

Regulatory Analysis Form		This space for use by IRRC RECEIVED 2000 JUL 13 PM 4:07 REVIEW COMMISSION IRRC Number: 1986
(1) Agency State Board of Education		
(2) I.D. Number (Governor's Office Use) 006-266		
(3) Short Title Special Education for Gifted Students		
(4) PA Code Cite 22 Pa. Code, Chapter 16	(5) Agency Contacts & Telephone Numbers Primary Contact: Peter H. Garland 787-3787 Secondary Contact: William Penn 787-2311	
(6) Type of Rulemaking (check one) Proposed Rulemaking Final Order Adopting Regulation <input checked="" type="checkbox"/> X Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? No <input checked="" type="checkbox"/> X Yes: By the Attorney General Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation governs services and programs provided to students who have been identified as gifted. Programs and services for students who are gifted were previously provided under 22 Pa. Code, Chapters 14 and 342. The creation of this regulation separates requirements governing education programs and services for gifted students from the regulatory requirements governing special education programs and services for children with disabilities. Many of the disability-specific requirements of federal law found in Chapters 14 and 342 are unnecessary for the proper education of students who are gifted.		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. These regulations are promulgated under authority of the Public School Code of 1949 (24 P.S. §§13-1371 and 26-2601-B--26-2606-B).		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulation is mandated by the Pennsylvania Public School Code (24 P.S. §13-1371) which requires the State Board of Education to adopt and prescribe standards for the proper education and training of exceptional children, including students of school age who are gifted.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation provides local education agencies with specific requirements to ensure the proper education of children who are gifted.

Formerly, 22 Pa. Code, Chapters 14 and 342 (relating to special education services and programs) governed all children with exceptionalities including those children with disabilities who are eligible for services under the Individuals with Disabilities Education Act (20 U.S.C. §1400 et seq.) As such, the disability-specific mandates of federal law and regulations are intertwined with and become requirements for students who are gifted in Pennsylvania. Many of the disability-specific mandates are unnecessary for the proper education of gifted students, and may limit the ability of local school districts to implement effective gifted education programs.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Without this regulation, children who are gifted might not be identified and properly educated.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

All students who are gifted, their teachers and parents, and educators and administrators seeking to provide effective and efficient education to students who are gifted. Currently there are approximately 85,000 students identified as gifted.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No adverse effects are anticipated. The regulation was drafted to preserve the rights of students who are gifted while minimizing procedural mandates to enable local education agencies to provide programs and services effectively and efficiently.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All 501 school districts will be required to comply with this regulation in the design and delivery of programs and services to students who are gifted. Educators providing programs and services to students who are gifted will be affected .

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

These regulations were developed by Board's Standing Committee on Special Education in meetings open to the public during which opportunities for public comment and involvement were provided. In addition, three public hearings were held in April 1997 prior to Board action in the Pittsburgh, Harrisburg and Philadelphia areas on draft regulations. Written comments were received during the 30-day public comment period. Groups representing gifted students, parents and teachers were consulted frequently in the development process.

(17) 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.

It is anticipated that there will be no additional costs due to this regulation and reducing current regulatory requirements will yield savings. For example, routine re-evaluations of the approximately 85,000 students identified as gifted are currently required every two years at an average cost of \$250 per student. Eliminating the requirement for re-evaluation in this proposed regulation, assuming that re-evaluations are requested for 20% of gifted students will save school districts \$16.8 million over three years. It is not possible to estimate savings that changing or eliminating other requirements will yield.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

See #17 above.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

No additional costs or savings are anticipated.

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(20) 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						
Local Government	0	5.6 million	5.6million	5.6million	5.6million	5.6million
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

See #17 above.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.
 No state funds are earmarked for gifted education.

Program	FY -3	FY -2	FY -1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

This regulation will reduce the administrative and procedural costs associated with providing proper programs and services to students who are gifted. It will enable teachers and administrators to spend more of their time and efforts on providing instruction and other services to students who are gifted. Added flexibility will enable schools to more effectively and efficiently deliver educational services to students who are gifted.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

None were considered since current provisions are provided in regulation and regulations are required by Commonwealth statute.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

N/A

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(24) 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 regulation.

Chapter 16 clarifies the distinction between gifted education, as required by Commonwealth statute, and special education, as required by both federal and state statute. Further, it will reduce the administrative burden of current regulations governing programs and services for students who are gifted.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Most states have provisions for gifted education. This regulation does not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

References to gifted education in 22 Pa. Code, Chapters 14 and 342 (relating to special education programs and services) are being eliminated concurrent with the promulgation of Chapter 16 (relating to gifted education).

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board held public committee meetings to consider comments and to develop final-form regulations.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes, current record keeping and paperwork requirements of local education agencies will be reduced.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Chapter 16 (and concurrent deletions of gifted education provisions in Chapters 14 and 342) will become effective upon final publication in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The effectiveness of proposed Chapter 16 will be reviewed by the State Board of Education every four years in accordance with the Board's policy and practice respecting all regulations promulgated by the Board.

