

Regulatory Analysis Form

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REGULATORY
REVIEW COMMISSION

(1) Agency

State Board of Education

(2) I.D. Number (Governor's Office Use)

6-287

IRRC Number: 2350

(3) Short Title

Special Education Services and Programs

(4) PA Code Cite

22 Pa. Code, Chapter 14

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jim Buckheit
(717) 787-3787

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

This final form regulation revises Section 14.162(c) of Chapter 14, Special Education Services and Programs, to bring the section into conformity with requirements of the Office of Special Education, U.S. Department of Education. Adopting this revision is a condition placed upon the Commonwealth by the U.S. Department of Education in order for the Commonwealth to continue to receive more than \$336 million in federal funding. The revision must be made by June 30, 2004. The final form regulation revises the provision that permits an independent hearing officer to overrule a parent's objection to the provision of special education services to their child. The revision provides a parent with the final authority whether their child is to be provided special education services after the child has been identified as being eligible for such services.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Act of March 10, 1949, P.L. 30, No. 14, §26-2603-B, added by the Act of March 30, 1988, P.L. 321, No. 43. The State Board's authority for Chapter 14, is the Public School Code of 1949 (24 P.S. 13-1372(1)).

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- (10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

To be eligible to receive federal funds under the Individuals with Disabilities Education Act, Part B (IDEA-B, a State must adopt regulations consistent with federal regulations (34 CFR §300.110). The proposed Chapter 14 amendment is applicable to the federal regulatory provision found at 34 CFR §300.505(a)(b).

The U.S. Department of Education (USDE), Office of Special Education Programs notified the Department of Education that Chapter 14, in particular § 14.162 (relating to impartial due process hearings) was inconsistent with federal regulations. The amended regulation will preclude a school district from seeking a remedy when a parent withholds written consent to his/her child being placed in special education.

An email message sent on June 28, 2002, from OSEP to the Director, Bureau of Special Education, first advised the Commonwealth of the need to revise the regulation. In a letter dated June 23, 2003, from Dr. Fran Warkomski, Director, Bureau of Special Education, Pennsylvania Department of Education, to Mr. Hugh Reid, Division of Monitoring and State Improvement Planning, U.S. Department of Education, a signed statement was provided that assured "that Pennsylvania will continue to implement all required actions to ensure adherence with requirements for Part B grant awards under the Individuals with Disabilities Education Act (IDEA)." The assurance also provided that "All necessary modifications to state regulations required to address 34 CFR § 300.505 have been provided to the State Board of Education, have progressed through public input stages, and are pending regulatory adoption..." In a letter dated July 1, 2003 from Stephanie S. Lee, Director, Office of Special Education Programs, U.S. Department of Education, to Secretary of Education Vicki L. Phillips, provided conditional approval of Pennsylvania's Eligibility Document Submission for Federal Fiscal Year 2003. The determination that Pennsylvania was eligible for conditional approval was based on the Department providing an assurance that "as soon as possible, but no later than July 1, 2004, Pennsylvania will revise Chapter 14 of the Pennsylvania Code to change § 14.162, consistent with 34 CFR § 300.505(b)."

- (11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

To remain eligible for \$336 million in federal funds under IDEA- Part B, the State must adopt rules consistent with the federal regulations. The amended regulation will preclude a school district from seeking a remedy when a parent withholds written consent to his/her child being placed in special education.

- (12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Implementation via non-regulatory activity would jeopardize the State's IDEA-B grant. This would have an effect on all children with disabilities who currently benefit from receiving an appropriate public education under Chapter 14.

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- (13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Approximately 250,000 children with disabilities (school aged and preschool age), benefit from special education under the regulatory protections of Chapter 14 and federal regulations. Parents who maintain that school districts should not begin special education without their consent will drive benefit. In 1999/2000, there were 195 hearing officer decisions. There was only one instance in which a school district sought a hearing officer's order permitting it to initiate special education in the absence of written parental consent. Parents will no longer be faced with a school district seeking a hearing officer's order to initiate special education services without their approval to do so.

