

<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><b>INDEPENDENT REGULATORY REVIEW COMMISSION</b></p> <p><b>RECEIVED</b></p> <p>AUG 02 2023</p> <p>Independent Regulatory Review Commission IRRC Number: <b>3379</b></p>
<p>(1) Agency: State Board of Education</p>		
<p>(2) Agency Number: 006 Identification Number: 341</p>		
<p>(3) PA Code Cite: 22 Pa. Code Chapter 14</p>		
<p>(4) Short Title: Special Education Services and Programs</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Karen Molchanow, Executive Director, State Board of Education, 717-787-3787, ra-stateboardofed@pa.gov Secondary Contact: John Gombocz, Special Education Advisor, Department of Education, 717-772-3745, jgombocz@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <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>This regulation supports Pennsylvania's people with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to special education services and programs) by replacing the terms "mentally retarded" and "mental retardation" with the term "intellectual disability."</p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p>The Public School Code of 1949 charges the Board with adopting and prescribing standards and regulations for the proper education and training of all exceptional children and with adopting broad policies and principles governing the educational programs of the Commonwealth. The Board's authority in that regard is set forth in Sections 1372 and 26-2603-B of the Public School Code of 1949, <i>as amended</i>, (24 P.S. §§ 13-1372 and 26-2603-B).</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>Rosa's Law (Pub L. No. 111-256), amended the Rehabilitation Act of 1973, 29 U.S.C. § 705(21)(A)(iii), 29 U.S.C. § 764(b)(2)(C)(v), 29 U.S.C. § 791(a), the Individuals with Disabilities Education Act</p>		

(IDEA), 20 U.S.C. §§ 1400(c)(12)(C), 1401(3)(A)(i) & (30)(C), the Higher Education Act of 1965, 20 U.S.C. § 1140(2)(A), and the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7512(16)(E) (subsequently repealed) by removing the term “mental retardation” and replacing it with the term “intellectual disability.” See also Federal Register Vol. 82, No. 131, Tuesday, July 11, 2017, Rules and Regulations. The act of November 22, 2011 (P.L. 420, No. 105) amended the Mental Health and Mental Retardation Act of 1966 (50 P.S. §§ 4101—4704) to read as the “Mental Health and Intellectual Disability Act of 1966” and replaced the defined term and references to “mental retardation” with “intellectual disability.” Although this regulation is not mandated by any Federal or State law, court orders, or Federal regulations, this final-omitted regulation is in conformance with Federal and State law. See Rosa’s Law (Pub L. No. 111-256) and the act of November 22, 2011 (P.L. 420, No. 105).

(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 possible and approximate the number of people who will benefit.

The benefit of this regulation is to promote respect, community integration, and an array of opportunities for an individual with an intellectual disability by using words that are positive and up-to-date in the State Board of Education’s (Board) regulations. This regulation affects individuals with an intellectual disability, and their families, who receive funded services and supports through Department of Education (Department) programs. Approximately 18.6% of the students in Pennsylvania have a disability according to the Special Education Data Report for the 2021-22 school year published by the Pennsylvania State Data Center. This equates to 313,618 students.

Data on special education enrollment in Pennsylvania’s schools can be found at:

[https://penndata.hbg.psu.edu/penndata/documents/BSEReports/Data%20Preview/2021-2022/Speced\\_Quick\\_Report\\_PA\\_Final\\_2021-2022.pdf](https://penndata.hbg.psu.edu/penndata/documents/BSEReports/Data%20Preview/2021-2022/Speced_Quick_Report_PA_Final_2021-2022.pdf)

Under Federal and State law, the terminology “intellectual disability” has replaced the archaic terminology “mental retardation”. Rosa’s Law (Pub L. No. 111-256); the act of November 22, 2011 (P.L. 420, No. 105)

“While ‘mentally retarded’ and ‘mental retardation’ were once accepted terminology; today, those terms have negative connotations and are considered offensive to many people. In fact, in 2010, Congress passed Rosa’s Law, which was designed to change references to ‘mental retardation’ in certain federal laws to ‘intellectual disability,’ and to change references to a ‘mentally retarded’ individual to an individual with an ‘intellectual disability.’ Rosa’s Law (Pub L. No. 111-256). This change in terminology reflects widespread adoption of the term ‘intellectual disability’ by most advocates, government agencies, and various public and private organizations.” *Pirela v. Horn*, 2014 U.S. Dist. LEXIS 45968, 2014 WL 1327596, at 3 n.3 (E.D. Pa. April 2, 2014).

(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, there are no provisions that are more stringent than federal standards.

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

This regulation will not affect Pennsylvania's ability to compete with other states. The majority of states in the nation no longer use the term mental retardation in official documents. Updating the terminology in 22 Pa. Code Chapter 14 will put Pennsylvania in line with terminology used both by other states and in federal law.

