

Regulatory Analysis Form



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency: State Board of Education

(2) Agency Number: 006
Identification Number: 317

IRRC Number: 2767

(3) Short Title: Special Education Services and Programs – General Provisions

(4) PA Code Cite: 22 PA Code Chapter 14

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Jim Buckheit, (717) 787-3787, 333 Market Street, 1st floor, Harrisburg, PA 17126-0333, (717) 787-7306, jrbuckheit@state.pa.us

Secondary Contact: Deborah Wynn, (717) 787-3787, 333 Market Street, 1st floor, Harrisburg, PA 17126-0333, (717) 787-7306, dewynn@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

N.A.

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☐ Final Regulation
- ☒ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
 - ☐ Certification by the Governor
 - ☐ Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Chapter 14 outlines requirements for the identification, evaluation, placement, support, staffing and dispute resolution students with disabilities. The regulation must comply with the Federal Individuals With Disabilities Education Act and implementing regulations. Chapter 14 adopts by reference numerous provisions in federal regulations. The U.S. Department of Education published new federal regulations in the Federal Register on December 1, 2008. This revision addresses those new regulations as they pertain to consent, parental consent and hearing rights. State policy must be aligned with the new requirements for the Commonwealth to be eligible to receive its annual allotment of what is now more than \$500 million.

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

- | | |
|---|----------------------------|
| A. The date by which the agency must receive public comments: | <u>N.A.</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>January 21-22, 2009</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>June 1, 2009.</u> |
| D. The expected effective date of the final-form regulation: | <u>June 1, 2009</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>June 1, 2009</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N.A.</u> |

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

The State Board of Education reviews its regulations at least once every four years. In this case federal law and regulations may necessitate more frequent updates to the regulation.

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SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Public School Code of 1949 (24 P.S. 13-1372 and 26-2603-B)
Individuals With Disabilities Education Act (P.L. 108-446) and implementing regulations (34 CFR 300.1---300.818), as amended at 73 FR 73006---73029).

(12) 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.

The regulation is mandated by state law in section 1372(1) of the Public School Code of 1949. Section 608 of the Federal Individuals with Disabilities Education Act (P.L. 108-446) and associated regulations (34 CFR 300.1---300.818) also requires that a state "ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title." The new federal requirements are published at 73 FR 73006---73029 (December 1, 2008). The Office of Special Education Programs in the U.S. Department of Education has advised states that state policies must be aligned with the new federal requirements by July 1, 2009 or the state's annual application for funding will not be granted full approval.

(13) 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.

Chapter 14 provides the basis for providing more than 270,000 young children and students with disabilities with educational programming and services necessary for them to receive a free appropriate public education as required by federal law.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N.A.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

No one will be adversely affected by the regulation.

(16) 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.

School districts (501), intermediate units (29), area vocational technical schools (82) and the governing boards (612), administrative staff (7,000), instructional staff (122,000) and support service professional and paraprofessional staff (15,000).

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SECTION III: COST AND IMPACT ANALYSIS

(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 which may be required. Explain how the dollar estimates were derived.

The implementation of the December 1, 2008 amendments, effective December 31, 2008, will have no substantial fiscal impact on the Department or local education agencies. It is possible that the regulations at 34 CFR 300.9 and 300.300 may result in a limited number of parents revoking their consent for special education services which would result in a decrease in the mandated services to that student, there is not an anticipation that this will be a routine or frequent occurrence that would result in a decrease to overall special education costs to the districts.

(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. Explain how the dollar estimates were derived.

N.A.

(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. Explain how the dollar estimates were derived.

N.A.

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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						
Local Government						
State Government						
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	0	0	0	0	0	0

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

Program	FY -3	FY -2	FY -1	Current FY
Special Education	\$953.0	\$980.6 million	\$1,010.0 million	\$1,026.8 million

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

Receipt of over \$500 million in federal funding to provide special education services and programs to nearly 270,000 children and students will benefit students, their families and the Commonwealth's taxpayers who otherwise would need to pay the full cost of providing appropriate educational services to students with disabilities.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Notice was provided to all school administrators via the Department's PennLINK email system. The revisions to federal regulations have been reviewed at conferences, workshops and communications with schools throughout the state.

(23) 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.

The least burdensome approach to this federal mandate has been selected. Only three of several provisions included in the federal regulation are addressed in Chapter 14 since Chapter 14 does not address the distribution of funds or related issues.

(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 regulations.

Every state must comply with the new federal requirements in order to continue to receive federal IDEA funds. Therefore adopting the new federal provisions by reference will not put Pennsylvania at a competitive disadvantage.

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

All states must comply with the federal regulatory provisions adopted in this regulation.

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

No.

(27) 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.

The revision does not impose additional legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork requirements as the revisions are existing federal mandates that apply to all schools that receive federal IDEA funds.