FACE SHEET
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REVIEW COMMISSION

1986

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Education
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 6-266

DATE OF ADOPTION May 13, 1999

BY: John H. Garland

TITLE: Executive Director
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies:

Murray E. Dunlop

1/14/00
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel, Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within days after submission.

Final-Form

State Board of Education
Title 22 - Education
Chapter 16: Gifted Education
and related sections of
Chapters 14 and 342: Special Education Services and Programs

PREAMBLE

State Board of Education 22 Pa. Code - Education Chapter 16: Special Education for Gifted Students

The State Board of Education (Board) hereby deletes the gifted education provisions of Chapters 14 and 342 (relating to special education services and programs) and adds a new Chapter 16 (relating to gifted education) to read as set forth in Annex A, under the authority of sections 1371, 2601-B and 2602-B of the Public School Code of 1949 (24 P.S. §§ 13-1371, 26-2601-B and 26-2602-B).

Notice of proposed rulemaking was published at 28 Pa.B. 4939 (October 3, 1998) with an invitation to submit written comments within 30 days.

PURPOSE

The Board acknowledges that students who are gifted and therefore need specially designed instruction are considered to be children with exceptionalities under section 1371 of the School Code (24 P.S. §13-1371(1)). The creation of Chapter 16 and the separation of gifted education from Chapters 14 and 342 are not intended to circumvent the statutory protections afforded to gifted students by the School Code, nor is it the Board's intent to create a need to relitigate case law already established in this Commonwealth pertaining to gifted students. It is the Board's intent to draw a clear distinction between gifted education as required in the Commonwealth and special education as required by Federal law. To accomplish this, the Board has removed or changed references to terms and concepts which are clearly linked to special

education as prescribed under the Individuals with Disabilities Education Act (2) U.S.C.A. §§1400-1485). This chapter is intended to strike a proper balance between necessary regulatory protections and maximum local control.

RESPONSE TO COMMENTS

Oversight of gifted education by the Department. Public commentators, the Senate Education Committee and Independent Regulatory Review Commission (IRRC) recommended that oversight and monitoring responsibilities of the Department be specified as found in Chapters 14 and 342 (Special Education Programs and Services). Language in Chapters 14 and 342 is required by federal statute for students with disabilities. Repeating that language in this chapter would not serve the goal of separating federally-driven provisions for students with disabilities from those determined by the Commonwealth for students who are gifted.

As a result, no additional language was added to the final-form regulation in Section 16.6 because the responsibility of the Secretary and the Department to oversee gifted education is found in the Public School Code of 1949. Section 1371 (1) includes students who are gifted in the term children with exceptionalities. In section 1372, the responsibility of the Secretary to ensure that special education for students with exceptionalities is delineated. Specifically the Secretary is required to “superintend the organization of special classes and other arrangements for special education and shall enforce the provisions of this act relating thereto (24 PS 13-1372 (3)).” To meet this responsibility, the Secretary will continue to include students who are gifted in Departmental tracking systems, monitor the actions of school districts for compliance with the

requirements of this regulation, and hear and investigate complaints.

Limitation on Class Size. Public commentators, the Senate Education Committee, and IRRC recommended that in addition to establishing a case load maximum, a maximum class size should be established in §16.41(c). Under Chapter 342, class size is limited to 15. A statewide gifted education organization suggested that a class size maximum of 20 be included in the regulation. The final form regulation has been revised under §16.41(c) (4) to include this maximum class size.

Participation of Regular Education Teachers in the GIEP'S. Public commentators recommended that both gifted and regular education teachers participate in the Gifted Individualized Education Program (GIEP) meeting. Section 16.41 of the proposed rulemaking stated that “one or more of the student’s current teachers” participate in the GIEP. The teacher or teachers involved in the GIEP could be a teacher of gifted students or a regular education teacher. There is currently no unique certification for teachers of gifted students. No change was made on final-form to provide local districts with the flexibility to include and involve teachers as necessary to develop an appropriate program.

Prehearing Conference. Public commentators and IRRC recommended the addition of the prehearing conference provision available to parents of gifted students in current Chapter 14 and 342. In the past, persons have found the prehearing procedure obviates the need for the time and expense consumed by the formal hearing process. However, a relatively high percentage of prehearing conferences are unable to resolve differences with the parties electing to proceed to a due process proceeding anyway. The Board heard from many that it would be more efficient to

move directly to a due process hearing to resolve differences.

Enrolled Versus Resident Students. Public commentators, the House Committee and IRRC commented that the provision in §16.21(a) requiring districts to provide programs and services to all “residents” identified as gifted and needing additional services and programs goes beyond the requirements of statute. The final-form regulation has been revised to limit the provision of gifted education programs and services to students enrolled in a district.

Title Change. Public commentators, the House and Senate Education Committees and IRRC commented that the title of the chapter be revised to better reflect statute requiring special education for students who are gifted. The title is changed on final-form.

Graduation Plans. Public commentators, the House Education Committee and IRRC recommended that proposed rulemaking be revised to add a requirement for a graduation plan. IRRC stated that a GIEP would not be complete without graduation planning for those in high school. In considering the addition of a graduation plan, the Board felt that planning courses and experiences needed to meet graduation requirements needs to be determined is implicit in the development of GIEP’s for high school students. To make this clear, the Department will advise local school districts of this responsibility.