Other states that have made the exact, or similar change in terminology include: Alabama (2009 Ala. Acts 635); Alaska (2013 Alaska Sess. Laws 42); Arizona (2011 Ariz. Sess. Laws 89); Arkansas (2019 Ark. Acts 1035); California (2012 Cal Stat. 448); Colorado (2018 Colo. Ch. 44); Connecticut (2011 Ct. P.A. 16); Delaware (78 Del. Laws 179 (2011)); D.C. (2011 D.C. Act 361); Florida (2013 Fla. Laws ch. 162); Georgia (2017 Ga. Laws 189); Hawaii (2011 Hi. Act 220); Idaho (2010 Idaho Sess. Laws 235); Illinois (2011 Ill. Laws 227); Indiana (2015 Ind. Acts 117); Iowa (2012 Iowa Acts Ch. 1019); Kansas (2012 Kan. Sess. Laws 91); Kentucky (2012 Ky. Acts 146); Louisiana (2014 La. Acts 811); Maine (2011 Me. Laws 542); Maryland (2009 Md. Laws 119); Massachusetts (2010 Mass. Acts ch. 239); Michigan (2014 Mich. Pub. Acts 72); Minnesota (2005 Minn. Laws. ch. 56); Mississippi (2010 Miss. Laws ch. 476); Missouri (2011 Mo. HB 648); Montana (2013 Mt. Laws 68); Nebraska (2013 Neb. Laws 23); Nevada (2013 Nev. Stat. 662); New Jersey (2010 N.J. Laws 50); New York (2016 N.Y. Laws 198); North Dakota (2011 N.D. Laws 207); Ohio (2015 Ohio HB 158); Oklahoma (2019 OK. Laws 475); Oregon (2011 Ore. Laws 658); South Carolina (2011 S.C. Acts 47); South Dakota (2013 S.D. Laws 125); Tennessee (2010 Tenn. Pub. Acts 734); Texas (2015 Tex. Gen. Laws 1); Utah (2016 Utah Laws 115); Vermont (2013 Vt. Laws 96); Virginia (2008 Va. Acts 821); Washington (2010 Wash. Sess. Laws Ch. 94); West Virginia (2010 W. Va Acts 14); Wisconsin (2011 Wis. Act 126); and Wyoming (2008 Wyo. Sess. Laws 70).

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

No, this regulation will not affect any other regulations of the Board or any other state agency. At the same time the Board is updating the terminology used in 22 Pa. Code Chapter 14, the Department of Education is making parallel updates to terminology in 22 Pa. Code Part XX Chapter 711 under a separate rulemaking (Regulation #6-342). The Department of Human Services (DHS) already has acted to reflect the same terminology updates in its regulations. DHS's final-omitted rulemaking replacing references to "mental retardation" with "intellectual disability" throughout its regulations took effect upon the rulemaking's publication in the *Pennsylvania Bulletin* on Saturday June 18, 2016 (46 Pa.B. 3177).

(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, *as amended* 71 P.S. § 745.3.)

The Bureau of Special Education (BSE) engaged in communication with stakeholders regarding the proposed change in language, including conducting outreach with the General Assembly, local education agencies (LEAs), the Parent Training Institute (PTI), the Parent Education & Advocacy Leadership Center (PEAL), and the Pennsylvania Association of Intermediate Units (PAIU).

Specifically, the BSE has fielded requests through the General Assembly regarding the need for the change in terminology. Also, various advocacy organizations for individuals with disabilities provided informal input, including the federally funded state PTI and the PEAL Center. In addition, the BSE has communicated with LEAs through the Penn\*Link Intranet that connects Pennsylvania schools explaining the change in terminology at the federal level through the Individuals with Disabilities Education Act (IDEA) with the passing of Rosa's Law (Pub L. No. 111-256). Lastly, the PAIU received communication in the form of open discussion from the BSE through its monthly meetings between the BSE Director and PAIU Directors.

In addition, the Board provided opportunities for public comment at the July 11, 2018, public meeting of its Special and Gifted Education Committee; at the July 11, 2018, public meeting of its Council of Basic Education; and at the July 12, 2018, public meeting of the Board. Further, the Board announced to stakeholders at its public meeting on May 10, 2018, that it intended to consider these amendments to update terminology in Chapter 14 at its next meeting on July 11-12, 2018. No stakeholders expressed concern about the proposed terminology change.

(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?

This regulation affects individuals with an intellectual disability, and their families, who receive funded services and supports through the Department's programs including, but not limited to, the Office of Child Development and Early Learning as well as the Bureau of Special Education, which serve approximately 313,618 students and their families. A student with an intellectual disability will be affected by attending a school community where the words used to describe these students and their services and supports are positive and respectful.

