

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p><i>(All Comments submitted on this regulation will appear on IRRC's website)</i></p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>	
<p>(1) Agency: State Board of Education</p>		<p>2017 MAR 13 PM 2:23</p> <p>IRRC</p> <p>RECEIVED</p> <p>IRRC Number: 3146</p>	
<p>(2) Agency Number: 006</p> <p>Identification Number: 336</p>			
<p>(3) PA Code Cite: 22 Pa. Code § 11.20</p>			
<p>(4) Short Title: Nonimmunized children.</p>			
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Karen Molchanow, Executive Director, (717) 787-3787, ra-stateboardofed@pa.gov</p> <p>Secondary Contact:</p>			
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>	
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The final rulemaking amends Section 11.20 of Title 22 of the Pennsylvania Code, relating to nonimmunized children, for consistency with recently-approved revisions to regulations of the Pennsylvania Department of Health (DOH) at Title 28, Chapter 23, Subchapter C of the Pennsylvania Code, relating to immunizations.</p>			
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>Sections 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. §§ 26-2603-B and 26-2604-B(a)-(b)). Also, Sections 1303a, 1327, and 1330 of the Public School Code of 1949 (24 P.S. §§ 13-1303a, 13-1327, and 13-1330).</p>			
<p>(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.</p> <p>No</p>			
<p>(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as</p>			

possible and approximate the number of people who will benefit.

Amendments to DOH regulations at Title 28, Chapter 23, Subchapter C (relating to immunizations) were approved by the Independent Regulatory Review Commission (IRRC) on October 20, 2016. This final rulemaking is necessary to ensure consistency among requirements related to the attendance of students who are not fully immunized that appear in regulations issued both by DOH and by the State Board of Education (Board). Parents, students, educators and school administrators at public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, will benefit from consistency in provisions related to student attendance that cross multiple state agencies.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Reviewing the available vaccination data from surrounding states shows that Pennsylvania's vaccination rates are lower than those states. The median length for provisional periods throughout the country is 30 days. The following chart shows the length of provisional periods for Pennsylvania and for surrounding states, along with the measles, mumps and rubella vaccination (MMR) rates for kindergarten (K) in those states for the year 2014. Although West Virginia has a provisional period as long as Pennsylvania, it has no religious/philosophical exception.

	Provisional period In days	2014 K MMR % rate
Ohio	15	91.9
W VA	240	97.6
VA	90	93.4
NY	14	98.2
NJ	15	92.3
MD	20	99.1
DE	14	97.8
PA	240	91.7

(Email from the Centers for Disease Control and Prevention (CDC), Federal Department of Health and Human Services, October 2013 (First Column); and Morbidity and Mortality Weekly Report (MMWR)

(Vol. 63, No. 41) (October 17, 2014) (Second Column)).

Pennsylvania's reduction of a provisional period for school admission should not have an impact, either positive or negative, on the Commonwealth's ability to compete with other states. The reduction of the provisional period should, however, increase herd immunity in the Commonwealth, and, therefore, make the Commonwealth a safer place for children and for adults.

With respect to the requirement that a dose of meningococcal conjugate vaccine (MCV) be required for entry into the 12th grade, ten other states require this second dose, including Ohio, West Virginia, New York, Indiana and Illinois. See http://www.immunize.org/laws/menin_sec.pdf

With respect to the pertussis dose at school entry, Pennsylvania is one of only two states that do not specifically require doses of Diphtheria, tetanus and pertussis (DTaP). New York state does not require either tetanus or pertussis, however, New York City does require it. See <https://www2a.cdc.gov/nip/schoolsurv/schimmrqmt.asp>

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final regulations do not affect other regulations of the Board. DOH regulations at Title 28, Chapter 23, Subchapter C (relating to immunizations) set forth immunization requirements for student attendance, including responsibilities of schools and school administrators pertaining to provisional admission to schools for students that are not fully immunized and recordkeeping requirements. Amendments to these DOH regulations were approved by IRRC on October 20, 2016, and the Board is taking action to ensure alignment in related provisions in 22 Pa. Code § 11.20. Because the regulations were not jointly promulgated, the agencies are doing this in separate rulemakings.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Prior to its approval of a proposed rulemaking, the Board offered three opportunities for public comment on the draft proposed revisions to 22 Pa. Code § 11.20 at public meetings of the Board. Opportunities for comment were provided during meetings of the Committee on Chapter 11 and the Council of Basic Education on January 13, 2016, and at the meeting of the State Board of Education on January 14, 2016.