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(28) 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.

The revisions align state regulations with federal regulations, both of which, are designed to meet the needs of students with disabilities.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as
to form and legality.
Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Education
(AGENCY)

BY: 

Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. #006-317

DATE OF ADOPTION: January 22, 2009

MAY 29 2009

DATE OF APPROVAL

DATE OF APPROVAL

BY: 

Deputy General Counsel
(~~Chief Counsel,~~
~~Independent Agency~~)

(Strike inapplicable title)

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable.
No Attorney General approval
or objection within 30 days
after submission.

FINAL-OMITTED REGULATION
COMMONWEALTH OF PENNSYLVANIA
STATE BOARD OF EDUCATION
22 PA CODE CHAPTER 14
SPECIAL EDUCATION SERVICES AND PROGRAMS -
GENERAL PROVISIONS

PREAMBLE

Title 22—EDUCATION

STATE BOARD OF EDUCATION

[22 PA. CODE CH. 14]

GENERAL PROVISIONS

The State Board of Education (Board) amends § 14.102 (relating to incorporation of Federal regulation) to read as set forth in Annex A.

Because the Board finds that proposed rulemaking procedures are unnecessary under the circumstances, public notice of the Board's intention to adopt this final-form rulemaking has been omitted as authorized by section 204(3) of the Commonwealth Documents Law (CDL) (45 P.S. § 1204(3)). Proposed rulemaking has been omitted as unnecessary because the amendments are mandated under sections 1407(1) and 1412(a) of the Individuals with Disabilities Education Act (Pub.L. No.108-446), 20 U.S.C. §§ 1407 and 1412(a), and 34 C.F.R. §§ 300.15, 300.300 and 300.512, which are among the regulations promulgated by the U.S. Department of Education (USDOE) on December 1, 2008, implementing the IDEA.

The Board adopted the Federal regulations by reference in its rulemaking published June 28, 2008. Because the USDOE later amended those regulations, it is necessary for the Board to formally adopt by reference the regulations as amended. Failure to conform State regulations to Federal regulations would seriously jeopardize Federal funding of special education programs for IDEA-eligible disabled children. The requirements of Federal law are specific, allowing for no alternative means of compliance. The Department is required to strictly adopt the Federal standards set forth in these amendments. Thus, inasmuch as this rulemaking is necessary to align the Commonwealth's regulations with the new version of Federal regulations, proposed rulemaking is unnecessary.

The new Federal requirements affect three subparagraphs of 22 Pa. Code § 14.102(a)(2) (relating to purposes) that make reference to Federal regulations. Those provisions of § 14.102(a)(2) currently provide as follows:

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1482)....

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 71 FR 46540—46845 (August 14, 2006). The following sections are incorporated by reference:

(iii) 34 CFR 300.9—300.15 (relating to consent; core academic subjects; day, business day, school day; educational service agency; elementary school; equipment; and evaluation).

(xxiv) 34 CFR 300.300 and 300.301 (relating to parental consent; and initial evaluations).

(xxx) 34 CFR 300.510—300.516 (relating to resolution process; impartial due process hearing; hearing rights; hearing decisions; finality of decisions, appeal; impartial review; timelines and convenience of hearings and reviews; and civil action).

The regulations as currently published incorporate by reference the Federal regulatory requirements that were published at 71 FR 46540—46845 (August 14, 2006). To fully and formally comply with Federal law and regulation, § 14.102(d)(2) must be amended as follows:

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 71 FR 46540—46845 (August 14, 2006), **and amended at 73 FR 73006—73029 (December 1, 2008)**. The following sections are incorporated by reference:

Affected Persons

Persons affected by this amendment have been given actual notice of the Board's intention to amend § 14.102 in advance of final-omitted form rulemaking under section 204(2) of the CDL. Specifically, all local educational agencies (LEAs) will receive electronic notice by means of PENN LINK transmission. Organizations representing students with disabilities and their parents will be notified in writing.

Statutory Authority

The Board acts under the authority of sections 1372 and 2603-B of the Public School Code of 1949 (Code) (24 P. S. §§ 13-1372 and 26-2603-B).

Background

Section 14.102 addresses the general provisions of the Commonwealth's special education regulations that adopted by reference certain of the Federal regulations at the time Chapter 14 was amended on June 28, 2008. On December 1, 2008, the USDOE amended the Federal regulations effective on December 31, 2008. The changes made in this final-form rulemaking to § 14.102 merely would require compliance with the current Federal regulations.