(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.

No compliance is required through this update of terminology. The Department encourages local government and providers to revise their communications to use the up-to-date terminology consistent with this regulation.

(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.

This regulation has no financial or economic impact.

This regulation will have a social impact by encouraging others to use the most appropriate language when addressing a person with a disability. The benefit of using respectful and positive language when speaking to and about others is a great benefit to society as a whole.

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

There are no adverse effects of this regulation.

(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.

There are no costs or savings to 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.

There are no costs or savings to local government.

(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.

There are no costs or savings to 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.

There is no increase or decrease in legal, accounting, or consulting paperwork because of this regulation.

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

No forms are required for the implementation of this regulation.

(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.**

Not applicable.

(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
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	
<b>COSTS:</b>						
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
<b>REVENUE LOSSES:</b>						
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.

Bureau of Special Education	FY -3	FY -2	FY -1	Current FY
<i>State Funds</i>				
Special Education	\$1,186,815,000.00	\$1,211,815,000.00	\$1,236,815,000.00	\$1,336,815,000.00
Approved Private Schools	\$114,738,000.00	\$122,656,000.00	\$122,656,000.00	\$129,120,000.00
Chartered Schools for the Deaf and Blind	\$54,584,000.00	\$57,057,000.00	\$57,722,000.00	\$62,502,000.00
Keystone Telepresence	\$300,000.00	\$300,000.00	\$300,000.00	\$300,000.00

<i>Federal Funds</i>				
IDEA-B, 611	\$449,731,894.00	\$462,947,596.00	\$559,436,639.00	\$482,113,284.00
ARP Supplemental IDEA			\$90,472,838.00	
<p>(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, <i>as amended</i> 71 P.S. § 745.3.), provide an economic impact statement that includes the following:</p> <p>(a) An identification and estimate of the number of small businesses subject to the regulation.</p> <p>Small businesses are not subject to the regulation.</p> <p>(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.</p> <p>No reporting, recordkeeping, or compliance is required by this regulation.</p> <p>(c) A statement of probable effect on impacted small businesses.</p> <p>The regulation does not affect small businesses. As such, there is no adverse impact on small businesses.</p> <p>(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.</p> <p>The regulation does not intrude on or result in costs to small businesses.</p>				
<p>(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.</p> <p>This regulation positively affects individuals with disabilities by using up-to-date and appropriate language.</p>				
<p>(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.</p> <p>An alternative provision to update the terminology is not available. A regulatory amendment is necessary to update the terminology.</p>				
<p>(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:</p> <p>a) The establishment of less stringent compliance or reporting requirements for small businesses;</p>				

- 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.

This regulation has no impact on small businesses.

- (a) This regulation uses the same updated terminology for all businesses, large and small, which serve and support individuals in the Commonwealth.
- (b) There are no schedules or deadlines applicable to either large or small businesses.
- (c) There are no compliance or reporting requirements applicable to either large or small businesses.
- (d) There are no performance standards required by this regulation.
- (e) Small businesses are subject to the regulation using appropriate terminology.

(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.

Data is not the basis for this regulation.

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

A. The length of the public comment period:	<u>Not applicable</u>
B. The date or dates on which any public meetings or hearings will be held.	Not applicable
C. The expected date of delivery of the final-form regulation:	<u>August 2023</u>
D. The expected effective date of the final-form regulation: <u>in the <i>Pennsylvania Bulletin</i></u>	<u>Upon notice or publication</u>
E. The expected date by which compliance with the final-form regulation will be required: <u>in the <i>Pennsylvania Bulletin</i>.</u>	<u>Upon notice or publication</u>



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

Not applicable

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

The State Board will review Chapter 14 every four years in accordance with the Board's policy and practice regarding all of its regulations. Thus, no sunset date is necessary.

CDL-1

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

**RECEIVED**

AUG 02 2023

Independent Regulatory  
Review Commission

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 hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Pennsylvania State Board of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>006-341</u></p> <p>DATE OF ADOPTION: <u>March 8, 2023</u></p> <p>BY: <u><i>Kan Mollahan</i></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><i>Adrian P. ...</i></u></p> <p><u>August 2, 2023</u> DATE OF APPROVAL</p> <p>Deputy General Counsel (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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**NOTICE OF FINAL-OMITTED RULEMAKING  
WITHOUT PUBLICATION AS PROPOSED**

**STATE BOARD OF EDUCATION**

**Intellectual Disability Terminology Update**

[22 PA. Code Part I Chapter 14 Sections 14.123, 14.124, 14.125, 14.132, 14.143, 14.162]

# **FINAL-OMITTED RULEMAKING**

## **STATE BOARD OF EDUCATION**

### **[22 PA. CODE Chapter 14]**

#### **Special Education Services and Programs**

The State Board of Education (Board) amends Chapter 14 of Title 22 (relating to Special Education Services and Programs) to read as set forth in Annex A as a final-omitted rulemaking.