In addition, to garner input from small business owners, the Board submitted a copy of the proposed regulation to the National Federation of Independent Business (NFIB) with a request that NFIB review and provide feedback relevant to the impact of the regulation on small business owners in the Commonwealth. The Board has not been apprised of any concerns on behalf of the small business community.

DOH also conducted outreach on its companion revisions proposed in regulation number 10-197. That outreach included gaining unanimous approval for draft proposed revisions to Title 28, Chapter 23, Subchapter C of the Pennsylvania Code (concerning immunization) from its Advisory Health Board on November 4, 2015. DOH also presented its proposed revisions to the Health Policy Board on November

17, 2015, distributed to media outlets an FAQ document discussing the proposed regulations, and reached out to representatives of the Pennsylvania School Nurses Association to discuss the proposed regulations.

On April 9, 2015, the Board published its proposed rulemaking in the *Pennsylvania Bulletin* (46 Pa.B. 1798) and provided a 30-day public comment period. Proposed revisions to DOH regulations at Title 28, Chapter 23, Subchapter C were published in the *Pennsylvania Bulletin* at the same time.

DOH convened its Advisory Health Board to review its final rulemaking on September 6, 2016, and published prior notice of the meeting in the *Pennsylvania Bulletin* on August 27, 2016. 46 Pa.B. 5642 (August 27, 2016).

At the May 11, 2016, public meeting of the Board's Council of Basic Education, the agenda included an information/discussion item on the proposed rulemaking related to 22 Pa. Code § 11.20. During that meeting, the Board's Chairman providing a summary of the public comments received on the proposed regulation and an opportunity for discussion among Board members about the proposed rulemaking and the public comments. The agenda also included an opportunity for members of the public to address the Council in person.

The Board provided additional opportunities for members of the public to speak on the final regulation prior to its adoption by including time for public comment on the agenda of the January 11, 2017, public meeting of the Committee on Chapter 11 and the January 12, 2017, public meeting of the Board.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The final rulemaking will assist the parents of school-aged children and the administrators and professional staff of public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, in understanding the rules for student attendance in relation to immunizations by providing clarity and consistency in regulations affecting such requirements across state agencies.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

All citizens of the Commonwealth with school-aged children and their children would be required to comply with the final rulemaking.

All public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools would be affected by these amendments. In 2016-17, there were 3,908 schools reporting immunizations.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The final rulemaking will benefit the parents of school-aged children and the administrators and professional staff of public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, in understanding the rules for student attendance in relation to immunizations by providing clarity and consistency in understanding regulations that address immunization requirements across state agencies.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As noted above, the benefits of consistency in regulations across state agencies should reduce confusion and questions from parents, school administrators and their professional staff about the full array of requirements for student attendance.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The final rulemaking makes amendments for clarity and consistency with IRRC-approved revisions to rules of the Department of Health. The Board's final regulations in and of themselves do not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

As local government entities, school districts are included in the regulated community addressed in question 19.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed rulemaking does not affect state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Final-form revisions to 22 Pa. Code § 11.20 do not address legal, accounting or consulting procedures and do not establish additional reporting, recordkeeping or other paperwork requirements. School reporting requirements related to immunizations are found in DOH regulations at Title 28, Chapter 23, Subchapter C.

(22a) Are forms required for implementation of the regulation?

