

Regulatory Analysis Form

This space for use by IRRC

RECEIVED

2003 AUG 18 PM 1:50

INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

State Board of Education

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

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: Patricia A. White
(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.

The U.S. Department of Education (USDE), Office of Special Education Program's notified the Department of Education that Chapter 14, in particular § 14.162 (relating to impartial due process hearings) was inconsistent with federal regulations. USDE holds that its regulations do not allow a local education agency (LEA) to seek the approval of an impartial hearing officer (i.e., override parental withholding of consent) when written parental consent is not forthcoming with regard to the *initiation of services*.

The proposed amendments to Chapter 14, § 14.162 (c), would preclude a school district and an early intervention agency from requesting a hearing in an attempt to override the parent's withholding of consent to begin special education instruction.

(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)}.

Regulatory Analysis Form

(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 for a federal grant 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).

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

To remain eligible for a grant under IDEA-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.

(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 derive 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.

Regulatory Analysis Form

(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.

(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 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 Pa. 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.

(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.

Regulatory Analysis Form

(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 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.

Regulatory Analysis Form

(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.

Regulatory Analysis Form

(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

(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 \$310,000,000.

(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-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.

Regulatory Analysis Form

(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.

(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 and 20, 2003, during public comment period following notice of the proposal to amend Chapter 14 in the *Pennsylvania Bulletin*.

Regulatory Analysis Form

(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.

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

RECEIVED

2003 AUG 18 PM 1:50

LEGISLATIVE REFERENCE BUREAU
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><i>[Signature]</i> DATE OF APPROVAL JUL 20 2003</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>State Board of Education (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. #006-287</p> <p>DATE OF ADOPTION: _____</p> <p>BY: <i>Patricia A White</i></p> <p>TITLE: Executive Director (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <i>[Signature]</i></p> <p>7/18/03 DATE OF APPROVAL Executive (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>
--	---	---

Proposed Rulemaking

Title 22 - Education
State Board of Education
Chapter 14 (Special Education Services and Programs)
Section 14.162(c) - (Impartial Due Process Hearings)

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

The State Board of Education (State Board) proposes to amend Chapter 14 (Special Education Services and Programs) of Title 22 (Education) to read as set forth in Annex A. The State Board takes this action under the authority of the Public School Code of 1949, act of March 10, 1949 (P.L. 30, No. 14), especially section § 1372 (24 P.S. § 13-1372 (relating to exceptional children; education and training)) and § 2603-B (24 P.S. § 26-2603-B (relating to powers and duties of the board)).

Purpose

The State Board proposes to amend in this proposed rulemaking only subsection (c) of § 14.162 (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 U.S. Department of Education's Office of Special Education Programs (OSEP) relating to parental consent and the initiation of educational services.

Requirements of the Regulations

OSEP sent correspondence to the Pennsylvania Department of Education indicating that §14.162(c) is inconsistent with federal regulatory requirements. OSEP is requiring all states to revise conflicting regulations to remain eligible for federal grant

funds under the Individuals with Disabilities Education Act (IDEA). OSEP maintains that when the requisite written parental consent is not forthcoming for an evaluation and initial education placement, under federal regulations a local education agency (LEA) may not seek the approval of an impartial hearing officer to initiate such services and override the parents' withholding of consent. In short, OSEP contends that the LEA may not invoke the hearing process when the parents do not want special education services initiated for their child.

To align with federal regulations and continue the Commonwealth's eligibility for the IDEA grant funds, the State Board proposes to amend § 14.162 (c) so that it will no longer allow an "initial educational placement" when the district has not obtained written parental consent.

Affected Parties

The proposed regulations affect the students and professional employees of the public schools of this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools).

Cost and Paperwork Estimates

Without proper alignment with federal requirements, the Department might lose its federal funding for special education, the current total exceeding \$310 million.

Effective Date

The proposed regulations will become effective upon final publication in the *Pennsylvania Bulletin*.

Sunset Date

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

Regulatory Review

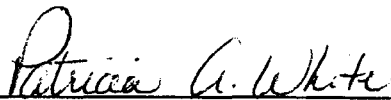
Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 8/18, 2003, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Department, the General Assembly and the Governor, of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia A. White, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333. All comments, suggestions or objections must be received by the State Board within 30 days following publication in the *Pennsylvania Bulletin*.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Patricia White at (717) 787-3787 or TDD (717) 787-7367.



Patricia A. White
Executive Director

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

August 18, 2003

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17101

Dear Mr. Nyce:

Enclosed is a copy of proposed regulations for review by your Committee pursuant to the Regulatory Review Act. The proposed regulation included in this packet is Chapter 14 Section 14.162 (c) that proposes technical changes for federal compliance related to Impartial Due Process Hearings.

The Regulatory Review Act, as amended, provides that the standing committees may convey to the Board and the Independent Regulatory Review Commission their comments on the proposed regulations any time prior to Final-Form Regulation Delivery.

The State Board of Education will provide your Committee with any assistance you may require to facilitate a thorough review of these proposed regulations.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia A. White".

Patricia A. White
Executive Director

cc: Dr. Vicki L. Phillips
Gregory Dunlap, Esq.

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

I.D. NUMBER: 6-287
 SUBJECT: Impartial Due Process Hearing & Expedited Due Process Hearing
 AGENCY: 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

RECEIVED
 2003 AUG 18 PM 1:50
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8/18	<u>M. L. A.</u>	HOUSE COMMITTEE ON EDUCATION
8/18	<u>V. O'Leary</u>	
8/19	<u>D. Hook</u>	SENATE COMMITTEE ON EDUCATION
8/18	<u>K. Creola</u>	
8/18/03	<u>E. Payan</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8/18/03	<u>Mayra Garcia</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)