#### *Statutory Authority*

The Board adopts this final-omitted rulemaking under the authority granted by Sections 1372 and 26-2603-B, of the Public School Code of 1949, *as amended* (24 P.S. §§ 13-1372 and 26-2603-B).

#### *Purpose*

This final-omitted rulemaking amends 22 Pa. Code Sections 14.123, 14.124, 14.125, 14.132, 14.143 and 14.162 by replacing the term “mental retardation” with the term “intellectual disability” and by replacing the term “mentally retarded” with the term “intellectual disability.” These terminology updates are presented for clarity and for consistency with Rosa’s Law (Pub L. No. 111-256), the regulations found at 34 CFR Sections 300.8 (a)(1), (c)(6)-(7) & (10)(ii); 300.309 (a)(3)(ii); and 300.311 (a)(6), and the act of November 22, 2011 (P.L. 420, No. 105).

#### *Background*

Currently, regulations under 22 Pa. Code Chapter 14 use the terms “mental retardation” and “mentally retarded.” Rosa’s Law (Pub L. No. 111-256), amended the Rehabilitation Act of 1973, 29 U.S.C. § 705(21)(A)(iii), 29 U.S.C. § 764(b)(2)(C)(v), 29

U.S.C. § 791(a), the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400(c)(12)(C), 1401(3)(A)(i) & (30)(C), the Higher Education Act of 1965, 20 U.S.C. § 1140(2)(A), and the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7512(16)(E) (subsequently repealed) by removing the term “mental retardation” and replacing it with the term “intellectual disability.” *See also* Federal Register Vol. 82, No. 131, Tuesday, July 11, 2017, Rules and Regulations. The act of November 22, 2011 (P.L. 420, No. 105) amended the Mental Health and Mental Retardation Act of 1966 (50 P.S. §§ 4101—4704) to read as the “Mental Health and Intellectual Disability Act of 1966” and replaced the defined term and references to “mental retardation” with “intellectual disability.”

The Board amends the terminology currently used in 22 Pa. Code Chapter 14 to be consistent with the aforementioned changes in terminology that were enacted in Federal law. This regulation supports individuals with an intellectual disability by replacing the terms “mentally retarded” and “mental retardation” with the terms “intellectual disability.” The benefit of this regulation is to promote respect, community integration, and an array of opportunities for an individual with an intellectual disability by using words that are positive and up to date in the Board’s regulations.

*Summary of the Final-Omitted Rulemaking*

The final-omitted rulemaking amends the following provisions in Chapter 14:

*Section 14.123 (Evaluation), Section 14.124(a) (Reevaluation), Section 14.125(3)(ii) (Criteria for the determination of specific learning disabilities), Section 14.132(a)(2)(vii) (ESY), Section 14.132(d) (ESY), and Section 14.143(b) (Disciplinary Placements).* Amendments to these sections replace the term “mental retardation” with the

term “intellectual disability.” *Section 14.124(c) (Reevaluation) and Section 14.162(a) (Impartial due process hearing and expedited due process hearing)*. Amendments to these sections replace the term “mentally retarded” with the term “intellectual disability.”

*Affected Parties*

This final-omitted rulemaking will affect public school entities, including school districts, area career and technical schools, intermediate units, and their employees. The rulemaking also will affect citizens of the Commonwealth with school-aged children and their children.

*Fiscal Impact and Paperwork Estimates*

This final-omitted rulemaking makes amendments for clarity and for consistency with Rosa’s Law (Pub L. No. 111-256) and the act of November 22, 2011 (P.L. 420, No. 105). This rulemaking does not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

*Effective Date*

This final-form rulemaking will take effect upon notice or publication in the *Pennsylvania Bulletin*.

*Sunset Date*

The Board will review the effectiveness of 22 Pa. Code Chapter 14 every four years in accordance with the Board’s policy and practice regarding its regulations. Thus, no sunset date is necessary.

*Omission of Proposed Rulemaking*

Notice of proposed rulemaking is omitted in accordance with Section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)) and 1 Pa. Code § 7.4(3),

because the Board finds for good cause that the proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest. Under Federal and State law, the terminology “intellectual disability” has replaced the archaic terminology “mental retardation.” *See Rosa’s Law* (Pub L. No. 111-256) and the act of November 22, 2011 (P.L. 420, No. 105).

