



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12234

TO: Full Board
FROM: John B. King, Jr.
SUBJECT: Proposed Amendment to sections 200.1 and 200.4
Relating to Students with Disabilities
DATE: February 21, 2011
STRATEGIC GOAL: Goals 1 and 2
AUTHORIZATION(S):

SUMMARY

Issue for Decision (Consent Agenda)

Should the Board of Regents adopt the proposed amendment of sections 200.1 and 200.4 of the Regulations of the Commissioner of Education to change the term "mental retardation" to "intellectual disability"?

Reason(s) for Consideration

In October 2010, federal legislation ("Rosa's Law") was enacted to amend the Individuals with Disabilities Education Act (IDEA) to change the term "mental retardation," to "intellectual disability."

Proposed Handling

The proposed amendment will be submitted to the Full Board for adoption at the March 2011 meeting.

Procedural History

The proposed amendment was discussed by the P-12 Education Committee at the December 2010 Regents meeting.

Background Information

On October 5, 2010, "Rosa's Law" (Public Law 111-256) was enacted to replace the term "mental retardation" with "intellectual disability" in federal statutes, including IDEA, the Elementary and Secondary Education Act (ESEA), the Higher Education Act

and the Rehabilitation Act of 1973. Rosa's Law is not intended to change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions of the federal statutes.

The proposed amendment will conform the Regulations of the Commissioner of Education to be consistent with the terminology change in federal law. While states are not required to replace the term "mental retardation" with "intellectual disability," the Department, after conducting a multiple-state survey of disability classifications and seeking input from members of the Commissioner's Advisory Panel for Special Education Services, has determined that replacing "mental retardation" with "intellectual disability" will ensure the Commissioner's Regulations are consistent with the terminology used in federal law and will address issues of respect and dignity for individuals with disabilities.

The proposed amendment also makes technical revisions to replace the term "Commissioner of Mental Retardation and Developmental Disabilities" with "Commissioner of the Office for People With Developmental Disabilities" to conform to a recent State statutory change of the name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

A Notice of Proposed Rule Making was published in the State Register on December 22, 2010. Public comment on the proposed amendment was accepted for 45 days from the date of publication in the State Register. An Assessment of Public Comment is attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That sections 200.1 and 200.4 of the Commissioner's Regulations be amended, as submitted, effective March 30, 2011.

Timetable for Implementation

If adopted at the March Regents meeting, the proposed amendment will become effective on March 30, 2011.

PROPOSED AMENDMENT OF SECTIONS 200.1 and 200.4 OF THE REGULATIONS
OF THE COMMISSIONER OF EDUCATION PURSUANT TO SECTIONS 207, 305,
4402 AND 4403 OF THE EDUCATION LAW, RELATING TO THE PROVISION OF
SPECIAL EDUCATION PROGRAMS AND SERVICES TO STUDENTS WITH
DISABILITIES

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the State Register on December 22, 2010, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

The majority of comments supported the proposed change to replace the term "mental retardation" with "intellectual disability." Supportive comments included: the change provides consistency with State and federal statutes and uses a less "derogatory" term that does not carry the stigma and negativity that is now associated with the term "mental retardation;" the term reflects the true nature of the disability and focuses less on bias; the term matches the definition of the disability more appropriately and focuses on the intellectual abilities that affect a student's educational performance.

DEPARTMENT RESPONSE:

Comments are supportive in nature and no response is necessary.

2. COMMENT:

Do not understand the reason for the change, other than because the term has been deemed politically incorrect. Changing the term is not going to enable students who have lower IQ's to be any more successful and earn local or Regent's diplomas; may create discrimination in part by being secretive about issues regarding

abilities/disabilities. Students' strengths and weaknesses should not be disguised by the disability classification; the term should be consistent with medical terminology in the Diagnostic Statistical manual so as not to confuse professionals and parents; the term "intellectual disability" may disguise a student's strengths and weaknesses. The proposed classification change does not reflect the global aspect of mental retardation, which is a critical consideration when assessing and determining the appropriateness of this classification for a student, while the current term, "mental retardation", encompasses the characteristic of a significantly impaired rate of learning. A diagnosis should be based on a student's differences, and suggest the label "intellectual differences" is a more proper classification for children with mental retardation. The term "intellectual disability" is not easily distinguishable from "learning disability", and could easily be thought to be one in the same.

DEPARTMENT RESPONSE:

The proposed change in the classification term to "intellectual disability" is intended to address issues of respect and dignity for individuals with disabilities and to offset the negative and derogatory connotations that are associated with the term "mental retardation". While the proposed amendment replaces the term "mental retardation" with "intellectual disability," it does not change the existing definition of such term, which is defined broadly enough to reflect students' differences and includes "subaverage general intellectual functioning." The definition of the term would also distinguish a student with an "intellectual disability" from one with a "learning disability."

