable steps to verify that the data is valid and reliable.

(2) After review and verification of PDE-360 data, the Department will promptly inform an LEA when any of its schools meets the definition of persistently dangerous school.

(3) The Department will provide technical assistance to the LEA in developing a corrective action plan. The Department will review proposed corrective action plans submitted by LEAs and approve suitable corrective action plans.

(4) After approval of the corrective action plan, the Department will conduct a site visit to each persistently dangerous school to assess the school's progress in implementing the plan. If no significant improvement is observed, the Department may require the LEA to submit a revised corrective action plan for that school.

(5) The Department will reassess a school's designation as persistently dangerous at the end of the school year during which its corrective action plan is completed.

(6) During the reassessment described in this section, the Department will remove the designation if the school no longer meets the definition of persistently dangerous school.

**Source**

The provisions of this § 403.6 adopted June 27, 2003, effective June 28, 2003, 33 Pa.B. 2980.

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