The Board does not set forth any requirements for forms related to the implementation of 22 Pa. Code § 11.20.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three year expenditure history for programs affected by the regulation.*

Program	FY -3	FY -2	FY -1	Current FY
	0	0	0	0

*Public school districts receive state support for their general operations through Basic Education Funding that is allocated through the Department of Education. Vaccination requirements are already in place, and schools already have mechanisms in place to determine whether children have met current vaccination requirements. While DOH's new requirement for more frequent monitoring of students who are not fully immunized could impact a school's administrative duties, the impact would vary depending on the number of children in a school who are not fully immunized. The impact also would depend on how a school elects to utilize the discretion granted to it per 28 Pa. Code § 23.85(e)(3) in designating staff responsible for fulfilling monitoring duties.

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation does not carry an adverse impact for small businesses.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Final-form revisions to 22 Pa. Code § 11.20 do not include such special provisions. However, final revisions to DOH regulations at Title 28, Chapter 23, Subchapter C of the Pennsylvania Code include special provisions that address homeless students, students who transfer to a school in the Commonwealth either from out of state or from another country, and students in foster care.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Board did not consider alternative regulatory schemes. Doing so for this final regulation would create inconsistency with new rules of the DOH.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small

businesses;

- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The regulation does not carry an adverse impact for small business.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Empirical data did not serve as the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period: 30 days
- B. The date or dates on which any public meetings or hearings will be held: N/A
- C. The expected date of delivery of the final-form regulation: March 2017
- D. The expected effective date of the final-form regulation: August 1, 2017
- E. The expected date by which compliance with the final-form regulation will be required:

Compliance is required on the first day of attendance of the 2017-2018 school year.

- F. The expected date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The State Board will review 22 Pa. Code § 11.20 on a regular basis in accordance with the Board's policy and practice respecting all its regulations. Therefore, no sunset date is necessary.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)**

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IRRC

2017 MAR 13 PM 2:23

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>State Board of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>006-336</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u>Kenn Mollano</u></p> <p>TITLE <u>Executive Director</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>J. Saville</u></p> <p><u>JAN 13 2017</u> DATE OF APPROVAL</p> <p><u>Deputy General Counsel</u> (Chief Counsel, Independent Agency) (Strike inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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**FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION**

**22 PA. CODE, CH. 11
NONIMMUNIZED CHILDREN**

FINAL RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 11]

Student Attendance

The State Board of Education (Board) adopts Chapter 11 (relating to student attendance) to read as set forth in Annex A. Notice of proposed rulemaking was published at 46 Pa.B. 1806 (April 9, 2016).

Statutory Authority

The Board acts under the authority of sections 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. §§ 26-2603-B and 26-2604-B).

Purpose

This rulemaking amends 22 Pa. Code § 11.20 (relating to nonimmunized students) for clarity and for consistency with a final rulemaking of the Pennsylvania Department of Health (DOH) amending Title 28, Chapter 23, Subchapter C of the Pennsylvania Code (relating to immunization).

Background

Currently, children in Pennsylvania may not be admitted or permitted to attend school unless the child has met the immunization requirements established by the DOH, which also provide for medical or religious exemptions from immunizations. On October 20, 2016, the Independent Regulatory Review Commission (IRRC) approved a final rulemaking of the DOH that amends these immunization requirements set forth at Title 28, Chapter 23, Subchapter C of the Pennsylvania Code (relating to immunizations).

Regulations of the Board at 22 Pa. Code § 11.20(a) contain related provisions that address the attendance of nonimmunized children. As such, in early 2016 the Board undertook an effort parallel to that of the DOH to amend the Board's regulations for consistency with revisions proposed by the DOH to the immunization requirements derived in Title 28, Chapter 23, Subchapter C.

Following an informational briefing from the DOH on January 13, 2016, and a public hearing convened by the Board on March 9, 2016, the Board published notice of proposed rulemaking in the *Pennsylvania Bulletin* on April 9, 2016 and provided a 30-day public comment period. In preparing this final rulemaking, the Board reviewed and considered the public comments received and the DOH's final rulemaking (regulation #10-197; IRRC #3147). The Board adopted Chapter 11 as a final rulemaking at the Board's public meeting on January 12, 2016.