Dual Exceptionality. Public commentators, the Senate Education Committee and IRRC recommended that the language in §16.7(b) be clarified to ensure that for students determined to be eligible for special education and needing gifted education, the processes followed under Chapters 14 and 342 fully address the students' needs related to disability as well as that for gifted status. The final-form regulation has been revised to clarify the intent to provide fully for students with dual exceptionality..

Deletion of Non-Regulatory Language. IRRC identified several places where non-regulatory language was contained within the regulation and recommended its deletion or movement to the Preamble (e.g., §16.2(b) which explains the Board's intent in developing separate gifted education regulations). In addition, IRRC identified several places where regulatory language was imbedded within definitions under §16.1 and §16.64(b), and recommended that they be moved to the body of the regulation (e.g., regulatory language found in the definition of mentally gifted was moved to §16.21(d)) or deleted (e.g., the mediator's responsibility under the definition of joint session). The changes have been made in the final-form.

Deadline for Implementation of the IEP. The House and Senate Education Committees and IRRC commented that there was no time frame in which a completed GIEP must be implemented. The final-form was revised to require the implementation of the completed GIEP within 10 school days or at the start of the following school year if the GIEP is completed less than 30 days before the last day of scheduled classes.

Subpoena Powers. Public commentators and IRRC questioned the statutory authority under which the Board could empower parties in a due process hearing to compel the attendance of witnesses, found in the proposed rulemaking under §16.63(k). No statutory provision can be found for the compelling of witnesses in a due process hearing. The Board has deleted this provision in the final-form.

Evaluation by Certified School Psychologist. Public commentators, the Senate Education Committee and IRRC recommended that the broad language of §16.22(h)(3)(iv) enabling certified professional employees to administer tests and similar evaluation materials used to determine giftedness be eliminated to clarify that only certified school psychologists are able to administer tests and evaluation materials. The final-form has been revised to accordingly.

Definition of Criteria for Gifted Education. IRRC commented that the criteria for determination of gifted status currently found in Department guidelines are regulatory in nature and should be added to the regulation. Criteria has been added to 16.21(e).

APPLICATION OF EDUCATION EMPOWERMENT ACT

On May 10, 2000, the Governor approved the Education Empowerment Act (EEA) (24 P.S. Art. XVII-B). Effective July 1, 2000, section 1714-B of the EEA (24 P.S. §17-1714-B) establishes a mandate waiver program under which the Department of Education is empowered to waive certain statutory and regulatory mandates on application of any school district. However, the EEA expressly exempts from the Department's waiver authority certain specified statutes and

regulations. Among those regulations exempted from the waiver program is 22 Pa. Code Chapter 14 (relating to special education services and programs). *See* 24 P.S. §17-1714-B(h),

On May 4, 2000, the Board submitted its final-form regulations to the Independent Regulatory Review Commission and the Senate and House Education Committees for review under the Regulatory Review Act. However, at the Board's meeting held May 11, 2000, concerns were raised as to whether a new Chapter 16 relating to gifted education would be exempt from the EEA's mandate waiver program scheduled to take effect July 1, 2000. In order to study this new legal issue, the Board on May 11 voted to recall its final-form regulation from regulatory review.

At the request of the Board, the Secretary asked the Department's Office of Chief Counsel to render an opinion on the issue. The Department's Office of Chief Counsel advised the Secretary that because the General Assembly clearly intended to exempt from the mandate waiver program all of Chapter 14, including the provisions governing gifted education, a new Chapter 16 governing gifted education would also be exempt from the mandate waiver program under section 1714-B(h) of the EEA. The change in numbering of the regulations by the Board would not alter the clear legislative intent to exempt from the program all Board regulations contained in Chapter 14 at the time the law went into effect.

Satisfied that a new Chapter 16 would be exempt from the mandate waiver program of the EEA exactly as Chapter 14 is exempt, the Board on July 12, 2000 voted to resubmit its final-form regulation.

Affected Parties

Chapter 16 will benefit Commonwealth students who are, or thought to be, gifted; their parents; and school districts and other education agencies which must comply with the regulations.

Cost and Paperwork Estimates

The regulations impose no additional cost or revenue loss to the Commonwealth. They will not require any additional reports or paperwork requirements. None of the regulatory requirements in the chapter are new for school districts, and, in fact, a number of regulatory requirements have been removed or reduced. For example, routine reevaluations of the approximately 85,000 identified gifted students currently required every 2 years, cost an average of \$250 per student. Eliminating the requirements for reevaluation every 2 years, assuming that reevaluations are requested for 20% of gifted students, can reduce costs to school districts by approximately \$16.8 million over 3 years. Moreover, considerable staff time can be redirected to teaching and other services for students.

Effective Date

Chapter 16 will become effective upon final publication in the Pennsylvania Bulletin.