Although this regulation is not mandated by any Federal or State law, court orders, or Federal regulations, this final-omitted rulemaking is in conformance with Federal and State law. *See Rosa’s Law* (Pub L. No. 111-256) and the act of November 22, 2011 (P.L. 420, No. 105). Because these amendments are for the purpose of making the terminology in the regulations consistent with the terminology used in Federal and State law, it is unnecessary to hold a public comment period because the Federal and State law dictate the terminology used and consideration of alternative constructs through public comment would be inconsistent with terminology used elsewhere.

Further, the affected individuals with an intellectual disability, friends and family members of affected individuals, providers of services and supports for individuals with an intellectual disability, and county mental health/intellectual disability programs support the use of the up-to-date and appropriate term “intellectual disability” to replace the archaic term “mental retardation.” This final-omitted rulemaking promotes respect, community integration and an array of opportunities for an individual with an intellectual disability by using a term that is positive and up to date.

#### *Regulatory Review*

Under Section 5.1(c) of the Regulatory Review Act, (71 P.S. § 745.5a(c)), on \_\_\_\_\_ the Board submitted a copy of this final-omitted regulation, and a copy of the

Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and the Senate Education Committees. On the same date, the final-omitted regulation was submitted to the Office of the Attorney General for review and approval under the Commonwealth Attorneys Act. (71 P.S. § 732-101–732-506). In accordance with Section 5.1(j.2) of the Regulatory Review Act, on \_\_\_\_\_, this final-omitted regulation was deemed approved by the House and Senate Education Committees Under Section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_ and approved this final-omitted regulation.

*Contact Person*

Interested persons may contact Karen Molchanow, Executive Director, State Board of Education, at [ra-stateboardofed@pa.gov](mailto:ra-stateboardofed@pa.gov) or 333 Market Street, 1<sup>st</sup> Floor, Harrisburg, PA 17126.

*Findings of the Board*

The Board finds:

(a) Notice of proposed rulemaking is omitted in accordance with § 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)) and 1 Pa. Code § 7.4(3).

The affected individuals with an intellectual disability, friends and family members of affected individuals, providers of services and supports for individuals with an intellectual disability and educational programs have previously indicated their support the use of the up-to-date and appropriate term “intellectual disability.” This final-omitted rulemaking promotes respect, community integration and an array of opportunities for an individual with an intellectual disability by using a term that is positive and up to date. The Federal

government also has indicated its support for the use of the up-to-date and appropriate term “intellectual disability.” Additionally, public comment will not change the terminology used. Therefore, the Board, based on the reasons above, finds that notice of proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest.

(b) The amendment of the regulations in the manner provided in this order is necessary and appropriate for the administration of regulations found at 22 Pa. Code Chapter 14.

*Order of the Board*

Acting under the authority of the Public School Code of 1949, the Board orders that:

- (a) The regulations of the Board, 22 Pa. Code Chapter 14, are amended by amending §14.123, §14.124, §14.125, §14.132, §14.143 and §14.162 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.
- (b) The Executive Director of the Board shall submit a copy of this final-omitted regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Executive Director of the Board shall submit this final-omitted regulation to IRRC and the Senate and House Education Committees, as required by law.
- (d) The Executive Director of the Board shall certify this final-omitted regulation, as approved for legality and form, and deposit it with the Legislative Reference Bureau as required by law.



(e) This final-omitted regulation shall take effect immediately upon notice or publication in the *Pennsylvania Bulletin*.

KAREN MOLCHANOW,  
Executive Director

**ANNEX A**

**TITLE 22. EDUCATION**

**PART I. STATE BOARD OF EDUCATION**

**SUBPART A. MISCELLANEOUS PROVISION**

**CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS**

\*\*\*\*\*

**§ 14.123. Evaluation.**

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, [mental retardation,] intellectual disability, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

\*\*\*\*\*

**§ 14.124. Reevaluation.**

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.303 (relating to reevaluations), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, [mental retardation,] intellectual disability, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.

\*\*\*\*\*

(c) Students with disabilities who are identified as [mentally retarded] having an intellectual disability shall be reevaluated at least once every 2 years.

\*\*\*\*\*

**§ 14.125. Criteria for the determination of specific learning disabilities.**

This section contains the State-level criteria for determining the existence of a specific learning disability. Each school district and intermediate unit shall develop procedures for the determination of specific learning disabilities that conform to criteria in this section. These procedures shall be included in the school district's and intermediate unit's special education plan in accordance with § 14.104(b) (relating to special education plans). To determine that a child has a specific learning disability, the school district or intermediate unit shall:

\*\*\*\*\*

(3) Have determined that its findings under this section are not primarily the result of:

- (i) A visual, hearing or orthopedic disability.
- (ii) [Mental retardation] Intellectual disability.
- (iii) Emotional disturbance.
- (iv) Cultural factors.
- (v) Environmental or economic disadvantage.
- (vi) Limited English proficiency.

