



PENNSYLVANIA'S STATE SYSTEM *of* HIGHER EDUCATION

GOVERNOR'S OFFICE OF GENERAL COUNSEL

University Legal Counsel

September 13, 2022

Karen Molchanow  
Executive Director State Board of Education  
333 Market Street, 1st Floor  
Harrisburg, PA 17126-0333

Re: Petition for Waiver of Regulation  
Pennsylvania State System of Higher Education

Dear Executive Director Molchanow,

Enclosed, please find the Petition for Waiver of a Regulation pursuant to 1 Pa. Code §35.18 on behalf of the Pennsylvania State System of Higher Education.

Please docket the Petition and Waiver request and return a stamped copy to me in the enclosed self-addressed stamped envelope. Please direct all future correspondence to my attention.

Very truly yours,

Michael S. Ferguson  
University Legal Counsel

Enclosure

c: Thomas P. Howell, Deputy General Counsel, Governor's Office of General Counsel, 333  
Market Street, 17th Floor, Harrisburg, PA 17101  
Dan Greenstein, Chancellor, Pennsylvania State System of Higher Education  
Donna F. Wilson, Vice Chancellor, Pennsylvania State System of Higher Education

**COMMONWEALTH OF PENNSYLVANIA  
STATE BOARD OF EDUCATION**

**PENNSYLVANIA STATE SYSTEM OF  
HIGHER EDUCATION,**                     :  
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**TO: THE STATE BOARD OF EDUCATION  
Karen Molchanow, Executive Director**

**PETITION OF THE PENNSYLVANIA STATE SYSTEM  
OF HIGHER EDUCATION PURSUANT TO 1 Pa. Code §35.18  
SEEKING A WAIVER OF 22 Pa. Code §31.21 (b)(3)<sup>1</sup>**

**I. PARTIES**

1. The Pennsylvania State System of Higher Education (hereinafter “State System”) was established by Act 188 of 1982.<sup>2</sup>
2. The State System exists as an independent agency of the Commonwealth and is governed by a Board of Governors (hereinafter “BOG”). 24 P.S. § 20-2004-A(a).
3. The BOG consists of twenty (20) members that include: the Governor; the Secretary of Education; two (2) Senators appointed by the President pro tempore and by the Minority Leader; two (2) Representatives appointed by the Speaker of the House and by the Minority Leader; eleven (11) members appointed by the Governor with the advice and consent of the Senate<sup>3</sup>; and, three (3) students members appointed by the BOG. 24 P.S. § 20-2004-A(a)(1)-(8).

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<sup>1</sup> This Petition also serves, to the extent necessary, as an application under 1 Pa. Code §33.61.

<sup>2</sup> Act of November 12, 1982, P.L. 660; 24 P.S. §20-2001-A through 20-2021-A, as amended (“Act 188”).

<sup>3</sup> Of these 11 members, six (6) members shall be selected from the residents of this Commonwealth and five (5) members shall be selected from trustees of constituent institutions.

4. The BOG, pursuant to its statutory authority has been given the authority to “establish broad fiscal, personnel and educational policies under which the institutions of the system shall operate.” 24 P.S. § 20-2006-A(a)(4).
5. Additionally, the BOG has the authority to “approve new undergraduate and graduate degree programs, which shall not be subject to the rules and regulations of the State Board of Education....” 24 P.S. § 20-2006-A(a)(5).
6. The State Board of Education (hereinafter “Board of Education”) has the power and duty to review and adopt regulations that govern educational policies and principles and establish standards governing the educational programs of the Commonwealth. 24 P.S. § 26-2603-B.
7. The Board of Education consists of two separate Councils, one for Basic Education, and a second for Higher Education. 24 P.S. § 26-2604-B.
8. The Council for Higher Education, among its powers, has the authority to develop standards for the approval of colleges and universities for granting of certification and degrees. 24 P.S. § 26-2604-B(c)(2).