- (14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

A school district seldom finds educating the child outside of the confines of special education less than successful for a student identified as disabled. This student may have otherwise benefited from special education but for whom the parent has withheld consent. As described in number 13, the actual instances where this situation arises is extremely limited.

- (15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All school districts (for school aged students with disabilities) and the Department of Education (for eligible young children -preschool) through mutually agreed-upon written arrangements with intermediate units, school districts or other agencies must comply with the requirements of the regulations.

- (16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

A draft amendment to Chapter 14, Section 16.162 (c) was developed by the Department, and, subsequently, the State Board's Special Education Committee posted the draft rule on its website requesting public comments at a public hearing. Public input has been provided thus far by the Pennsylvania School Board Association, the Pennsylvania State Education Association, Education Law Center, and other stake-holders (i.e., legal counsel). The Board also solicited comments from individuals who were active participants in the last revision of Chapter 14.

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(17). Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

There will be no significant impact on cost or savings to the regulated community because the current rule has rarely been invoked. In one year where it did occur, the one due process hearing cost the regulated community \$982.92 (payment to hearing officer), which will be a future savings under the amended rule. Additional savings would be the elimination of the need for the school district solicitor and staff participation at a due process hearing.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Not applicable.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

No significant impact on cost or savings to state government because the current rule has rarely been invoked. In one year, the one due process hearing cost to the state government was \$691.30 (steno services), which will be a future savings under the amended rule. Additional savings would be the elimination of the administrative cost to arrange for the rare due process hearing.

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(20) 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	\$983	\$983	\$983	\$983	\$983	\$983
Local Government						
State Government	\$700	\$700	\$700	\$700	\$700	\$700
Total Savings	\$1683	\$1683	\$1683	\$1683	\$1683	\$1683
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	\$00.00	\$00.00	\$00.00	\$00.00	\$00.00	\$00.00
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

Experience suggests that under current law, no more than one due process hearing per year would be expected to be conducted where the school district would seek a hearing officer's order in the absence of parental consent. The known cost of this one hearing was \$982.92 for hearing officer cost (decision, travel, preparation, etc.) paid by the school district. The cost of the stenographer was \$691.30 paid by the Department of Education.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Due Process Hear.	None	\$1683	None	None

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(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There are no adverse effects and costs. Moreover, the federal grant placed in jeopardy if no rule change would be forthcoming, would be in excess of \$336,000,000.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered because failure to adopt a rule consistent with federal regulations would jeopardize IDEA-Part B grant to the Commonwealth and raise the risk of judicial review of Chapter 14.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Regulatory alternatives were not considered because failure to adopt a rule consistent with federal regulations would jeopardize IDEA-B grant to the Commonwealth and risk judicial review of Chapter 14.

(24) 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 regulation.

The amendment proposed would not be more stringent than federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

All other states are required to meet the same federal standards. The regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

No.

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(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

In addition to the special hearing held on February 21, 2003 to receive input on this regulatory amendment, additional public input was solicited during the State Board's regular meetings on March 19 - 20, 2003, during public comment period following notice of the proposal to amend Chapter 14 in the *Pennsylvania Bulletin*. An additional committee meeting, open to the public, was held on November 19, 2003 prior to final adoption of the revision by the State Board.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The final form regulation will not change existing reporting, record keeping or other paperwork requirements.

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

There would not be any necessary specific provisions for affected groups or persons.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The amended regulation will be effective upon final publication in the *Pennsylvania Bulletin*. This change will not have any affect on permits, licenses or other necessary approvals for the delivery of special education by local education agencies.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of Chapter 14 will be reviewed by the State Board of Education every four years, in accordance with the Board's policy and practices respecting all regulations promulgated by the Board.