\*\*\*\*\*

**§ 14.132. ESY.**

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), school entities shall use the following standards for determining whether a student with disabilities requires ESY as part of the student's program:

\*\*\*\*\*

(2) In considering whether a student is eligible for ESY services, the IEP team shall consider the following factors; however, no single factor will be considered determinative:

\*\*\*\*\*

(vii) Whether the student's disability is severe, such as autism/pervasive developmental disorder, serious emotional disturbance, severe [mental retardation] intellectual disability, degenerative impairments with mental involvement and severe multiple disabilities.

\*\*\*\*\*

(d) Students with severe disabilities such as autism/pervasive developmental disorder, serious emotional disturbance; severe [mental retardation] intellectual disability; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

\*\*\*\*\*

**§ 14.143. Disciplinary placements.**

\*\*\*\*\*

(b) A removal from school is a change of placement for a student who is identified with [mental retardation] an intellectual disability, except if the student's actions are consistent with 34 CFR 300.530(g)(1)-(3) (relating to authority of school personnel).

**§ 14.162. Impartial due process hearing and expedited due process hearing.**

(a) In addition to the requirements incorporated by reference in 34 CFR 300.504 (relating to procedural safeguard notice), with regard to a student who [is mentally retarded] has an intellectual disability or who is thought to [be mentally retarded] have an intellectual disability, a notice when mailed shall be issued to the parent by certified mail (addressee only, return receipt requested).

\*\*\*\*\*



August 2, 2023

**VIA E-MAIL**

David Sumner  
Executive Director  
Pennsylvania Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

Executive Director Sumner,

Attached, please find final-omitted rulemaking number #6-341 from the state Board of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) by replacing the terms “mentally retarded” and “mental retardation” with the term “intellectual disability.”

Sincerely,

/s/ Eric Levis

Eric Levis  
Deputy Policy Director



August 2, 2023

**VIA E-MAIL**

The Honorable Senator Lindsey M. Williams  
Democratic Chair, Senate Education Committee  
Pennsylvania State Senate  
Senate Box 203038  
Harrisburg, PA 17120-3038

Dear Senator Williams,

Attached, please find final-omitted rulemaking number #6-341 from the state Board of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) by replacing the terms "mentally retarded" and "mental retardation" with the term "intellectual disability."

Sincerely,

/s/ Eric Levis

Eric Levis  
Deputy Policy Director



August 2, 2023

**VIA E-MAIL**

The Honorable Representative Jesse Topper  
Republican Chair, House Education Committee  
Pennsylvania State House of Representatives  
400 Irvis Office Building  
P.O. Box 202078  
Harrisburg, PA 17120-2078

Dear Representative Topper,

Attached, please find final-omitted rulemaking number #6-341 from the state Board of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) by replacing the terms "mentally retarded" and "mental retardation" with the term "intellectual disability."

Sincerely,

/s/ Eric Levis

Eric Levis  
Deputy Policy Director





August 2, 2023

**VIA E-MAIL**

The Honorable Representative Peter Schweyer  
Democratic Chair, House Education Committee  
Pennsylvania State House of Representatives  
128 Main Capitol Building  
P.O. Box 202134  
Harrisburg, PA 17120-2134

Dear Representative Schweyer,

Attached, please find final-omitted rulemaking number #6-341 from the state Board of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) by replacing the terms “mentally retarded” and “mental retardation” with the term “intellectual disability.”

Sincerely,

/s/ Eric Levis

Eric Levis  
Deputy Policy Director



August 2, 2023

**VIA E-MAIL**

The Honorable Senator David Argall  
Republican Chair, Senate Education Committee  
Pennsylvania State Senate  
Senate Box 203029  
Harrisburg, PA 17120-3029

Dear Senator Argall,

Attached, please find final-omitted rulemaking number #6-341 from the state Board of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) by replacing the terms “mentally retarded” and “mental retardation” with the term “intellectual disability.”

Sincerely,

/s/ Eric Levis

Eric Levis  
Deputy Policy Director

**Shani Shenk**

---

**From:** Rizzi, Alicia (GC) <arizzi@pa.gov>  
**Sent:** Wednesday, August 2, 2023 12:08 PM  
**To:** Levis, Eric  
**Subject:** FW: [ EXTERNAL ] RECEIPT CONFIRMATION REQUESTED - PDE Final-Omitted Regulation #6-341

**RECEIVED**

AUG 02 2023

Independent Regulatory  
Review Commission

Rick,

Please see OAG's acknowledgement below.