## **II. REGULATION/STATUTES AT ISSUE.**

9. 22 Pa. Code §31.21 (Academic Program) regulates the necessary Curricula required to award degrees for Institutions of Higher Education in Pennsylvania.
10. 22 Pa. Code § 31.21 (b) addresses how semester credit hours that are calculated in order for an institution of higher education to confer a degree.

11. 22 Pa. Code § 31.21 (b)(3) identifies the specific number of credits that are required to receive a baccalaureate (or Bachelors) degree. Specifically, the regulation states

A baccalaureate degree must require the satisfactory completion of a minimum of 120 semester credit hours or a minimum of 180 quarter credits. Of the total baccalaureate degree program course requirements, at least 40 semester credit hours or 60 quarter credit hours must be in general education and represent a broad spectrum of disciplines in general education.

12. 22 Pa. Code § 31.21 (b)(3) was adopted May 1, 1982, and has remained relatively unchanged since that time, other than a 2006 amendment (36 Pa. Bull. 3650) that edited the number of general education credits from the original regulation that used the fractional “1/3” of the total credit required to the now stated “40” or “60” hours.

13. Section 24 P.S. §20-2002-A (a) created the State System and states,

Subject to the regulatory powers conferred by law upon the State Board of Education, there is hereby established a body corporate and politic constituting a public corporation and government instrumentality to be known as the State System of Higher Education, independent of the Department of Education, hereinafter referred to as the system,...

14. Thus, the General Assembly made the State System independent of the Department of Education, but continued the State System’s obligation to comply with regulations issued by the State Board of Education unless otherwise stated.

15. The General Assembly also codified the primary purpose and mission of the State System stating in relevant part,

Its purpose shall be to provide **high quality education at the lowest possible cost to students**. The primary mission of the system is the provision of instruction for undergraduate and graduate students to and beyond the master's degree in the

liberal arts and sciences and in applied fields, including the teaching profession.

\* \* \*

24 P.S. § 20-2003-A (emphasis added).

16. It is the conflict between the credit requirements set forth in 22 Pa. Code § 31.21 (b)(3) and the State System's duty to provide a high quality education at the lowest possible cost to students that is at issue.

**III. WHY THE CONFLICT REQUIRES ACTION BY THE BOARD OF EDUCATION TO WAIVE THE REGULATORY 120 MINIMUM CREDIT HOUR REQUIREMENT, INCLUDING 40 GENERAL EDUCATION CREDIT HOUR REQUIREMENT, TO OBTAIN A BACCALAUREATE DEGREE FOR UNIVERSITIES WITHIN THE STATE SYSTEM.**

17. The Commonwealth and its employers need to have additional qualified graduates in the marketplace.
18. In response to that need, the State System universities are able to offer high quality baccalaureate education at fewer than 120 minimum credits, with 40 minimum credits of general education, and thus at a lower cost to students.
19. The credit mandate in 22 Pa. Code § 31.21 (b)(3) conflicts with the State System's statutory mandate to offer high quality education at the lowest possible cost to students.
20. There is no requirement under federal law or the Middle State Commission of Higher Education (MSCHE) that requires four years and/or 120 semester credit hours or 40 hours of general education to be awarded a baccalaureate degree.
21. The United States Department of Education ("ED") has issued regulations regarding institutions of higher education ("IHE") and their accreditation.

22. The ED regulations contained in Chapter VI of Title 34 of the Code of Federal Regulations provide the regulatory background for the U.S. Secretary of Education (“Secretary”) to determine whether an institution is an eligible institution of higher education for the purposes of being eligible for federal financial aid. 34 C.F.R. §600.1.
23. A requirement to be recognized by the Secretary as an IHE, the institution must be accredited. 34 C.F.R. §600.4.
24. The Secretary recognizes regional accrediting agencies to assist ED in assuring the quality of education being provided by IHE’s meet the standards established by federal law for institutions to be an eligible program to receive federal financial assistance. 20 U.S.C. § 1099 (b); 34 C.F.R. §602.10.
25. 34 C.F.R. Part 668 establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965. 34 C.F.R. §668.1.
26. This includes the requirement that an eligible program provided by an IHE any financial assistance must - “lead (1) Lead to an associate, bachelor's, professional, or graduate degree; (2) Be at least a two-academic-year program that is acceptable for full credit toward a bachelor's degree; or (3) Be at least a one-academic-year training program that leads to a certificate, or other nondegree recognized credential, and prepares students for gainful employment in a recognized occupation.” 34 C.F.R. §668.8(c).