Sunset Date

The effectiveness of Chapter 16 will be reviewed by the Board every 4 years in accordance with the Board's policy and practice respecting all regulations promulgated by the Board. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on September 23, 1998, the Board submitted a copy of the proposed rulemaking published at 28 Pa.B. 4939 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education for review and comment. In compliance with section 5(c) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees and the public.

Final-form regulations were approved by the Senate Education Committee on _____, the House Education Committee on _____, and were approved by IRRC on _____, in accordance with section 5(c) of the Regulatory Review Act.

Contact Person

The official responsible for information on these final-form regulations Peter H. Garland,

Executive Director of the State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, telephone (717)787-3787 or TDD (717)787-7367.

Findings

The Board finds that:

(1) Public notice of the intention to adopt these regulations was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No.240)(45 P.S. §§1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The regulations are necessary and appropriate for the administration of the Public School Code of 1949.

Order

The Board, acting under the authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code, Chapters 16, 14 and 342 are added, deleted, and amended to read as set forth at Annex A.

(b) The Executive Director will submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form as required by law.

(c) The Executive Director of the Board shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order is effective upon final publication in the Pennsylvania Bulletin.

By the State Board of Education:



Peter H. Garland

Executive Director

Readers' Note: All changes from proposed rulemaking to this final-form are **bolded**. Deleted language is found in [brackets] and new language is underlined .

ANNEX A

22 Pa. Code Chapter 16

[GIFTED EDUCATION] SPECIAL EDUCATION FOR GIFTED STUDENTS

GENERAL PROVISIONS

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[IMPLEMENTATION SCHEDULE

16.71. General.]

GENERAL PROVISIONS

§16.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Agency--An intermediate unit, school district, area vocational technical school, State-operated program or facility, or other public or private organization providing educational services to gifted students or students thought to be gifted.

Chapter [5] ~~4~~--State Board of Education regulations as adopted under statutory authority in the School Code.

Educational placement--The overall educational environment in which gifted education is provided to a gifted student.

GIEP--Gifted Individualized Education Program.

GMDT--Gifted Multidisciplinary Team.

Gifted education-- Specially designed instruction to meet the needs of a gifted student that is:

- (i) Conducted in [the classroom or other setting] an instructional setting.
- (ii) Provided in an instructional or skill area.
- (iii) Provided at no cost to the parents.
- (iv) Provided under the authority of a school district, directly, by referral or by contract.
- (v) Provided by an agency.
- (vi) Individualized to meet the educational needs of the student.
- (vii) Reasonably calculated to yield meaningful educational benefit and student progress.
- (viii) Provided in conformity with a GIEP.

Gifted Multidisciplinary Evaluation--A systematic process of testing, assessment, and other evaluative processes used by a team to develop a recommendation about whether or not a student is gifted or needs gifted education.

Gifted student - A student who is exceptional under section 1371 of the School Code (24 P.S. § 13-1371) because the student meets the definition of mentally gifted in this section, and needs specially designed instruction beyond that required in Chapter [5 (relating to curriculum)] 4(relating to academic standards and assessment). This term applies only to students who are of "school age" as defined under §11.12 (relating to school age).

Instructional setting--A classroom or other setting in which gifted students are receiving gifted education.

Mentally gifted--Outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program. [This term includes a person who has an IQ of 130 or higher and when multiple criteria by the Department indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of mentally gifted shall include an assessment by a certified school psychologist.]

Parents--A natural or adoptive parent or parents, a guardian or guardians, one or more persons acting as the parent or parents of a student.

Party-- Parent or school district.

Regular classroom--A specific instructional grouping within the regular education environment.

Regular education environment--The regular classroom and other instructional settings in which students without a need for gifted education receive instructional programs and the full range of supportive services normally provided to these children. [Within the regular education environment, regular and gifted education shall be provided to a gifted student when deemed appropriate by the student's GIEP.]

School Code--the Public School Code of 1949 (24 P.S. §§ 1-101-27-2702).

School day--A day in which school is in session.

Screening and evaluation process--The systematic determination of whether or not a student is gifted or needs

gifted education.

[Social work services in school - Preparing a social or developmental history of a child who is gifted, group and individual counseling with the child and family, working with problems in a child's living situation (home, school and community) that affect the child's adjustment in school, and mobilizing school and community resources to enable the child to learn as effectively.]

Specially designed instruction-- Adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials, or a specialized curriculum for students who are gifted. [These adaptations or modification must go beyond the services and programs that the student would receive as part of a general education and be unique to the educational needs of each student.]

Support services--Services as required under §16.33 (relating to support services) to assist a gifted student to benefit from gifted education. Examples of the term include:

(i) Psychological services.

[(ii) Social work services.]

[(iii)](ii) Parent counseling and education.

[(iv)](iii) Counseling services.

[(v)](iv) Transportation to and from gifted programs to classrooms in buildings operated by the school district.

§16.2 Purpose.

(a) This chapter specifies how the Commonwealth will meet its obligations to suspected and identified

gifted students who require gifted education to reach their potential. It is the intent of the Board that gifted students be provided with quality gifted education services and programs. [Achieving this purpose will require mutual efforts by the Commonwealth, school districts, other agencies and parents.]