Thank you,  
Alicia

---

**From:** Elliott, Amy M. <aelliott@attorneygeneral.gov>  
**Sent:** Wednesday, August 2, 2023 11:40 AM  
**To:** Rizzi, Alicia (GC) <arizzi@pa.gov>  
**Cc:** Trotter, Carolyn <ctrotter@attorneygeneral.gov>; Abelson, Addie <adabelson@pa.gov>; Risser, Jennifer (GC) <jrisser@pa.gov>; GC, Regulations <RA-GCREGULATIONS@pa.gov>  
**Subject:** Re: [ EXTERNAL ] RECEIPT CONFIRMATION REQUESTED - PDE Final-Omitted Regulation #6-341

Receipt acknowledged

On Aug 2, 2023 5:27 AM, "Rizzi, Alicia (GC)" <arizzi@pa.gov> wrote:

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

Attached for your review please find the Department of Education's final-omitted regulation #6-431.

**Please reply to this email at your earliest convenience with a confirmation of receipt so that the agency may provide proof of delivery to IRRC.**

Thank you,

**Alicia C. Rizzi** | Legal Office Administrator  
Governor's Office of General Counsel  
Commonwealth of Pennsylvania  
333 Market Street Tower, 17th Floor | Harrisburg, PA 17101  
Phone: 717.787.9344 | Fax: 717.787.1788  
[arizzi@pa.gov](mailto:arizzi@pa.gov) | [www.ogc.pa.gov](http://www.ogc.pa.gov)

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Review Commission

**Shani Shenk**

---

**From:** Shannon Walker <Swalker@pahousegop.com>  
**Sent:** Wednesday, August 2, 2023 11:22 AM  
**To:** Levis, Eric; Jesse Topper  
**Cc:** Kane, Julie; Latanishen, Stephen; Snyder, Samantha (PDE); Molchanow, Karen; Clancy, Carole; Diane Acri  
**Subject:** RE: Delivery of Final-Omitted Rulemakings #6-341 and #6-342  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**RECEIVED**

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Review Commission

Rick,

Thank you for your email. This reply confirms that the rulemakings were received.

All the best,

**Shannon L. Walker** | Executive Director  
Pennsylvania House of Representatives  
Education Committee (R)  
(p): 717-260-6231

---

**From:** Levis, Eric <ELEVIS@pa.gov>  
**Sent:** Wednesday, August 2, 2023 10:56 AM  
**To:** Jesse Topper <Jtopper@pahousegop.com>; Shannon Walker <Swalker@pahousegop.com>  
**Cc:** Kane, Julie <jukane@pa.gov>; Latanishen, Stephen <slatanishe@pa.gov>; Snyder, Samantha (PDE) <samsnyder@pa.gov>; Molchanow, Karen <kamolchano@pa.gov>; Clancy, Carole <caclancy@pa.gov>  
**Subject:** Delivery of Final-Omitted Rulemakings #6-341 and #6-342  
**Importance:** High

Dear Representative Topper,

Please see the attached documents for final-omitted regulations #6-341 and #6-342 from the state Board of Education and the state Department of Education. The regulations support individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) and Chapter 711 (relating to Charter School and Cyber Charter School Services and Programs for Children with Disabilities) by replacing the terms "mentally retarded" and "mental retardation" with the term "intellectual disability." PDE and the state Board are submitting the regulations in tandem due to the identical terminology corrections.

We appreciate your acceptance of the regulations through electronic delivery.

Please provide written (email) confirmation that the rulemakings were received.

Thank you.

Rick

Eric Levis | Deputy Policy Director  
Pennsylvania Department of Education  
333 Market Street | Harrisburg, PA 17126  
C: 717.731.2433 | [elevis@pa.gov](mailto:elevis@pa.gov)  
[www.education.pa.gov](http://www.education.pa.gov)

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**Shani Shank**

---

**From:** Kleiman, Cheryl <Cheryl.Kleiman@pasenate.com>  
**Sent:** Wednesday, August 2, 2023 11:15 AM  
**To:** Levis, Eric; Williams, Senator Lindsey  
**Cc:** Kane, Julie; Latanishen, Stephen; Snyder, Samantha (PDE); Molchanow, Karen; Clancy, Carole  
**Subject:** Re: Delivery of Final-Omitted Rulemakings #6-341 and #6-342

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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On behalf of Senator Williams, I am happy to confirm receipt.