27. IHE are also required to report the program's published length of time to complete a degree in the event that it differs from the "normal time" to complete a program.

34C.F.R. §668.41(d)(4).

28. The regulations define "normal time" as

the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

34C.F.R. §668.41(a).

29. To be eligible for federal financial aid, 34 C.F.R. §668.8(k)(1) and (2) requires:

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward completion of an eligible program offered by the institution that provides an associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that -

(i) The eligible program requires at least two academic years of study; and

(ii) The institution can demonstrate that least one student graduated from the program during the current award year or the two preceding award years.

30. Thus, while the regulations identify how credits must be calculated, and how students must be notified about program length (a minimum of two years), there is no specific regulation that requires a certain number of credits be achieved for the confirmation of a baccalaureate degree. 34 C.F.R. §668.8(k).

31. The Middle State Commission on Higher Education (“Middle States” or “MSCHE”) has been recognized by the Secretary as a Regional Institution Accrediting Agency for IHE located in Delaware, The District of Columbia, Maryland, New Jersey, New York, **Pennsylvania**, Puerto Rico, the U.S. Virgin Islands, the Republic of Panama. 65 FR 53278 (2000).
32. Middle States is the accrediting agency for all institutions within the State System.  
<https://www.msche.org/about-us/>
33. All institutions with the State System are accredited and therefore meet the requirements for educational quality established by ED.
34. Pursuant to the educational standards adopted by MSCHE, there is no specific credit requirement to obtain a baccalaureate degree.  
[https://www.msche.org/standards/#standard\\_3](https://www.msche.org/standards/#standard_3)
35. In relevant part, MSCHE Standard III requires
- An accredited institution “possesses and demonstrates the following attributes or activities:”
1. certificate, undergraduate, graduate, and/or professional programs leading to a degree or other recognized higher education credential, **of a length appropriate to the objectives of the degree or other credential**, designed to foster a coherent student learning experience and to promote synthesis of learning;
  2. student learning experiences that are designed, delivered, and assessed by faculty (full-time or part-time) and/or other appropriate professionals who are:
    - a. rigorous and effective in teaching, assessment of student learning, scholarly inquiry, and service, as appropriate to the institution’s mission, goals, and policies;



- b. qualified for the positions they hold and the work they do;
  - c. sufficient in number;
  - d. provided with and utilize sufficient opportunities, resources, and support for professional growth and innovation;
  - e. reviewed regularly and equitably based on written, disseminated, clear, and fair criteria, expectations, policies, and procedures;
3. academic programs of study that are clearly and accurately described in official publications of the institution in a way that students are able to understand and follow degree and program requirements and expected time to completion;
4. sufficient learning opportunities and resources to support both the institution's programs of study and students' academic progress;
5. at institutions that offer undergraduate education, a general education program, free standing or integrated into academic disciplines, that:

a. offers a sufficient scope to draw students into new areas of intellectual experience, expanding their cultural and global awareness and cultural sensitivity, and preparing them to make well-reasoned judgments outside as well as within their academic field;

b. offers a curriculum designed so that students acquire and demonstrate essential skills including at least oral and written communication, scientific and quantitative reasoning, critical analysis and reasoning, technological competency, and information literacy. Consistent with mission, the general education program also includes the study of values, ethics, and diverse perspectives; and

\* \* \*

[https://www.msche.org/standards/#standard\\_3](https://www.msche.org/standards/#standard_3) (emphasis added).

