



Office of Children and Family Services

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Informational Letter

Transmittal:	16-OCFS-INF-08
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	August 5, 2016
Subject:	Substituting “Intellectual Disability” for “Mental Retardation” in Family Court Proceedings
Suggested Distribution:	Directors of Social Services Directors of Voluntary Authorized Agencies Foster Care Supervisors Adoption Supervisors Staff Development Coordinators Social Services Attorneys
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Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Rosa’s Law (P.L. 111-256), Chapter 168 of the Laws of 2010,		

			Chapter 37 of the Laws of 2011, Chapter 37 of the Laws of 2016		
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I. Purpose

The purpose of this Informational Letter is to convey to local departments of social services and voluntary agencies the provisions of Chapter 37 of the Laws of 2016 (Chapter 37). That chapter amends the Domestic Relations Law (DRL), the Family Court Act (FCA), the Executive Law, and the Social Services Law (SSL) by changing the term “mental retardation” to the term “intellectual disability” throughout statutes referencing certain family court proceedings.

II. Background

In 2010, President Barack Obama signed Rosa’s Law (P.L. 111-256) to eliminate the term “mental retardation” throughout various federal laws that primarily relate to education and employment and replace it with the term “intellectual disability.”

Governor David Paterson, in 2010, signed legislation to change the name of the New York State Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD) and to make corresponding changes to the Mental Hygiene Law (MHL).¹ In 2011, Governor Andrew Cuomo signed legislation to make further statutory changes to reflect this change.²

In 2013, the American Psychiatric Association released the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5). The DSM-5 is the standard manual used by clinicians and researchers to diagnose and classify mental disorders. The DSM-5 changed the name of the diagnosis of “mental retardation” to “intellectual disability (intellectual developmental disorder).” It also emphasized the need to use both clinical assessment and standardized testing of intelligence when diagnosing intellectual disability, with the severity of impairment based on adaptive functioning rather than IQ test scores alone.³ “Adaptive functioning” refers to how well a person meets community standards of personal independence and social responsibility, in comparison to others of similar age and sociocultural background. Specifically, in order for an individual to qualify for an intellectual disability, he or she must have deficits in intellectual functioning and deficiencies in at least one domain of adaptive functioning – conventional, social, or practical. The onset of the intellectual and adaptive deficits must have been present during childhood or adolescence, also known as the developmental period.⁴

On May 25, 2016, Governor Cuomo signed legislation (Chapter 37) to replace the term “mental retardation” with the term “intellectual disability” within the DRL, FCA, Executive Law and SSL in regard to termination of parental rights (TPR) and determining capacity

¹ L. 2010, c. 168.

² L. 2011, c. 37.

³ American Psychiatric Association. (2013). Intellectual Disability Fact Sheet, <http://www.dsm5.org/documents/intellectual%20disability%20fact%20sheet.pdf>

⁴ American Psychiatric Association. (2013). *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.).

and residential placements for alleged and adjudicated juvenile delinquents. Prior to the enactment of the chapter, the testimony of clinicians, who under the requirements of the DSM-5, used the term “intellectual disability” in Family Court cases regarding TPR and the capacity of children to stand trial, did not conform to New York State (NYS) law’s outmoded use of the term “mental retardation.” Chapter 37 brings language used in the DRL, FCA, Executive Law and SSL into conformity with the MHL and medical terminology that uses the term “intellectual disability” to refer to individuals with this diagnosis. Chapter 37 aids mental health experts, legal practitioners, and jurists in accurately defining, applying and making legal determinations concerning individuals who are intellectually disabled within the meaning and criteria of the DSM-5. Chapter 37 also contains statutory language which clarifies that existing case law that relates to TPR and uses the term “mental retardation” remains applicable to the term “intellectual disability.”

III. Program Implications

Chapter 37 ends the use of the term “mental retardation” and replaces it with the term “intellectual disability” in regards to TPR and in determining capacity and residential placements for alleged and adjudicated juvenile delinquents. The change in terms does not necessitate any change in existing practice.

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