**Chapter 14 – 14.162(b) revision
List of Commentators
Official Public Comment Period
8/30/03-9/29/03**

Mr. Timothy Allwein
Assistant Executive Director
Governmental and Member Relations
Pennsylvania School Boards Association
774 Limekiln Road
New Cumberland, PA 17070-2398
717-774-2331

Representative Bernard O'Neill
Member, House Education Committee
Pennsylvania House of Representatives
5 East Wing
House Box 202020
Harrisburg, PA 17120-2020
717-705-7170

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED
2004 FEB 18 AM 10:57

LEGISLATIVE REVIEW COMMISSION

#2350

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>PA State Board of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>6-287</u></p> <p>DATE OF ADOPTION: <u>11/20/03</u></p> <p>BY: <u>[Signature]</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>[Signature]</u></p> <p><u>2/11/04</u> DATE OF APPROVAL <u>Exec</u> (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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FINAL-FORM
TITLE 22 - EDUCATION
CHAPTER 14, SECTION 14.162(C)
SPECIAL EDUCATION SERVICES AND PROGRAMS
IMPARTIAL DUE PROCESS HEARING AND EXPEDITED DUE PROCESS HEARING

PREAMBLE

**DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION
22 PA. CODE—EDUCATION
CHAPTER 14: SPECIAL EDUCATION SERVICES AND PROGRAMS**

The State Board of Education (Board) amends Chapter 14 (relating to special education services and programs) to read as set forth in Annex A. The State Board takes this action under the authority of sections 1372 and 2603-B of the Public School Code of 1949 (24 P.S. §§ 13-1372 and 26-2603-B). Notice of proposed rulemaking was published at 33 Pa.B. 4306 (August 30, 2003) with an invitation to submit written comments.

Purpose

The final-form rulemaking will amend § 14.162(c) (relating to impartial due process hearing and expedited due process hearing). The purpose of amending § 14.162(c) is to align the Commonwealth's special education regulations with the requirements imposed by the United States Department of Education's Office of Special Education Programs (OSEP) relating to parental consent and the initiation of educational services. If the Commonwealth does not make this change by June 30, 2004, the Commonwealth risks having more than \$336 million in Federal special education funds withheld by the U.S. Department of Education, affecting services to nearly 250,000 students.

Comments and Responses

The Board received public comments regarding the proposed change in the regulations. In addition, the House Education Committee held a hearing on October 8, 2003 and briefly continued its discussion at a hearing on October 15, 2003. Though the House Education Committee did not officially submit comments, one member of the Education Committee did submit comments for consideration; and committee staff asked a question about the OSEP's position. In his letter, the State Representative urged the Board to challenge OSEP, arguing that OSEP's position is inconsistent with the requirements of the Individuals With Disabilities Education Act (IDEA). The State Representative believes OSEP's position puts school districts at risk for legal challenges that could result in assessment of monetary damages were parents later to claim that the district did not fulfill its duty.

In addition, the Board received a letter from the Pennsylvania School Boards Association (PSBA). PSBA opposes the revision, believing OSEP's position to be inappropriate and putting school districts at risk of legal liability for not providing students a free appropriate public education (FAPE) as required by IDEA. In its letter

PSBA urges the Board to move forward to a hearing with the U.S. Department of Education, believing that an administrative hearing would result in a favorable decision for the Commonwealth and no loss of Federal funds.

At a public committee meeting held by the Board on February 21, 2003, the Standing Committee on Special Education received written and oral testimony regarding the proposed revision from five commentators. The Education Law Center did not take a position on this change and asked that other changes be made to Chapter 14 beyond those outlined in § 14.162. The Pennsylvania State Education Association concurred that the revision was necessary to avoid Federal-funding jeopardy. Two commentators asked the Board not to make the revision and to challenge OSEP's position through the hearing process. They expressed concern that school districts will face financial judgments resulting from legal challenges to districts that do not provide FAPE, even when a parent refuses FAPE. Another commentator asked the Board to state explicitly that a school district's obligation to provide FAPE ends upon a parent's refusal to consent to an initial offer of FAPE and does not request an impartial hearing.

Overall Comments and Policy Considerations

Federal IDEA funding awarded to the Commonwealth for the 2003-04 school year is conditioned upon the Commonwealth making the necessary regulatory revision by June 30, 2004. In correspondence dated June 23, 2003, the Pennsylvania Department of Education informed OSEP that it is committed to making this change.

The following outlines the substance of correspondence between the U.S. Department of Education and the Pennsylvania Department of Education regarding this issue.