36. Based upon the above MSCHE standards, the requirements of 22 Pa. Code §31.21 (b)(3) do not align with the MSCHE program accreditation standard nor the State System's duty to provide a high quality education at the lowest possible cost to students.

#### **IV. RELIEF SOUGHT**

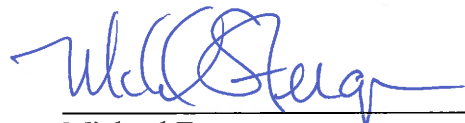
37. The State System asserts that 22 Pa. Code §31.21 (b)(3)'s requirement that a baccalaureate degree requires a minimum of 120 credit hours and 40 credits of general education frustrates its ability to deliver a high quality baccalaureate degree at the lowest possible cost as mandated by 24 P.S. §20-2003-A.
38. State System universities are able to provide select high quality baccalaureate degrees with fewer than 120 credits and with innovative and integrative models of general education, resulting in significantly lower cost for students and their families.
39. A high quality 3-year baccalaureate, for example, would represent a potential 25% reduction in total cost of attaining a baccalaureate degree, and would provide a more rapid path to advanced study or entry into the Commonwealth's workforce.
40. To the extent that there might be concerns about the maintenance of the quality of any program, 22 Pa. Code §31.51 (Maintenance of Quality) requires an academic program audit every five (5) years to determine whether the academic program has continued utility based upon programmatic and mission needs, and such audits are subject to request by PDE.

41. Failure to meet the MSCHE standards of accreditation would jeopardize both federal funding, 34 C.F.R. Subtitle B, Chapter VI, and state funding, 22 Pa. Code §40.53(b).
42. Additionally, the State System Board of Governors, pursuant to its authority under 24 P.S. §20-2006-A(a)(5) would only approve baccalaureate programs of fewer than 120 credits or 40 hours of general education that meet the standards of accreditation of MSCHE, or any other program specific accreditor.

WHEREFORE, the State System of Higher Education respectfully requests that the State Board of Education, pursuant to its authority under 1 Pa. Code §35.18, waive the requirements set forth in 22 Pa. Code §31.21(b)(3) relating to the 120 credit hour requirement and general education requirements, and permit the Board of Governors of the State System to establish the minimum requirements, in accordance with all accrediting rules, for the satisfactory completion of a baccalaureate degree.

Respectfully submitted,

Dated: September 13, 2022



Michael Ferguson  
Attorney ID No. 83882  
University Legal Counsel  
PA State System of Higher Education  
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Harrisburg, PA 17110  
(717) 720-4070  
[mferguson@passhe.edu](mailto:mferguson@passhe.edu)

**VERIFICATION**

I, Dr. Donna Wilson, hereby verify that I am the Vice Chancellor and Chief Academic Officer of the Pennsylvania State System of Higher Education, and I am acquainted with the facts set forth in the foregoing Petition for Waiver, and that the same are true and correct to the best of my knowledge, information, and belief.

This statement is made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_

**Donna F  
Wilson**

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Dr. Donna Wilson  
Vice Chancellor and Chief Academic Officer  
Pennsylvania State System of Higher Education

**PROOF OF SERVICE**

I, Michael S. Ferguson, hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of §33.32 (relating to service by a participant).

State Board of Education  
333 Market Street, 1st Floor  
Harrisburg, PA 17126-0333  
Via Hand Delivery

Thomas P. Howell, Deputy General Counsel  
Governor's Office of General Counsel  
Commonwealth of Pennsylvania  
333 Market Street, 17th Floor, Harrisburg, PA 17101  
*Counsel to the Board of Education*  
Via Hand Delivery

Dated this 13<sup>th</sup> day of September, 2022



\_\_\_\_\_  
Michael S. Ferguson  
University Legal Counsel

Of Counsel for:

Pennsylvania State System of Higher Education