3. COMMENT:

Support the proposed amendment as long as the definition previously associated with the term "mentally retarded" is not changed.

DEPARTMENT RESPONSE:

The proposed amendment will replace the term “mental retardation” with “intellectual disability” in State regulations to be consistent with the terminology change in federal law. However, it does not change the existing definition of such term in section 200.1(zz)(7) of the Regulations of the Commissioner of Education.

4. COMMENT:

Will “intellectual disability” replace “mental retardation” as one of the 13 disability categories used on individualized education programs (IEPs) and for diagnosis?

DEPARTMENT RESPONSE:

Yes. If adopted, the term “intellectual disability” will replace “mental retardation” as one of the thirteen disability classifications that a Committee on Special Education (CSE) must use to identify a student who is eligible for special education, and would be indicated in a student’s IEP.

5. COMMENT:

If the amendment is adopted, the CSE will have to submit even more paperwork than they need to complete now.

DEPARTMENT RESPONSE:

The proposed amendment only changes the term “mental retardation” to “intellectual disability”, and does not include any additional paperwork requirements.

6. COMMENT:

The attempt to rename a particular classification brings into question all of the 13 classifications currently in use, which are confusing and painful for parents. Propose revisiting the appropriateness of 13 classifications instead of just one. Recommend using the classifications utilized by other states (i.e., Mild, Moderate, and Severe) as these descriptors more accurately reflect the degree of impact of the disability on the

student's ability to participate and make progress in their educational program.

DEPARTMENT RESPONSE:

34 CFR section 300.8 defines the term "child with a disability" and provides a definition of 13 disability classifications. The thirteen disability categories included in New York State's definition of a "student with a disability" in section 200.1(zz) of Regulations of the Commissioner of Education are consistent with federal terms and definitions, and the proposed amendment, which replaces the term "mental retardation" with "intellectual disability", ensures continued consistency with federal terminology. While federal regulations allow a State to use the term "developmental delay" for a child who needs special education who is between the ages of three and nine and who is experiencing a developmental delay in physical development, cognitive development, communication development, social or emotional development and/or adaptive development, federal regulations do not provide this same flexibility to students older than age nine.

7. COMMENT:

The correct name of OPWDD is the Office for People With Developmental Disabilities, not the Office of People With Developmental Disabilities

DEPARTMENT RESPONSE:

"Office of People With Developmental Disabilities" was a typographical error in the announcement regarding the proposed changes to the regulations that was posted on the Department's website. The actual proposed amendment uses the correct name, "Office for People With Developmental Disabilities."

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 305, 4402 and 4403.

1. Paragraphs (6), (7), and (8) of subdivision (zz) of section 200.1 of the Regulations of the Commissioner of Education are amended, effective March 30, 2011, as follows:

(6) Learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, as determined in accordance with section 200.4(j) of this Part. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of [mental retardation] an intellectual disability, of emotional disturbance, or of environmental, cultural or economic disadvantage.

(7) [Mental retardation] Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(8) Multiple disabilities means concomitant impairments (such as [mental retardation] intellectual disability-blindness, [mental retardation] intellectual disability-orthopedic impairment, etc.), the combination of which cause such severe educational needs that they cannot be accommodated in a special education program solely for one of the impairments. The term does not include deaf-blindness.

2. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (i) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(b) the committee on special education or multidisciplinary team, upon receipt of consent, shall forward the student's name and other relevant information in a report to the Commissioner of Mental Health, Commissioner of [Mental Retardation and Developmental Disabilities] the Office for People With Developmental Disabilities, Commissioner of Social Services or Commissioner of Education or their designees. The committee on special education or multidisciplinary team shall determine which commissioner shall receive the report; and

3. Paragraph (4) of subdivision (i) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(4) The committee on special education or the multidisciplinary team shall forward additional and updated relevant information to the Commissioner of Mental Health, Commissioner of [Mental Retardation and Developmental Disabilities] the Office for People With Developmental Disabilities, Commissioner of the Office of Children and Family Services or Commissioner of Education, or their designees, upon the request for such information by such commissioner or designee, and upon obtaining appropriate consent.

4. Subparagraph (ii) of paragraph (3) of subdivision (j) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(ii) The CSE determines that its findings under this paragraph are not primarily the result of a visual, hearing, or motor disability; [mental retardation] an intellectual

disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

5. Clause (f) of subparagraph (i) of paragraph (5) of subdivision (j) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(f) the determination of the CSE concerning the effects of a visual, hearing, or motor disability; [mental retardation] an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and