Public comments on proposed rulemaking

Public comments on the proposed rulemaking largely were duplicative of the public comments submitted on the companion proposal of the DOH published at 46 Pa.B. 1798 (April 9, 2016), and, in most instances, reflected comments submitted to both agencies. Those comments substantively fell within the purview of the DOH's rulemaking and expertise, and those comments were addressed and responded to by the DOH in the preamble of its final rulemaking on regulation #10-197 (IRRC #3147).

The Board notes that a small number of comments involved issues that potentially question the Board's jurisdiction to promulgate this rulemaking. In particular, one commentator stated that "The Department of Education is to Educate. (Period)." The Board disagrees. Instead, the Board's authority, through its Council of Basic Education,

includes the formulation of policy proposals “in all educational areas,” relating to Basic Education, specifically including “admission, attendance, graduation and other separation requirements.” The instant rulemaking specifically implements admission and attendance requirements, and therefore is expressly within the Board’s purview.

Further, some commentators questioned the administrative burden that they believe would arise from the addition of a 12th grade MCV vaccine. The Board has reviewed the DOH’s response to the concerns, and agrees with the DOH that any such burden would be outweighed by the prevention of meningitis, which has a fatality rate of approximately 10%.

Some commentators raised questions about medical privacy. One commentator asked how the DOH and PDE will protect medical privacy and ensure that children do not suffer the loss of privacy with the requirement of electronic reporting. With respect to the commentators’ concerns about immunization record confidentiality within School Districts, requirements relating to confidentiality in an educational setting are addressed by other law. Specifically, the Federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, protects a student’s privacy. Issues relating to whether a School District has complied with FERPA would be best addressed by the Family Policy Compliance Office within the U.S. Department of Education. Finally, with respect to comments regarding the transmission of immunization data, the regulations do not request or require that School Districts share individually identifiable immunization information with the Board or with the Department of Education.

Some commentators have argued that the regulation should require School Districts to use “standardized language” in communications regarding vaccine

requirements. The Board disagrees. Instead, local school districts are in the best position to determine how best to communicate the rulemaking's requirements to parents within their districts.

Finally, the Board notes the comments submitted by the Pennsylvania State Education Association (PSEA). PSEA commented in support of most provisions of the rulemaking. Notably, PSEA did express concern that the proposed rulemaking's effective date did not provide School Districts with sufficient opportunity to prepare for its implementation. In response, DOH and the Board have amended the effective date of the rulemaking, and it will now be effective for the 2017-2018 school year.

An introductory cover letter to the public comments submitted by the Pennsylvania Association of School Administrators requested that the Board provide clarification in its final rulemaking on the responsibilities of public school entities, if any, related to whether school entities are required to convene an IEP team to approve a change in placement for IEP students who are excluded for more than 10 days and whether school entities have an obligation to provide continuing education services to special education students who are excluded from school because they are not fully immunized. To provide clarification to school entities on these issues, the Department of Education will issue guidance to the field on requirements related to continuing education and the convening of IEP teams to approve a change in placement as they pertain to the exclusion of students who are not fully immunized.

The Board also received comments from the IRRC that raised a procedural concern about the promulgation of the Board's proposed rulemaking simultaneous with the proposed rulemaking of the DOH. IRRC expressed concern regarding clarity and

implementation of the Board's proposed rulemaking in final-form as the proposed rulemaking included a reference to "temporary waivers" that were proposed, but not yet finalized, in DOH regulations. The IRRC stated that the Board's final-form regulation should not be submitted for review until after the DOH's regulation is published in the *Pennsylvania Bulletin* as final and temporary waivers are established in regulation. The Board heeded the comments received from the IRRC and transmitted its final rulemaking for review after IRRC's approval of DOH's final rulemaking.