[(b)] The Board acknowledges that students who are gifted and therefore need specially designed instruction are considered to be children with exceptionalities under section 1371 of the School Code (24 P.S. §13-1371(1)). The creation of this chapter and the separation of gifted education from Chapters 14 and 342 is not intended to circumvent statutory protections afforded to gifted students by the School Code, nor is it the Board's intent to create a need to relitigate case law already established in the Commonwealth pertaining to gifted students. However, it is the Board's intent to draw a clear distinction between gifted education as required in the Commonwealth and special education required by Federal law. To accomplish this, the Board has removed or changed references to terms and concepts clearly linked to special education as prescribed under the Federal Individuals with Disabilities Education Act (20 U.S.C.A. §§1400-1485). This chapter is intended to strike a proper balance between necessary regulatory protections and maximum local control.]

[(c)](b) The Commonwealth, through the Department, will provide general supervision of services and programs provided under this chapter.

[(d)](c) The Department will disseminate information about and promote the use of promising practices and innovative programs to meet the needs of gifted students.

[(e)](d) To provide services and programs efficiently, the Commonwealth will delegate operational responsibility to its school districts. Each school district shall, by direct service or through arrangement with other agencies, provide the following:

(1) Services and programs planned, developed and operated for the identification and evaluation of each gifted student.

(2) Gifted education for each gifted student which is based on the unique needs of the student, not solely on the student's classification.

(3) Gifted education for gifted students which enables them to participate in acceleration or enrichment programs, or both, as appropriate, and to receive services according to their intellectual and academic abilities and needs.

§16.3 Experimental programs.

(a) The Secretary may approve exceptions to this chapter for the operation of experimental programs that are anticipated to improve student achievement and that meet certain unique programmatic needs of gifted students. School [entities] districts shall submit an annual application for approval of those programs. The application shall:

(1) Include provision for the involvement of parents, administrators and professionals in the design and ongoing review of performance.

(2) Include provisions for annually evaluating the program as to whether it benefits student achievement.

(3) Demonstrate that it has met [other criteria established by the Secretary] the following criteria:

(i) A definition of the need that exists which necessitates an experimental program.

(ii) Data to support the existence of the need.

(iii) A description of the program, including the nature of the program, specific goals and objectives to be reached, role and function of personnel involved, and timelines for development, implementation and evaluation.

(b) When an experimental program has been approved for 3-consecutive years and has resulted in improved student achievement under subsection (a), annual application is not needed for the program to continue to operate.

(c) The Secretary may terminate an experimental program for failing to meet the objectives established in the application or for noncompliance with State law or regulations not specifically waived in the Secretary's approval of the experimental program under subsection (a) **upon sixty (60) days notice.**

(d) The Secretary will report annually to the Board regarding applications for experimental programs under this section and the disposition of the applications.

§16.4 Strategic plans.

(a) Each school district's strategic plan developed under Chapter [5 (relating to curriculum)]**4 (relating to academic standards and assessments)** shall include procedures for the education of all gifted students [who are residents of] **enrolled in** the district [under section 1302 of the School Code (24 P. S. §13-1302)]. The strategic plan shall be developed to ensure the support of the implementation of plans developed under subsection (b).

(b) Each[agency] school district shall provide, as the Department may require, reports of students, personnel and program elements, including the costs of the elements, which are relevant to the delivery of gifted education.

§16.5 Personnel.

(a) Professional personnel shall consist of certified individuals responsible for identifying gifted students and providing gifted education in accordance with Article XI of the School Code (24 P. S. §§11-1101--11-1192) and this title.

(b) Paraprofessional personnel consist of individuals who work under the direction of professional personnel as defined in this chapter. The duties and training of the paraprofessional staff shall be determined by the employing agency.

(c) A school district and intermediate unit shall provide, under section 1205.1 of the School Code (24 P. S. §12-1205.1), in-service training for gifted and regular teachers, principals, administrators and support staff persons responsible for gifted education.

§16.6. General supervision.

(a) Educational programs for gifted students administered within this Commonwealth are considered to be under the general supervision of the Department and shall meet the provisions of this chapter.

(b) The Department will ensure that appropriate and responsible fiscal oversight and control is maintained over the development and provision of gifted education in accordance with this chapter providing for fiscal

accountability and prudent management.

(c) The Board will review this chapter at least every 4 years to ensure consistent interpretation and application of this chapter.

§16.7. Special education.

(a) Nothing in this chapter is intended to reduce the protections afforded to students who are eligible for special education as provided for under Chapters 14 and 342 (relating to special education services and programs) and the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400--1485).

(b) If a student is determined to be both gifted and eligible for special education, the procedures in Chapter 14 and 342 shall take precedence. **For such students identified with dual exceptionalities, the needs established under gifted status in this chapter shall be fully addressed in the procedures required in Chapters 14 and 342.**

(c) For students who are gifted and eligible for special education, it is not necessary for school districts to conduct separate screening and evaluations, develop separate IEPs, or use separate procedural safeguards processes to provide for a student's needs as both a gifted and an eligible student.