Purpose of the Amendment

This final-form rulemaking, proposed rulemaking omitted, is necessary to align the Commonwealth's regulations to the December 1, 2008 version of Federal IDEA-implementing regulations. Currently, the Commonwealth's special education regulations adopt by reference the August 14, 2006 version of the Federal mandates. Specifically, the December 1, 2008 amendments to Title 34 of the Code of Federal Regulations modify the prior version to provide as follows:

- A parent has the right unilaterally to withdraw a child with a disability from continued special education and related services, and a public agency may not challenge that parent's decision using Part B dispute resolution procedures. *See* 34 C.F.R. § 300.300.
- If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency may not continue to provide special education and related services to that child but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services. *See* 34 C.F.R. § 300.300(b)(4).
- While a parent may revoke consent for the continued provision of special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent. *See* 34 C.F.R. § 300.9.
- Parties may be accompanied or advised by counsel or by individuals with special knowledge or training with respect to the problems of children with disabilities at a due process hearing; however, State law determines whether or not parties have

the right to be represented by non-attorneys during a due process hearing. See 34 C.F.R. § 300.512.

Fiscal Impact and Paperwork Requirements

The amendment will have no fiscal impact on the Commonwealth, its political subdivisions or local educational agencies. That is so because the change simply adopts the requirements that were promulgated by the USDOE on December 1, 2008, and were mandatory effective December 31, 2008.

Effective Date

The final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*. However, based upon the USDOE promulgated regulations, these requirements were made effective on December 31, 2008, by force of Federal law.

Sunset Date

In accordance with its policy and practice regarding regulations, the Board will review the effectiveness of these regulations after 4 years. Therefore, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 3, 2009, a copy of the final-omitted regulation was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Education for review and comment. A copy of the final-omitted regulation was submitted on the same date to the Attorney General for review and comment under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the final-omitted regulation was deemed approved by the House and Senate Committees on _____, 2009. Under section 5.1(e) of the Regulatory Review Act, on _____, 2009, IRRC met and approved the final-omitted regulation.

Contact Person

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

Findings

The Board finds that:

(1) Public notice of the intention to amend its regulation as adopted by this order under the procedures specified in sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(3) of the CDL, because the Board has, for good cause, found that the procedures specified in section 201 and 202 of the CDL are, in this circumstances, unnecessary because the requirements of Federal law are specific, allowing for no alternative means of compliance. The Department is required to strictly adopt the Federal standard set forth in these amendments.

(2) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for administration of the *Pennsylvania Code* and the Commonwealth's obligations established by the Individuals with Disabilities Education Act

Order

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 14, are amended by amending § 14.102 to read as set forth in 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 publication in the *Pennsylvania Bulletin*.

Jim Buckheit
Executive Director

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 14. SPECIAL EDUCATION SERVICES AND PROGRAMS

GENERAL PROVISIONS

§ 14.102. Purposes.

(a) It is the intent of the Board that children with disabilities be provided with quality special education services and programs. The purposes of this chapter are to serve the following:

(1) To adopt Federal regulations by incorporation by reference to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—1482) and to ensure that:

(2) To adopt, except as expressly otherwise provided in this chapter, the requirements of 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities) as published at 71 FR 46540—46845 (August 14, 2006), **and amended at 73 FR 73006 – 73029 (December 1, 2008)**. The following sections are incorporated by reference:



Commonwealth of Pennsylvania STATE BOARD OF EDUCATION

June 3, 2009

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Commission
14th Floor, 333 Market Street
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of final omitted regulation approved by the State Board of Education (22 Pa. Code, Chapter 14 –Special Education Services and Programs – General Provisions, #006-317) for review and action by the Commission pursuant to section 5.1(c) of the Regulatory Review Act.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of this final-omitted regulation.

Thank you for your consideration.

Sincerely,

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

Jim Buckheit
Executive Director

Enclosure

cc: Secretary Zahorchak
Gregory Dunlap, Esq.
Teresa Colarusso

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

I.D. NUMBER: 6-317

SUBJECT: SPECIAL EDUCATION SERVICES AND PROGRAMS – GENERAL PROVISIONS

AGENCY: STATE BOARD OF EDUCATION

TYPE OF REGULATION

Proposed Regulation

Final Regulation

X 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


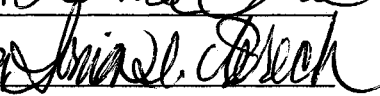

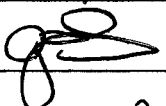

a. With Revisions

b.

Without Revisions

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REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6/3/09		HOUSE COMMITTEE ON EDUCATION -- Rep. Paul Clymer
6/3/09		MAJORITY CHAIRMAN <u>Rep. James Roebuck, Jr.</u>
6/3/09		SENATE COMMITTEE ON EDUCATION <u>Sen. Andrew Dinniman</u>
6/3/09		MAJORITY CHAIRMAN <u>Sen. Jeffrey Piccola</u>
6/3/09		INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

~~LEGISLATIVE REFERENCE BUREAU (for Proposed only)~~

Legal Review Section
6.11.09

6/15/09