Provisions of the Final-Form Regulation

The final rulemaking makes clarifying amendments to 22 Pa. Code § 11.20(a). The revisions to that subsection eliminate language that is duplicative to requirements already established by DOH under 28 Pa. Code § 23.84 (relating to exemption from immunization) and maintain the requirement for students to comply with the immunization regulations established by DOH in order to be admitted or permitted to attend school. Further, the revisions allow a student who is unable to provide documentation of full immunization to attend a public, private, nonpublic, special education or vocational school under certain circumstances where the Secretary of Health issues a temporary waiver of the immunization requirements. The reference to a temporary waiver is being added for consistency with new provisions of a final DOH rulemaking that allows the Secretary of Health to issue a temporary waiver to immunization requirements in the event of a nationwide vaccine shortage or in the event of a disaster.

The Board's proposed rulemaking also would remove 22 Pa. Code § 11.20(b) to eliminate duplication with requirements established by DOH at Title 28, Chapter 23,

Subchapter C of the Pennsylvania Code, and already cross-referenced in the Board's proposed regulations at 22 Pa. Code § 11.20(a).

Affected Parties

The rulemaking will affect public, private, parochial or nonpublic schools, including vocational schools, intermediate units, and special education and home education programs, cyber and charter schools, and their employees. The rulemaking also will affect citizens of the Commonwealth with school-aged children and their children.

Cost and Paperwork Estimates

The rulemaking makes amendments for clarity and for consistency with recently-approved changes to rules of the DOH. The Board's regulations in and of themselves do not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

Effective Date

The amendments will be effective on August 1, 2017. This will allow parents, guardians and schools time to become familiar with the requirements, prepare for their implementation and obtain the required vaccinations prior to the start of the 2017-2018 school year. The Board will review the effectiveness of 22 Pa. Code § 11.20 every four years in accordance with the Board's policy and practice respecting all of its regulations. Thus, no sunset date is necessary.

Sunset Date

The Board will review the effectiveness of 22 Pa. Code § 11.20 every four years in accordance with the Board's policy and practice respecting all of its regulations. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of a Notice of Proposed Rulemaking, published at 46 Pa.B. 1806 (April 9, 2016), to the Independent Regulatory Review Commission (IRRC) and to the chairpersons of the House and Senate Committees on Education for review and comment. As a courtesy, at the same time the Board also delivered a copy of a Notice of Proposed Rulemaking to the House Health and Human Services Committee and the Senate Public Health and Welfare Committee.

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. In preparing the final-form rulemaking, the Board has considered all comments from IRRC and the public.

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

Contact Person

For information about Chapter 11, please contact Karen Molchanow, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787.

Findings

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The final-form rulemaking is necessary and appropriate for the administration of the School Code.

Order

The Board, acting under the authorizing statute, orders as follows:

- (a) The regulations of the Board, 22 Pa. Code § 11.20(a), are adopted.
- (b) The chair of the Board 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 chair 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 shall take effect August 1, 2017.

KAREN MOLCHANOW,
Executive Director

ANNEX A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

CHAPTER 11. STUDENT ATTENDANCE

§ 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, temporary waiver 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.

**Commonwealth of Pennsylvania
State Board of Education
22 PA Code Chapter 11
Regulation 006-336
List of Commentators**

Charmaine Rusin, Director
Alison Mullins, Co-Director
Pennsylvania Coalition for Informed
Consent
PO Box 584
Norristown, PA 19401
Info@pacic.org