AUG 02 2023

Thanks,  
Cheryl Kleiman

Independent Regulatory  
Review Commission

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**From:** Levis, Eric <ELEVIS@pa.gov>  
**Sent:** Wednesday, August 2, 2023 10:58:29 AM  
**To:** Williams, Senator Lindsey <lindsey.williams@pasenate.com>; Kleiman, Cheryl <cheryl.kleiman@pasenate.com>  
**Cc:** Kane, Julie <jukane@pa.gov>; Latanishen, Stephen <slatanishe@pa.gov>; Snyder, Samantha (PDE) <samsnyder@pa.gov>; Molchanow, Karen <kamolchano@pa.gov>; Clancy, Carole <caclancy@pa.gov>  
**Subject:** Delivery of Final-Omitted Rulemakings #6-341 and #6-342

**EXTERNAL EMAIL**

Dear Senator Williams,

Please see the attached documents for final-omitted regulations #6-341 and #6-342 from the state Board of Education and the state Department of Education. The regulations support individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 14 (relating to Special Education Services and Programs) and Chapter 711 (relating to Charter School and Cyber Charter School Services and Programs for Children with Disabilities) by replacing the terms "mentally retarded" and "mental retardation" with the term "intellectual disability." PDE and the state Board are submitting the regulations in tandem due to the identical terminology corrections.

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Thank you.

Rick

Eric Levis | Deputy Policy Director  
Pennsylvania Department of Education  
333 Market Street | Harrisburg, PA 17126  
C: 717.731.2433 | [elevis@pa.gov](mailto:elevis@pa.gov)

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## Shani Shenk

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**From:** Armstrong, Monica <marmstrong@pasen.gov>  
**Sent:** Wednesday, August 2, 2023 11:04 AM  
**To:** Levis, Eric; Urban, Cynthia  
**Cc:** Kane, Julie; Latanishen, Stephen; Snyder, Samantha (PDE); Molchanow, Karen; Clancy, Carole  
**Subject:** RE: Delivery of Final-Omitted Rulemakings #6-341 and #6-342

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning, Eric-

Confirming that I have received the regulations today, August 2, 2023, on behalf of the Senate Education Committee.

Thank you.

**Monica Armstrong**  
Executive Assistant | Harrisburg Scheduler

SENATOR DAVE ARGALL  
29<sup>th</sup> Senatorial District

177 Main Capitol | Senate Box 203029  
Harrisburg, PA 17120-3029  
717-787-2637  
[www.SenatorArgall.com](http://www.SenatorArgall.com)



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**From:** Levis, Eric <ELEVIS@pa.gov>  
**Sent:** Wednesday, August 2, 2023 11:01 AM  
**To:** Argall, Senator David <dargall@pasen.gov>; Urban, Cynthia <curban@pasen.gov>; Armstrong, Monica <marmstrong@pasen.gov>  
**Cc:** Kane, Julie <jukane@pa.gov>; Latanishen, Stephen <slatanishe@pa.gov>; Snyder, Samantha (PDE) <samsnyder@pa.gov>; Molchanow, Karen <kamolchano@pa.gov>; Clancy, Carole <caclancy@pa.gov>  
**Subject:** Delivery of Final-Omitted Rulemakings #6-341 and #6-342  
**Importance:** High

Ⓞ CAUTION : External Email Ⓞ

Dear Senator Argall,

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Rick

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333 Market Street | Harrisburg, PA 17126  
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## Shani Shenk

---

**From:** Garofalo, Gelina M. <GGarofalo@pahouse.net>  
**Sent:** Wednesday, August 2, 2023 11:00 AM  
**To:** Levis, Eric; Schweyer, Peter; Dixon, Erin  
**Cc:** Kane, Julie; Latanishen, Stephen; Snyder, Samantha (PDE); Molchanow, Karen; Clancy, Carole  
**Subject:** RE: Delivery of Final-Omitted Rulemakings #6-341 and #6-342

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Eric,

Please consider this confirmation that I have received the rulemakings.

Thank you,

Gelina M. Garofalo, Senior Legislative Assistant  
Representative Peter G. Schweyer  
House of Representatives  
128, Main Capitol Building  
Harrisburg, PA 17120  
717-787-2909  
ggarofalo@pahouse.net

---

**From:** Levis, Eric <ELEVIS@pa.gov>  
**Sent:** Wednesday, August 2, 2023 10:54 AM  
**To:** Schweyer, Peter <PSchweyer@pahouse.net>; Dixon, Erin <EDixon@pahouse.net>; Garofalo, Gelina M. <GGarofalo@pahouse.net>  
**Cc:** Kane, Julie <jukane@pa.gov>; Latanishen, Stephen <slatanishe@pa.gov>; Snyder, Samantha (PDE) <samsnyder@pa.gov>; Molchanow, Karen <kamolchano@pa.gov>; Clancy, Carole <caclancy@pa.gov>  
**Subject:** Delivery of Final-Omitted Rulemakings #6-341 and #6-342  
**Importance:** High

Dear Representative Schweyer,

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Thank you.

Rick

Eric Levis | Deputy Policy Director  
Pennsylvania Department of Education  
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C: 717.731.2433 | [elevis@pa.gov](mailto:elevis@pa.gov)  
[www.education.pa.gov](http://www.education.pa.gov)

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