- In an e-mail message sent June 28, 2002, OSEP advised the Director of the Department's Bureau of Special Education that Pennsylvania must revise the regulation. The message stated:

In reviewing your eligibility documents, OGC brought it to my attention that there is a problem in Chapter 14. Specifically, § 14.162, Impartial due process hearing and expedited due process hearing, paragraph (c), reads: "A school district may request a hearing to proceed with an initial evaluation, *an initial educational placement* or a reevaluation when the district has not obtained parental consent as required by 34 CFR 300.505(c)(relating to parental consent). When a parent rejects the district's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, the school district may request an impartial due process hearing.

The bold, italicized words need to be eliminated to be consistent with 34 CFR 300.505(b) which does not include a parent's refusal to provide consent for initial placement.

- On January 28, 2003, in an e-mail message to the Director of the Department's Bureau of Special Education, OSEP confirmed that the proposed revision to § 14.162(c) conforms to OSEP's interpretation of 34 C.F.R. § 300.505(b).
- In a letter dated June 23, 2003, to the U.S. Department of Education's Division of Monitoring and State Improvement Planning, the Director of the Department's Bureau of Special Education delivered a signed statement assuring OSEP "that Pennsylvania will continue to implement all required actions to ensure adherence with requirements for Part B grant awards under the Individuals with Disabilities Education Act (IDEA)." The Department also assured OSEP that "[a]ll necessary modifications to state regulations required to address 34 CFR § 300.505 have been provided to the State Board of Education, have progressed through public input stages, and are pending regulatory adoption...."

The Department's statement of assurance also provided:

1. As soon as possible, but no later than July 1, 2004, the State will make all of the changes to its statutes, regulations, policies and procedures, as specified in the memorandum from Hugh Reid to Dr. Fran James Warkowski that are necessary to make them consistent with the following requirements of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations in 34 CFR Part 300, and will provide the Secretary with a copy of the revised documents showing those revisions to Chapter 14 of the Pennsylvania Code to change § 14.162 consistent with 34 CFR §300.505(b). The suggested language should include: "The Individuals with Disabilities Education Act Amendments of 1997 require a public agency to obtain informed parental consent before it initiates provision of special education and related services (34 CFR § 300.505). The Pennsylvania Department of Education, Bureau of Special Education has agreed to seek a State Board revision to Chapter 14 of the Pennsylvania Code to change § 14.162(c) to enhance the Pennsylvania Department of Education's enforcement capabilities. Informed parental consent must be obtained before: (1) conducting an initial evaluation; (2) reevaluation; and (3) the initial provision of special education and related services [34 CFR §300.505(a)(1)]. The public agency may seek a hearing officer decision permitting an initial evaluation and reevaluation when parents withhold consent

[34 CFR §300.505(b)]. However, a hearing officer may not override a parental withholding of consent for the initiation of special education services. A parent's decision on whether to allow a school district to begin to initiate special education program is exclusive to the parent."

2. Throughout the period of the State's grant awards for fiscal year 2003 under Part B of the IDEA, the State will ensure that all public agencies in the State will comply with all of the requirements of Parts A and B of the IDEA and its implementing regulations; and

3. The State will provide OSEP with a copy of a memorandum notifying all public agencies of the changes that impact on public agencies' provision of special education and related services that OSEP requires as a result of its review of the State's eligibility documents.

- In a letter dated July 1, 2003 from Stephanie S. Lee, Director, Office of Special Education Programs, U.S. Department of Education, to Secretary of Education Vicki L. Phillips, OSEP conditionally approved Pennsylvania's Eligibility Document Submission for Federal Fiscal Year 2003. OSEP's determination that Pennsylvania was eligible for conditional approval was based on the Department providing its assurance that, "as soon as possible, but no later than July 1, 2004, Pennsylvania will revise Chapter 14 of the Pennsylvania Code to change § 14.162, consistent with 34 CFR § 300.505(b)." The letter also required the Department to notify all public schools of this change and the impact on their provision of special education services. The Department distributed a memorandum via e-mail on August 15, 2003, to school administrators notifying them of the change and the need for schools to comply with the change during the 2003-04 school year.

