

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p style="text-align: center;"><i>INDEPENDENT REGULATORY REVIEW COMMISSION</i></p> <p style="text-align: center;">AUG 02 2023</p> <p style="text-align: center;">Independent Regulatory Review Commission</p> <p>IRRC Number: 3380</p>
(1) Agency: Department of Education		
(2) Agency Number: 006 Identification Number: 342		
(3) PA Code Cite: 22 Pa. Code Chapter 711 Sections 711.22, 711.24, 711.25, 711.44, 711.61.		
(4) Short Title: Intellectual Disability Terminology Update		
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Carole Clancy, Director, Bureau of Special Education 717-783-6880t, caclancy@pa.gov . Secondary Contact: John Gombocz, Special Education Advisor, Department of Education 717-772-3745, jgombocz@pa.gov		
(6) Type of Rulemaking (check applicable box):		
<input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)		
<p>This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code Chapter 711 relating to education by replacing the term "mental retardation" with the term "intellectual disability" and by replacing the term "mentally retarded" with "an individual with an intellectual disability."</p>		
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.		
<p>Sections 1701-A through 1732-A, 1749-A(b)(8), 1751-A, of the Public School Code of 1949, <i>as amended</i>, 24 P.S. Sections 17-1701-A through 17-1732-A, 17-1749-A(b)(8), 17-1751-A. Sections 1 through 15 of the Regulatory Review Act, <i>as amended</i>, 71 P.S. Sections 745.1 through 745.15. Section 204 of the Commonwealth Documents Law, <i>as amended</i>, 45 P.S. Section 1204.</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.		

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." 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 Department's 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 approximately 313,618 students.

Data on special education enrollment in Pennsylvania's school can be found at:
(https://penndata.hbg.psu.edu/penndata/documents/BSERReports/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, P.L. 111-256, Oct. 5, 2010, 124 Stat 2643. 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. Many other states have made the exact, or similar change in terminology including: 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 Department or any other state agency. The State Board of Education is updating 22 Pa. Code Chapter 14 Sections 14.123, 14.124, 14.125, 14.132, 14.143, 14.162 with a separate rulemaking (#6-341). The Department of Human Services Intellectual Disability Terminology Update Regulation No. 14-539 (#3137) was approved by the Independent Regulatory Review Commission on May 19, 2016 as reported in the *Pennsylvania Bulletin*. 46 Pa.B. 2919 (June 4, 2016). The Department of Human Services adopted the final-omitted rulemaking on Saturday June 18, 2016 as reported in the *Pennsylvania Bulletin*. 46 Pa.B. 3177 (June 18, 2016).

(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) conducted stakeholder communication regarding a change in language through multiple means that includes 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, advocacy organizations have provided informal input, including the federally funded state PTI and 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). Last, the BSE has received feedback in the form of open discussion through monthly meetings between the BSE Director and PAIU Directors. 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 to encourage 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
SAVINGS:	\$	\$	\$	\$	\$	\$
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	
COSTS:						
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
REVENUE LOSSES:						
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	

(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, as amended 71 P.S. § 745.3), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

There is no adverse impact on small businesses.

(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.

No reporting, recordkeeping, or compliance is required by this regulation.

(c) A statement of probable effect on impacted small businesses.

While no regulatory compliance is required, small businesses will be better informed about the use of appropriate and up-to-date terminology.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation does not intrude on or result in costs to small businesses.

(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.

This regulation positively affects individuals with disabilities by using up-to-date and appropriate language.

(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.

An alternative provision to update the terminology is not available. A regulatory amendment is necessary to update the terminology.

(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:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- 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: | <u>Not applicable</u> |
| 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: | <u>Not applicable</u> |

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

The Department will review the effectiveness of 22 Pa. Code Chapter 711 every four years in accordance with the Department's policy and practice regarding 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 Department of Education</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>006-342</u></p> <p>DATE OF ADOPTION: _____</p> <p>BY: <u></u></p> <p>TITLE <u>Dr. Khalid N. Mumin, Secretary</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></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**

PENNSYLVANIA DEPARTMENT OF EDUCATION

Intellectual Disability Terminology Update

[22 PA. Code Part XX Chapter 711 Sections 711.22, 711.24, 711.25, 711.44, 711.61]

FINAL-OMITTED RULEMAKING

PENNSYLVANIA DEPARTMENT OF EDUCATION

[22 PA. CODE Chapter 711]

Intellectual Disability Terminology Update

The Pennsylvania Department of Education (Department) amends Chapter 711 of Title 22 by replacing the term “mental retardation” with the terms “intellectual disability” and by replacing the term “mentally retarded” with “an individual with an intellectual disability.” These amendments are set forth in Annex A.

Statutory Authority

The Department adopts this final-omitted rulemaking under the authority granted by Sections 1701-A through 1732-A, 1749-A(b)(8), and 1751-A, of the Public School Code of 1949, *as amended*, 24 P.S. Sections 17-1701-A through 17-1732-A, 17-1749-A(b)(8), 17-1751-A.

Omission of Proposed Rulemaking

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), because the Department 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” and “mentally retarded.” *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 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). Because the 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 public comment would not change the terminology used.

