



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

**TO:** P-12 Education Committee

**FROM:** John B. King, Jr.

**SUBJECT:** Proposed Amendment to sections 200.1 and 200.4,  
Relating to Students with Disabilities

**DATE:** November 30, 2010

**STRATEGIC GOAL:** Goals 1 and 2

**AUTHORIZATION(S):**

### Summary

#### Issue for Discussion

Should the Board of Regents amend sections 200.1 and 200.4 of the Regulations of the Commissioner of Education to change the term “mental retardation” to “intellectual disability”?

#### Reason 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 is before the P-12 Education Committee for discussion at the December 2010 meeting.

#### Procedural History

Not applicable.

## 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 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 will be published in the State Register on December 22, 2010. Public comment on the proposed amendment will be accepted for 45 days from the date of publication in the State Register. A copy of the proposed amendment is attached. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

## Recommendations

The Board of Regents should discuss the proposed amendment in December 2010 and take action in March 2011.

## Timetable for Implementation

The proposed amendment is before the Committee for discussion in December 2010 and, following the receipt of public comment, will be submitted for action at the March 2011 meeting with a proposed effective date of March 30, 2011.

Attachment

## 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