Finally, Congress is currently engaged in reauthorization of IDEA. A bill recently approved by the Senate Health, Education, Labor and Pension Committee includes language that addresses this issue. The language in the bill is consistent OSEP's existing interpretation. Therefore it is highly probable that this requirement will be clearly addressed in Federal statute upon reauthorization of IDEA.

The Board believes the number of students affected by this change is relatively small. Based on the most recent school year for which data is available, of nearly 250,000 students eligible for special education services, there was only one case where a school district sought a hearing officer's order to allow it to provide special education services to a student without parental consent.

Upon careful consideration of the issues raised by all commentators, the Board believes it is in the best interest of the Commonwealth to comply with the directive from OSEP and to revise § 14.162(c) of Chapter 14 as shown in Annex A.

Affected Parties

The final-form rulemaking affects the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools).

Costs and Paperwork Estimates

Without proper alignment with Federal requirements, the Department might have its Federal funding for special education withheld, the current total exceeding \$336 million.

Effective Date

The proposed amendment will become effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

Sunset Date

In accordance with its policy and practice respecting all of its regulations, the State Board of Education will review the effectiveness of Chapter 14 every four years. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on August 18, 2003, the Board submitted a copy of the proposed rulemaking, published at 33 Pa.B. 4306, to IRRC and to the Chairpersons of the House and Senate Committees on Education for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation. In preparing the final-form rulemaking, the Board considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), the final-form rulemaking was deemed approved by the Senate and House Committees on _____ . IRRC met on _____, and approved the final-form rulemaking in accordance with section 5.1(e) of the Regulatory Review Act.

Contact Person

The official responsible for information on these final-form regulations is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, telephone (717) 787-3787 or TDD (717) 787-7367.

Findings

The State Board of Education 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 in 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 Public School Code of 1949.

Order

The State Board of Education, acting under authorizing statute, orders that:

- (a) The regulations of the Board, 22 Pa. Code Chapter 14, § 14.162(c), are amended to read as set forth at Annex A.
- (b) The Executive Director 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 Executive Director 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 is effective upon final publication in the *Pennsylvania Bulletin*.

By the State Board of Education:

Jim Buckheit
Executive Director
State Board of Education

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

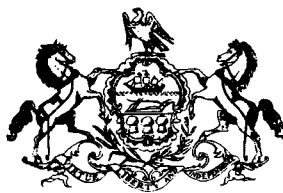
Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

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

...

(c) A school district may request a hearing to proceed with an initial evaluation[, **an initial educational placement**] or a reevaluation when the district has not obtained parental consent as required by 34 CFR 300.505(c) (relating to parental consent). When a parent rejects the district's proposed identification of a child, proposed evaluation, proposed provision of a free appropriate public education or proposed educational placement, **other than the initial placement**, the school district may request an impartial due process hearing.



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

February 13, 2004

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of the final-form of State Board of Education regulation 22 Pa. Code, Chapter 14, Section 14.162(c) Special Education Services and Programs, Impartial Due Process Hearing and Expedited Due Process Hearing for review by the Commission pursuant to the provisions of section 5 (c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of these final-form regulations.

Please let me know if there is anything that you need.

Sincerely,

A handwritten signature in cursive script that reads "Buckheit".

Jim Buckheit
Executive Director

Enclosure

Cc: Dr. Vicki L. Phillips
Gregory Dunlap, Esq.
Larry White, Esq.

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

I.D. NUMBER: 006-287
 SUBJECT: Impartial Due Process Hearing & Expedited Due Process Hearing
 AGENCY: DEPARTMENT OF EDUCATION

RECEIVED 19 FEB 19 05:51
 DEPARTMENT 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
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/13	<i>Yvonne Effinger</i>	HOUSE COMMITTEE ON EDUCATION
2/13	<i>Michelle Lutz</i>	
2/13	<i>T. C. Lutz</i>	SENATE COMMITTEE ON EDUCATION
2/13	<i>R. B. Gross</i>	
2/13	<i>J. Page</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

February 12, 2004