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LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL

PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

August 26, 2008      333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

Honorable Gerald L. Zahorchak, Secretary  
Department of Education  
333 Market Street, 10th Floor  
Harrisburg, PA 17101

Re: Regulation #6-300 (IRRC #2550)  
Department of Education  
Keystone Educational Accountability Best Management Practices Standards

Dear Secretary Zahorchak:

The Independent Regulatory Review Commission disapproved your regulation on August 21, 2008. Our order is enclosed and will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us).

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact me at 783-5506.

Sincerely,

Kim Kaufman  
Executive Director

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Enclosure

cc: Honorable James J. Rhoades, Chairman, Senate Education Committee  
Honorable Raphael J. Musto, Minority Chairman, Senate Education Committee  
Honorable James R. Roebuck, Jr., Majority Chairman, House Education Committee  
Honorable Jess M. Stairs, Minority Chairman, House Education Committee

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held August 21, 2008

Arthur Coccodrilli, Chairman  
Karen A. Miller  
John F. Mizner, Esq.

Regulation No. 6-300 (#2550)  
Department of Education  
Keystone Educational Accountability Best  
Management Practices Standards

On June 20, 2006, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of Education (Department). This rulemaking adds 22 Pa. Code Chapter 405. The proposed regulation was published in the July 1, 2006 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on July 21, 2008.

This final-form regulation implements the Keystone Educational Accountability Act of 2003 (Act). The purpose of the Act is to put in place an assessment system aimed at improving school district management practices and use of resources, as well as to identify potential cost savings, by providing for the establishment of best management practice standards covering a broad range of educational and operational programs and services.

Based upon the information provided to us, the Commission has determined that three of the criteria set forth in the Regulatory Review Act have not been met.

The first and most critical criterion that has not been met is whether the agency has the statutory authority to promulgate the regulation and whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based. (71 P.S. § 745.5b(a)). In our comments on the proposed rulemaking, we stated that the regulation fails to establish the process for both self-assessment and the external review. In response to this comment, the Department added a new section pertaining to the review and self-assessment process (§ 405.14). Our concern is with the following new language in the section: “Each school district of the Commonwealth shall be reviewed for compliance with the standards once every six years, **to the extent that funds are provided for this purpose in the general appropriation act each year.**” (Emphasis added.) We believe that the Department does not have the statutory authority to limit compliance reviews to years when the General Assembly provides a specific appropriation. The controlling provision of the Act states, “Every school district shall be subject to a best financial management practices review on a continuing six-year cycle.” (24 P.S. § 25-2506-A(a)). We understand this to mean that every school district *must* undergo a review every six years, regardless of designated funding.

The Act does permit the Department some flexibility depending on the availability of specifically appropriated funds, but that flexibility is limited to situations involving the use of private firms to conduct these reviews. Specifically, the Act allows the Department “to contract with a private firm or firms...to the extent that funds are provided for this purpose in the General Appropriation Act each year.” 24 P.S. § 25-2506-A(c). We feel that the Department has mistakenly applied the flexibility permitted in Subsection (c) to the review process required in Subsection (a). Therefore, we conclude that § 405.14 of the regulation conflicts with the specific

statutory directive to conduct financial management reviews of each school district once every six years. Further, the Department, by exceeding the scope of statutory authority granted by the General Assembly, is not conforming to the intention of that body. The Department should delete Section 405.14 from the regulation.

The second criterion that has not been met is whether the regulation is clear and lacks ambiguity. (71 P.S. § 745.5b(b)(3)(ii)). We believe the new section pertaining to definitions (§405.2) lacks clarity for the following reasons. First, the introductory paragraph of the section is not written in regulatory language and should be deleted. Second, most of the definitions included in the final rulemaking include the term that is being defined. Pursuant to the *Pennsylvania Code and Bulletin Style Manual*, the term being defined should not be included in the definition (§ 1.7(e)). We recommend that the definitions in the attached Appendix A be amended accordingly. Third, under the definition of “Keystone District,” the phrase “is eligible to be certified by the Pennsylvania Secretary of Education as a Keystone District” is substantive and should be moved to the body of the regulation.

The third criterion that has not been met is whether the Department has complied with the provisions of the Act and the regulations of Commission in promulgating the regulation. As noted above, a new section pertaining to definitions was added to the final regulation. The inclusion of this new section required renumbering of other sections contained in the regulation. However, the renumbering was not formatted in a manner consistent with the Commission’s regulations under 1 Pa. Code § 307.3a(b)(1) and (2).

We have determined this regulation is not consistent with the statutory authority of the Department and the intention of the General Assembly. Additionally, after considering all of the other criteria of the Regulatory Review Act discussed above, we find promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.



A handwritten signature in black ink, appearing to read "Kim Kaufman", is written over a horizontal line.

Kim Kaufman, Executive Director

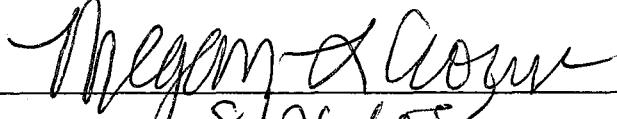
## Appendix A

The definitions of the following terms contain the word or phrase that it is defining. As stated in the disapproval order, these terms should be removed from the definition, pursuant to the *Pennsylvania Code and Bulletin Style Manual*.

- Benchmark
- Capital Assets
- Conflict of Interest, Statement of
- Coordinated Review Effort (CRE)
- Cost-effective
- Cross Training
- Ethics, Statement of
- Green Building Design
- Information Made Available
- Internal Controls, System of
- Keystone District
- Risk Management
- School Board
- School Meal Initiative for Healthy Children (SMI)
- Stakeholders
- Strategic Plan
- Succession Planning
- Superintendent
- Total Cost of Ownership

Regulation #6-300 (IRRC #2550)  
Department of Education  
Keystone Educational Accountability Best Management  
Practices Standards

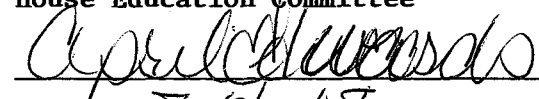
Honorable Gerald Zahorchak, Secretary

  
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Date: 8/26/08

Regulation #3-600 (IRRC #2550)  
Department of Education  
Keystone Educational Accountability Best Management  
Practices Standards

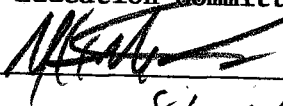
Honorable James Roebuck, Jr., Majority Chairman  
House Education Committee

  
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Date: 8-26-08

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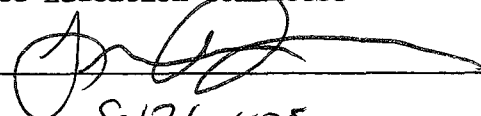
Honorable Raphael Musto, Minority Chairman  
Senate Education Committee

  
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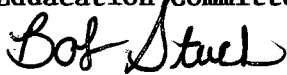
Honorable James Rhoades, Chairman  
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Date: 8-26-08