SCREENING AND EVALUATION PROCESS

§16.21. General.

(a) Each school district shall adopt and use a system to locate and identify all students [residing in the district's jurisdiction] **enrolled in the district** who are thought to be gifted and in need of specially designed

instruction.

(b) Each school district shall conduct awareness activities to inform the public of gifted education services and programs and the manner by which to request these services and programs.

(c) Each school district shall determine the student's needs through a screening and evaluation process which meets the requirements of this chapter.

(d) Each school district shall establish procedures to determine whether a student is mentally gifted. This term includes a person who has an IQ of 130 or higher and when multiple criteria as set forth in Department Guidelines indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of mentally gifted shall include an assessment by a certified school psychologist.

(e) Multiple criteria indicating gifted ability include:

- (1) A year or more above grade achievement level for the normal age group in one or more subjects as measured by nationally normed and validated achievement tests able to accurately reflect gifted performance. Subject results shall yield academic instruction levels in all academic subject areas.**
- (2) An observed or measured rate of acquisition/retention of new academic content or skills that reflect gifted ability.**

- (3) Demonstrated achievement, performance or expertise in one or more academic areas as evidenced by excellence of products, portfolio or research, as well as criterion-referenced team judgement.

- (4) Early and measured use of high level thinking skills, academic creativity, leadership skills, intense academic interest areas, communications skills, foreign language aptitude or technology expertise.

- (5) Documented, observed, validated or assessed evidence that intervening factors such as English as a second language, learning disability, physical impairment, emotional disability, gender or race bias, or socio/cultural deprivation are masking gifted abilities.

§16.22. Gifted multidisciplinary evaluation.

(a) Prior to conducting an initial gifted multidisciplinary evaluation, the school district shall comply with the notice and consent requirements under §§16.61 and §16.62 (relating to notice; and consent).

(b) Referral for gifted multidisciplinary evaluation shall be made when the student is suspected by teachers or parents of being gifted and not receiving an appropriate education under Chapter [5 (relating to curriculum)] 4 (relating to academic standards and assessment) and one or more of the following apply:

- (1) A request for evaluation has been made by the student's parents under subsection (c).

- (2) The student is thought to be gifted because the school district's screening of the student

indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom.

(3) A hearing officer or judicial decision orders a gifted multidisciplinary evaluation.

(c) Parents who suspect that their child is gifted may request a gifted multidisciplinary evaluation of their child at any time, with a limit of one request per school term. The request shall be in writing. If a parental request is made orally to school personnel, the personnel shall inform the parents that the request shall be made in writing and shall provide the parents with a form for that purpose.

[(d) Parental consent or, if consent is not obtained, the order of a hearing officer or court shall be obtained prior to the conduct of any part of an initial gifted multidisciplinary evaluation consistent with §§ 16.61–16.65 (relating to procedural safeguards).]

[(e)](d) Multidisciplinary evaluations shall be conducted by GMDTs. The GMDT shall be formed on the basis of the student's needs and shall be comprised of the student's parents, a certified school psychologist, persons familiar with the student's educational experience and performance, one or more of the student's current teachers, persons trained in the appropriate evaluation techniques and, when possible, persons familiar with the student's cultural background. A single member of the GMDT may meet two or more of the qualifications specified in this subsection.

[(f)](e) Gifted multidisciplinary evaluations shall be sufficient in scope and depth to investigate information relevant to the student's suspected giftedness, including academic functioning, learning strengths, and educational needs.

[(g)](f) The multidisciplinary evaluation process shall include information from the parents or others who interact with the student on a regular basis, and may include information from the student if appropriate.

[(h)](g) The following protection-in-evaluation measures shall be considered when performing an evaluation of students suspected of being **[exceptional] gifted**:

(1) No one test or type of test may be used as the sole criterion for determining that a student is or is not gifted.

(2) Intelligence tests yielding an IQ score may not be used as the only measure of aptitude for students of limited English proficiency, or for students of racial-, linguistic- or ethnic-minority background.

(3) Tests and similar evaluation materials used in the determination of giftedness shall be:

(i) Selected and administered in a manner that is free from racial and cultural bias and bias based on disability.

(ii) Selected and administered so that the test results accurately reflect the student's aptitude, achievement level or whatever other factor the test purports to measure.

(iii) Professionally validated for the specific purpose for which they are used.

(iv) Administered by **[certified professional employes or]** certified school psychologists under instructions provided by the producer of the tests and sound professional practice.

(v) Selected and administered to assess specific areas of educational need and ability and not merely a single general IQ.

~~[(i)]~~(h) The GMDT shall prepare a written report which brings together the information and findings from the evaluation or reevaluation concerning the student's educational needs and strengths. The report shall make recommendations as to whether the student is gifted and in need of specially designed instruction, shall indicate the bases for those recommendations, and shall indicate the names and positions of the members of the GMDT.

~~[(j)]~~(i) To recommend that a student who has been evaluated is a gifted student, the GMDT shall conclude that the student needs specially designed education and meets the criteria for eligibility as defined in §16.1 (relating to definitions) and § 16.21 (relating to general).