Rachel Chaput
246 Hunters Lane
Dingmans Ferry
Rachel_chaput@yahoo.com

Meredith Murphy
Chester Springs, PA
meredithgmurphy@gmail.com

Kate Labedu
kladebu@equitylendinggroup.com

Ashley Armer
81 Tennyson Drive
Lancaster, PA 17602
Ashley@armertech.com

Victoria Rowe
vicrowe@gmail.com

Alison Fujito
Pittsburgh, PA
fujifiddle@gmail.com

Kimberly Pristello
2494 Mummasburg Road
Gettysburg, PA 17325
KDP32@comcast.net

Victoria Tinsley
victins@gmail.com

Scotti Aversa
Scojoe476@yahoo.com

Lisa Brinton
lgoodaleb@hotmail.com

Jay Callaghan
jay.callaghan13@gmail.com

Michelle Dougherty
shellycakesdoc@gmail.com

Erin Walker
Erinwalker333@gmail.com

Renee Pine
Renee07@pa.net

Nancy Russell
nancyhrussell@gmail.com

Marty Matika
Marty.matika@gmail.com

James Lyons-Weiler
jameslyonsweiler@gmail.com

Jessica Molina
jessicasoto829@gmail.com

Anthony George
Tpianoman321@gmail.com

Monica Hayse
mjeanhayse@gmail.com

Jennifer Buczynski
Hisdelight831@gmail.com

Artemis Morris
artemisndlac@gmail.com

Ronald A. Eddy
Ronald.Eddy@bnymellon.com

Sue Krkoska
krkoska@ptd.net

Scott Rosenthal
scottrosenthaldc@gmail.com

Margie & Craig Schaeffer
13593 Monterey Lane
Blue Ridge Summit, PA 17214
massage@synergymassage.com

John & Abby Banks
Lake Ariel, PA
Abbybanks99@gmail.com

Jamie Egbujo
Ifaye727@msn.com

Michelann Diehl
Mdpcprog32@aol.com

Jordan Pyfer
touchaheart@hotmail.com

Jamie Dollinger
jamieraedollinger@gmail.com

Vickie Suarez
parentalrightspa@gmail.com

Michelle King
kingjamie@hotmail.com

Sherry Wack
Shefish222@yahoo.com

Chris Hawbaker
Youandmeforever94@gmail.com

Lisa Hawbaker
Youandmeforever94@gmail.com

Christopher Haas
3420 Leechburg Road
Plum, PA 15239
c.t.haas@comcast.net

Margaret Mazur
margmystr@gmail.com

Mary Fisher
7021 Torresdale Avenue
Philadelphia, PA 19135
fisfall@yahoo.com

Mary Beth Dongas
Marybeth.dongas@icloud.com

Barbara O'Neill
barbaraoneill@hotmail.com

Jennifer Long
Jenlong01@gmail.com

Stacy Arquillo
Arquillo188@comcast.net

Lacey Snader
Laceylanette77@aol.com

John Callahan
Pennsylvania School Boards Association
400 Bent Creek Blvd.
Mechanicsburg, PA 17050
Cindy.eckerd@psba.org

Heather Morgan
heatheranya@hotmail.com

Kim Bonneau
426 Bluebuff Road
King of Prussia, PA 19406
Coki21@hotmail.com

Jennifer Miller
jenjeneer@aol.com

Lynn & JJ Stoner
Superspike19@gmail.com

Jennifer Murdock
Poodlenoodle3000@yahoo.com

Christine Lindenmuth
350 Broad Street Apt. 30
Harleysville, PA 19438
Christine.lindenmuth@yahoo.com

Nicholas Merolesi, Sr.
Nickomero25@hotmail.com

C.J. Mullins
3805 Leyland Drive
Mechanicsburg, PA 17050
Mullin1279@aol.com

Andrew & Theresa Sabatini
Acme, PA 15610
asab@zoominternet.net

Merrily Flinger
nmflinger@verizon.net

Katie Corter
York, PA
katiecorter@hotmail.com

Rebekka Parry
danandrebekka@verizon.net

Marlena Torres
Marlena.torres@gmail.com

Lynn Lades and Louise Francis
Health Alert Philly
217 S. Jessup Street
Philadelphia, PA 19107
LynnLandes@earthlink.net

Theresa Hunt
Theresa.nichole.hunt@gmail.com

Allison Whing
ashing@comcast.net

Shelle Lee
Lee.shelle@yahoo.com

Rachelle Nance
rachellenance@yahoo.com

Katie Walker
2050 Turkey Hill Road
Narvon, PA 17555
Walkerfamily2@frontier.com

Kristy Olson
hmcolson@yahoo.com

Rellsper
rellsper@gmail.com

Sandra Avery
Savery55@gmail.com

Julie Livingston
14 Edith Drive
Windsor, PA 17366
tennpoint@comcast.net

Leigh Shane
Leighg12000@yahoo.com

Janet Cook
1508 King David Drive
Pittsburgh, PA 15237
Janetcook12@verizon.net

Dianna Troyer
Dessertrose03@gmail.com

Scott & Rochelle Casses
9 Meadowood Place
Boiling Springs, PA 17007
scasses@comcast.net