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 terms "mental retardation" and "mentally retarded." 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, and the Department seeks to make this regulatory change in an expeditious manner.

Purpose

This final-omitted rulemaking amends 22 Pa. Code Sections 711.22, 711.24, 711.25, 711.44, and 711.61 by replacing the term "mental retardation" with the term "intellectual disability" and by replacing the term "mentally retarded" with "having an intellectual disability" 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 711 use the term “mental retardation.” 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.”

Affected Parties

This final-omitted rulemaking will affect public, private, parochial, and nonpublic schools, including charter schools, cyber charter schools, vocational schools, intermediate units, special education and home education programs, and their employees. The rulemaking also will affect citizens of the Commonwealth of Pennsylvania with school-aged children and their children.

Fiscal Impact and Paperwork Estimates

This final-omitted rulemaking will make amendments 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). The Department’s final-omitted

rulemaking does not establish new requirements that carry an additional cost or create new paperwork requirements for the regulated community.

Effective Date

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

Sunset Date

The Department will review the effectiveness of 22 Pa. Code Chapter 711 every four years in accordance with the Department's policy and practice regarding its regulations. Thus, no sunset date is necessary.

Regulatory Review

Under Section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on _____ the Department 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).

Under Section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____ this final-omitted regulation was deemed approved by the House and Senate Committees. Under Section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____ and approved this final-omitted regulation.

Public Comments and Contact Person

Although this rulemaking is being adopted without publication as a final-omitted rulemaking, interested persons and individuals affiliated with education are invited to submit written comments, questions, suggestions, commendations, concerns, or objections regarding this rulemaking to, Carole Clancy, Director, Bureau of Special Education, caclancy@pa.gov, 333 Market Street, Harrisburg, PA 17126, and/or John Gombocz, Special Education Advisor, jgombocz@pa.gov, 333 Market Street, Harrisburg, PA 17126. Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling John Gombocz at (717) 772-3745.

Findings of the Department

The Department 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 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. It is unnecessary to hold a public comment period because Federal and State law dictate the terminology used and public comment would not change the terminology used. Therefore, the Department, based on the reasons above, finds that proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest.

(b) That the adoption of this regulation in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the education regulations found at 22 Pa. Code Chapter 711.

Order of the Department

The Department, acting under the authorizing statutes, orders that:

(a) The regulations of the Department are amended to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this final-omitted regulation to the Office of General Counsel and the Office of the Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary of the Department shall submit this final-omitted regulation to the Independent Regulatory Review Commission and the Senate and House Education Committees, as required by law.

(d) The Secretary of the Department shall certify this Order and Annex A, as approved as to legality and form, and deposit them with the Legislative Reference Bureau as required by law.

(e) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

DR. KHALID N. MUMIN,
Secretary

ANNEX A

TITLE 22. EDUCATION

PART XX. CHARTER SCHOOLS

**CHAPTER 711. CHARTER SCHOOL AND CYBER CHARTER SCHOOL SERVICES
AND PROGRAMS FOR CHILDREN WITH DISABILITIES**

§ 711.22. Reevaluation.

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

§ 711.24. 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), must 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.

§ 711.25. Criteria for the determination of specific learning disabilities.

Following are State-level criteria for determining the existence of a specific learning disability. Each charter school and cyber charter school 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's charter application and annual report. To determine that a child has a specific learning disability, the charter school or cyber charter school shall:

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

(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.

§ 711.44. ESY.

(a) In addition to the requirements incorporated by reference in 34 CFR 300.106 (relating to extended school year services), charter schools and cyber charter schools 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 disabilities; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

§ 711.61. Suspension and Expulsion.

(c) Any removal from the current educational placement is a change of placement for a student who is identified with [mental retardation] an intellectual disability.



August 2, 2023

VIA E-MAIL

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

Executive Director Sumner,

Attached, please find final-omitted rulemaking number 6-342 from the state Department of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code 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.”

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 #6-342 from the state Department of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code 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.”

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 #6-342 from the state Department of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code 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.”

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 #6-342 from the state Department of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code 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.”

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 #6-342 from the state Department of Education.

This regulation supports individuals with an intellectual disability by updating the language in 22 Pa. Code 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.”

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 #6-342

Rick,

Please see OAG's acknowledgement below.

Thank you,
Alicia

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AUG 02 2023

Independent Regulatory
Review Commission

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 #6-342

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 | www.ogc.pa.gov

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Independent Regulatory
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

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AUG 02 2023

Independent Regulatory
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
www.education.pa.gov

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Review Commission

Shani Shenk

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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Independent Regulatory
Review Commission

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

Thanks,
Cheryl Kleiman

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.

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

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Review Commission

Shani Shenk

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

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Follow Up Flag: Follow up
Flag Status: Flagged

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Independent Regulatory
Review Commission

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
29th Senatorial District

177 Main Capitol | Senate Box 203029
Harrisburg, PA 17120-3029
717-787-2637
www.SenatorArgall.com



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,

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

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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
www.education.pa.gov

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Independent Regulatory
Review Commission

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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AUG 02 2023

Independent Regulatory
Review Commission

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

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Thank you.

Rick

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C: 717.731.2433 | elevis@pa.gov
www.education.pa.gov

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