~~[(k)]~~(i) The following timeline applies to the completion of gifted multidisciplinary evaluations:

(1) Each district shall establish and implement procedures to complete a gifted multidisciplinary evaluation for a student referred for evaluation within 45 school days after receiving parental permission for an initial evaluation, after notifying the parents of a reevaluation or after receiving an order of a court or hearing officer to conduct a multidisciplinary evaluation.

(2) An evaluation report shall be completed within 10 school days after completion of the gifted multidisciplinary evaluation.

(3) Within 5 school days after its completion, a copy of the evaluation report shall be delivered to the parents of the student.

§16.23 Gifted multidisciplinary reevaluation.

(a) Gifted students shall be reevaluated before a change in educational placement is recommended for the student and when the conditions under §16.22(b)(1) or (3) (relating to gifted multidisciplinary evaluations) are met. In addition, gifted students may be reevaluated at any time under recommendation by the GIEP team.

(b) Reevaluations shall be developed in accordance with all the requirements concerning evaluation in this chapter.

(c) Reevaluations shall include a review of the student's GIEP, a determination of which instructional activities have been successful, and recommendations for the revision of the GIEP.

GIEP

§16.31 General.

(a) A GIEP is a written plan describing the education to be provided to a gifted student. The initial GIEP shall be based on and be responsive to the results of the evaluation and shall be developed and implemented in accordance with this chapter.

(b) If a gifted student moves from one school district in this Commonwealth to another, the new district shall implement the existing GIEP to the extent possible or shall provide the services and programs specified in an interim GIEP agreed to by the parents until a new GIEP is developed and implemented in accordance with this section and §§16.32 and 16.33 (relating to GIEP; and support services) **[and] or** until the completion of due process proceedings under §§16.61--16.65 (relating to procedural safeguards).

(c) Every student receiving gifted education provided for in [a GIEP] an IEP developed prior to the effective date of this chapter shall continue to receive the gifted education under that [GIEP] IEP until the student's GIEP is [revised] developed. For a student also eligible under Chapters 14 and 342, the student will continue to receive gifted education under that IEP until revised.

(d) Every student receiving gifted education prior to the effective date of this chapter shall continue to receive gifted education [unless a GIEP team determines that the student no longer needs gifted education] until the student (1) graduates from high school, (2) is no longer of school age, or (3) a GIEP team determines that the student no longer needs gifted education.

§16.32. GIEP.

(a) Each school district shall establish and implement procedures to appoint a GIEP team to review the recommendations of the GMDT and, if the GIEP team determines a student is gifted, to develop a GIEP for the student. The GIEP shall be developed at a GIEP meeting and based on data and information presented at that meeting.

(b) The GIEP team, in accordance with the requirements of this chapter shall, based upon the evaluation report, develop an initial GIEP for a student it determines to be a gifted student, and arrive at a determination of educational placement. Revisions to GIEPs, changes in educational placement, or continuation of educational placement for a student determined to be a gifted student shall be made by the GIEP team based upon a review of the student's GIEP and instructional activities [which have been successful], as well as on information in the most recent evaluation.

(c) Each GIEP team shall include persons who meet the following qualifications:

- (1) One or both of the student's parents.

- (2) The student if [16 years of age or older, or if younger and] the parents choose to have the student participate.

- (3) A representative of the district, who will serve as the chairperson of the GIEP team, who is knowledgeable about the availability of resources of the district, and who is authorized by the district to commit those resources .

- (4) One or more of the student's current teachers.

- (5) Other individuals at the discretion of either the parents or the district.

(d) The school district shall establish and implement procedures designed to ensure that the parents of the gifted student are offered the opportunity to be present at each GIEP team meeting. These procedures shall include **any one or a combination of** the following: documented phone calls, letters, and certified letters with return receipts. Agencies shall maintain documentation of their efforts to encourage parents to attend. By including them in the invitation, the following shall be considered reasonable efforts to ensure parent participation in the GIEP meeting:

- (i) The purpose, time and location of the meeting.

- (ii) The names of the persons expected to attend.

- (iii) The [educational] **procedural** rights available to protect the student and parent, in language

which is clear and fully explains all rights.

(iv) That a determination will be made at the meeting as to whether or not the student is gifted.

(v) That if the student is determined to be gifted, a GIEP will be developed.

(vi) Notifying the parent and other persons who will be attending **[early enough] at least 10 calendar days in advance** to ensure that the parent will have an opportunity to attend.

(e) The GIEP of each gifted student shall be based on the GMDT's recommendations and shall contain the following:

(1) A statement of the student's present levels of educational performance.

(2) A statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report.

(3) A statement of the specially designed instruction and support services to be provided to the student.

(4) Projected dates for initiation and anticipated duration of gifted education.

(5) Appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning outcomes are being achieved.

(6) Names and positions of GIEP team participants and the date of the meeting.

(f) A copy of the GIEP shall be provided to the parents, along with a notice of parental rights under §§16.61--16.65 (relating to procedural safeguards).

(g) The following timeline governs the preparation and implementation of GIEPs:

(1) A GIEP shall be developed within 30 calendar days after issuance of a GMDT's written report.