Karen Lear
learkar@verizon.net

Darlene Grant
Beaniebabies89@gmail.com

Lacey Altman
Dundermuffin89@gmail.com
Daniel Waterman
Allentown, PA
ddwaterman@gmail.com

Rachel Kent & Christopher Lawton
417 Meadowbrook Drive
Huntingdon Valley, PA 19006
rachelakent@gmail.com

Kristi Wees
kristiwees@gmail.com

Robin Hamilton
Mom2cmss@atlanticbb.net

Nicole Hoover
nhsweepstakes@gmail.com

James Buckheit
PASA
2608 Market Place
Harrisburg, PA 17111
jbuckheit@pasa-net.org

Seth Mullen
Hershey, PA
samullendc@yahoo.com

Melanie Dito
Newtown Township, PA
Mdito42@gmail.com

Ian Thomas
104 Valley View Road
Media, PA 19063
Ian.phillynvc@gmail.com

George Hartman
Ghpilotf16@gmail.com

Kathleen G. Tanenbaum OTR
Kathleengt1@gmail.com

Noelle Gaburon
hopeenergy@aol.com

Rebecca J. Smith
rjholtry@yahoo.com

Teresa Alva
Teresa555@gmail.com

Rose D'Adamo
Headdoc50@aol.com

Cynthia Stolten
1139 W. Locust Street
Scranton, PA 18504
cindystolten@gmail.com

Anita Brown
Vaga60@gmail.com

Wade Burns
Wadeburns7@aol.com

Nathan Boggs
nboggs@premierautomation.com

David Smith
305 Swan Avenue
Brownsville, PA 15417
dwsmscks@gmail.com

Melanie Gardone
Greensburg, PA
mgardone@yahoo.com

Tina Mack
3661 Evergreen Road
Pulaski, PA 16143
Nursetina.pitt@gmail.com

Christopher Mack
3661 Evergreen Road
Pulaski, PA 16143
Cmbmack88@verizon.net

Heidi Myers
Cwlady26@yahoo.com

Melissa & Mark Moran
756 Derwin Road
Monroe Twp., PA 18636
moranpix@yahoo.com

Jennifer Willis
100A Wood Corner Road
Lititz, PA 17543
Jennifer.gmofreelc@gmail.com

Jill Kletzing
Coffeewoman21@yahoo.com

Amanda Spangler
amandaspangler@gmail.com

Karen Foley
Lafayette, PA
canolifoley@yahoo.com

Megan Burns
Meganburns7@aol.com

Sue Stracciolin
suestracc@gmail.com

Nathan Flinner
Nmflinner7@gmail.com

Victoria Tinsley
victins@gmail.com

Beth & John Langer
703 Pennsylvania Avenue
Irwin, PA 15642
bethyab@yahoo.com

Kyle Hertzog
National Vaccine Information Center
k.hertzog69@gmail.com

W. Nicholas Knisley, D. Ed.
Belnick8@aol.com

Mindy Buzard
mindybuzard@hotmail.com

Clayton Thomas
slim_pckns@yahoo.com

Jerry Oleksiak
PSEA
governmentrelations@psea.org

Chara Daum
ccdauam@msn.com

Dr. Teresa D'Aversa Johnson
johnsonfamilychiropractic@verizon.net

Jane Scott
106 Scott Lane
Monroe Twp., PA 18636
Janescott106@yahoo.com

Jessica Fitzgerald
Pittsburgh, PA
lessfitz4yl@cs.com

Paula M. Chaiken
Shavertown, PA
pchaiken@gmail.com

Abby Call
abbcadab@gmail.com

Donique Browsh
nickibrowsh@gmail.com

Melissa Marcolina
302 Dupont Street
Philadelphia, PA 19128
Melthomas_3@yahoo.com

Megan Asplundh Pendergrass
masplundh@hotmail.com

Zofia Hausman
zofia@neviafilms.com

Bryan Thomas
Bryang.thomas87@gmail.com

Danielle Fishman
Daniellefishman1@gmail.com

Matthew Marcolina
302 Dupont Street
Philadelphia, PA 19128
Melissa.matthew.marco@gmail.com

