

# **RULES AND REGULATIONS**

## **Title 22—EDUCATION**

### **DEPARTMENT OF EDUCATION**

#### **[22 PA. CODE CH. 711]**

#### **Charter School and Cyber Charter School Services and Programs for Children with Disabilities; Intellectual Disability Terminology Update**

**[53 Pa.B. 7487]**

**[Saturday, December 2, 2023]**

The Department of Education (Department) amends Chapter 711 (relating to charter school and cyber charter school services and programs for children with disabilities) 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" as set forth in Annex A.

#### *Statutory Authority*

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

#### *Omission of Proposed Rulemaking*

Notice of proposed rulemaking is omitted in accordance with section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)) and 1 Pa. Code § 7.4(3) (relating to omission of notice of proposed rulemaking) 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 Mental Health and Intellectual Disability Act of 1966 (50 P.S. §§ 4101—4704).

Although this regulation is not mandated by any Federal or State law, court orders, or Federal regulations, this final-omitted rulemaking is in conformance with Federal and State law. See Rosa's Law (Pub.L. No. 111-256) and the Mental Health and Intellectual Disability Act of 1966. 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 §§ 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 300.8(a)(1), (c)(6), (7) and (10)(ii), 300.309(a)(3)(ii) and 300.311(a)(6) (relating to child with a disability; determining the existence of a specific learning disability; and specific documentation for the eligibility determination); and the Mental Health and Intellectual Disability Act of 1966.

### *Background*

Currently, regulations in Chapter 711 use the term "mental retardation." Rosa's Law (Pub.L. No. 111-256) amended sections 7(21)(A)(iii), 204(b)(2)(C)(v) and 501(a) of the Rehabilitation Act of 1973 (29 U.S.C. §§ 705(21)(A)(iii), 764(b)(2)(C)(v) and 791(a)), sections 601(c)(12)(C) and 602(3)(A)(i) and 30(C) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400(c)(12)(C) and 1401(3)(A)(i) and (30)(C)), section 760(2)(A) of the Higher Education Act of 1965 (20 U.S.C. § 1140(2)(A)) and section 7202(16)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. § 7512(16)(E)) (subsequently renumbered as section 6202(16)(E) and repealed), by removing the term "mental retardation" and replacing it with the term "intellectual disability." See also 82 FR 31910 (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. This final-omitted rulemaking will also affect citizens of this Commonwealth with school-aged children and their school-aged children.

### *Fiscal Impact and Paperwork Estimates*

This final-omitted rulemaking will make amendments for clarity and for consistency with Rosa's Law, the regulations found at 34 CFR 300.8(a)(1), (c)(6), (7) and (10)(ii), 300.309(a)(3)(ii) and 300.311(a)(6), and the Mental Health and Intellectual Disability Act of 1966. 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*

This final-omitted rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

### *Sunset Date*

The Department will review the effectiveness of Chapter 711 every 4 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 August 2, 2023, the Department submitted a copy of this final-omitted rulemaking, and a copy of the Regulatory

Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Education Committee of the Senate and the chairperson of the Education Committee of the House of Representatives. 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, on September 20, 2023, this final-omitted regulation was deemed approved by the Education Committee of the Senate and the Education Committee of the House of Representatives. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 21, 2023, 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 final-omitted rulemaking to, Carole Clancy, Director, Bureau of Special Education, [caclancy@pa.gov](mailto:caclancy@pa.gov), 333 Market Street, Harrisburg, PA 17126, or John Gombocz, Special Education Advisor, [jgombocz@pa.gov](mailto:jgombocz@pa.gov), 607 South Drive, Harrisburg, PA 17126. Persons with disabilities who require an alternative means of providing public comment may make arrangements by calling John Gombocz at (717) 772-3745.

### *Findings*

The Department finds that:

(a) Notice of proposed rulemaking is omitted in accordance with section 204(3) of the Commonwealth Documents Law 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, based on the reasons previously stated, the Department finds that notice of proposed rulemaking is unnecessary and that a delay in the promulgation of these amendments is contrary to the public interest.

(b) The adoption of this final-omitted rulemaking in the manner provided by this Order is necessary and appropriate for the administration and enforcement of the Department's education regulations found in Chapter 711.

### *Order*

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

(a) The regulations of the Department, 22 Pa. Code Chapter 711, are amended by amending §§ 711.22, 711.24, 711.25, 711.44 and 711.61 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Secretary of Education shall submit this final-omitted rulemaking 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 Education shall submit this final-omitted rulemaking to IRRC and the Education Committee of the Senate and the Education Committee of the House of Representatives,

as required by law.

(d) The Secretary of Education shall certify this Order and Annex A, as approved for 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

(*Editor's Note:* See 53 Pa.B. 6319 (October 7, 2023) for IRRC's approval.)

**Fiscal Note:** 6-342. No fiscal impact; recommends adoption.

## **Annex A**

### **TITLE 22. EDUCATION**

#### **PART XX. CHARTER SCHOOLS**

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

##### **IDENTIFICATION AND EVALUATION**

###### **§ 711.22. Reevaluation.**

\* \* \* \* \*

(c) Children with disabilities who are identified as 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, 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) Intellectual disability.
- (iii) Emotional disturbance.
- (iv) Cultural factors.
- (v) Environmental or economic disadvantage.
- (vi) Limited English proficiency.

\* \* \* \* \*

## **IEP**

### **§ 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 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 intellectual disabilities; degenerative impairments with mental involvement; and severe multiple disabilities require expeditious determinations of eligibility for ESY services to be provided as follows:

\* \* \* \* \*

## **PROCEDURAL SAFEGUARDS**

### **§ 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 an intellectual disability.

[Pa.B. Doc. No. 23-1676. Filed for public inspection December 1, 2023, 9:00 a.m.]

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