Mike Thomas
Livefortoday44@gmail.com

Carisa Kozicki
ckphotog@gmail.com

Suzanne Gladish Snyder
sgladish@gmail.com

Mira Newman
mira@davidnewmanmusic.com

Natalie Thomas
Natalie2thomas@yahoo.com

Kristen Yoder
kayoder@gmail.com

Dave Tonal
Tonal401@gmail.com

Lenbo64@aol.com

Nira Eckstein
Nira613@msn.com

Jodi Sinagra
Ms3mama@yahoo.com

Jodi Witmer
swedishq@gmail.com

Nicole Rufe
24 Pheasant Road
Doylestown, PA 18901
rufes@verizon.net

Jeanine Knipprath
Neaner57@gmail.com

Jeanne Christine
WJKCHRIS@hotmail.com

Laura Shanahan
lauralshanahan@comcast.net

Walid Assaf
Assafwalid3@gmail.com

Noel8772@gmail.com

Ashley Thomas
Akgthomas523@gmail.com

Steve & Laureen Eichelberger
9100 Barnes Lake Road
N. Huntingdon, PA 15642
Hvn8bnd@comcast.net

Alex Willis
Awillis2008@gmail.com

Lorena Brandl
brandls@verizon.net

George Shupe
brandls@verizon.net

Dianna Wise
winkmen@hotmail.com

Jodi Ferris
Scott and jodi@hotmail.com

Sarah Anderson
Sarah2799@hotmail.com

Rachel Benhow
1611 Rome Ter.
Harrisburg, PA 17110

Lori A. Flynn, RN
3801 Elmerton Avenue
Harrisburg, PA 17109



COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION

March 13, 2017

Mr. David Sumner
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17126

Dear Mr. Sumner:

Enclosed is a copy of a final-form rulemaking approved by the State Board of Education (22 Pa. Code § 11.20, regulation #6-336), for review and action by the Independent Regulatory Review Commission (“Commission”) pursuant to the Regulatory Review Act. This rulemaking also is being delivered today to the Pennsylvania House of Representatives and Senate Standing Committees on Education.

The State Board of Education will provide the Commission with any assistance it may require to facilitate a thorough review of this final rulemaking.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Karen Molchanow".

Karen Molchanow
Executive Director

Enclosures

cc: Thomas Howell, Deputy General Counsel, Governor’s Office of General Counsel
Alicia Rizzi, Regulatory Coordinator, Governor’s Office of General Counsel
Ernie Helling, Office of Chief Counsel, Department of Education
Wallace Rejrat, Office of Chief Counsel, Department of Education
Angela Fitterer, Government Relations Office, Department of Education

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 6-336
SUBJECT: NONIMMUNIZED CHILDREN
AGENCY: STATE BOARD OF EDUCATION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - With Revisions
 - Without Revisions

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FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>HOUSE COMMITTEE - EDUCATION</u>		
3/13/17	<i>Cathy Donnell</i>	MAJORITY CHAIR <u>Rep. David Hickernell</u>
3/13/17	<i>April McClellan</i>	MINORITY CHAIR <u>Rep. James Roebuck</u>
<u>SENATE COMMITTEE - EDUCATION</u>		
3/13/17	<i>[Signature]</i>	MAJORITY CHAIR <u>Sen. John Eichelberger</u>
3/13/17	<i>[Signature]</i>	MINORITY CHAIR <u>Sen. Andrew Dinniman</u>
3/13/17	<i>K Cooper</i>	<u>INDEPENDENT REGULATORY REVIEW COMISSION</u>
_____	_____	<u>ATTORNEY GENERAL</u> (for Final Omitted only)
_____	_____	<u>LEGISLATIVE REFERENCE BUREAU</u> (for Proposed only)