(2) The GIEP of each student shall be implemented **no more than ten (10) school days after it is signed or at the start of the following school year if completed less than thirty (30) days before the last day of scheduled classes** in accordance with §16.62(5)(relating to consent).

(3) GIEP team meetings shall be convened at least annually, or more frequently if conditions warrant, as well as following an evaluation or reevaluation. A GIEP team meeting shall also be convened at the request of a GIEP team member, the parent, the student, or the school district.

§16.33. Support services.

(a) The GIEP team, during the development, review or revision of a GIEP, shall determine whether the gifted student needs one or more support services.

(b) The GIEP team shall conclude that transportation to and from school [or to and from a site other than the school,] psychological services, [social work services] parent counseling and education, or another service is a support service if the GIEP team determines that one of the following criteria has been met:

(1) The service is an integral part of an educational objective of the student's GIEP, without which the GIEP cannot be implemented.

(2) The service is needed to ensure the student benefits from or gains access to a gifted education program.

EDUCATIONAL PLACEMENT

§16.41. General.

(a) The GIEP team shall base educational placement decisions on the gifted student's needs.

(b) Districts may use administrative and instructional strategies and techniques in the provision of gifted education for gifted students which do not require, but which may include, categorical grouping of students. Such placement shall:

(1) Enable the provision of appropriate specially designed instruction based on the student's need and ability.

(2) Ensure that the student is able to benefit meaningfully from the rate, level, and manner of instruction.

(3) Provide opportunities to participate in acceleration or enrichment, or both, as appropriate for the student's needs. Such opportunities must go beyond the program that the student would

receive as part of a general education.

(c) Districts shall adopt board policies relating to caseloads and class sizes for gifted students which:

(1) ensure the ability of assigned staff to provide the services required in each gifted student's GIEP.

(2) address all the educational placements for gifted students used by the district.

(3) limit the total number of gifted students which can be on an individual gifted teacher's caseload to a maximum of 75 students.

(4) limit the total number of gifted students which can be on an individual gifted teacher's class roster to a maximum of 20 students.

(d) Caseload and class size maximums may be waived by the Secretary upon written request by the district for extenuating circumstances.

[(d)](e) Gifted educational placement may not be based on one or more of the following:

(1) Lack of availability of placement alternatives.

(2) Lack of availability or efforts to make educational or support services available.

(3) Lack of staff qualified to provide the services set forth in the GIEP.

(4) Lack of availability of space or of a specific facility.

(5) Administrative convenience.

§16.42. Parental placement in private schools.

(a) This chapter does not limit the right of parents to have their gifted children educated at private schools completely at private expense.

(b) The home education program of a gifted child shall be governed by sections 1327 and 1327.1 of the School Code (24 P. S. §§13-1327 and 13-1327.1).

PROCEDURAL SAFEGUARDS

§16.61. Notice.

(a) A school district shall document the provision of written notice to the parents of a gifted student at least 10 school days prior to one or more of the following events:

(1) The school district proposes to conduct a gifted multidisciplinary evaluation or reevaluation of the student.

(2) The school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the student, or proposes or refuses to make any significant changes in

the GIEP.

(b) A change in the identification, evaluation, educational placement or GIEP of a gifted student may not be made during the pendency of an administrative or judicial proceeding unless agreed to by the parties to the proceeding.

(c) The content of notices to the parents shall be written in language understandable to the general public. If necessary, the content of notices shall be communicated orally in the native language or directly so that the parents understand the content of the notices.

(d) The notice shall include:

(1) A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action and a description of options the district considered and the reasons why those options were rejected.

(2) A description of each evaluation procedure, type of test, record or report used as a basis for the action.

(3) A description of other factors relevant to the district's action.

(4) A full explanation of the procedural safeguards, including the right to an impartial hearing available to the student or the parents under this chapter.

(e) The notice shall inform the parents of the following:

(1) The addresses and telephone numbers of various organizations which are available to assist in connection with the hearing.

(2) The timelines involved in conducting an evaluation, developing a GIEP, and initiating a hearing.

(3) An outside evaluation submitted by the parents shall be considered.

(4) The information in §16.63 (relating to impartial due process hearing).

§16.62. Consent.

The district shall document that written parental consent is obtained prior to:

(1) Conducting an initial multidisciplinary evaluation.

(2) Initially placing a gifted student in a gifted program.

(3) Disclosing to unauthorized persons information identifiable to a gifted student.

(4) When completed, the GIEP provided for in §16.32 (relating to GIEP) shall be presented to the parents, along with a notice of recommended assignment signed by the school district superintendent provided for in §16.61 (relating to notice) and a notice of parental right to an impartial due process hearing under §16.63 (relating to impartial due process hearing). The notice shall be presented to the parents in person at the conclusion of the GIEP conference or by certified mail within 5 calendar days after the completion of

the GIEP conference.

(5) The parents shall have 10 calendar days to respond to a notice of recommended assignment sent by mail or 5 calendar days to respond to a notice presented in person at the conclusion of an GIEP conference. If the parents receive the notice in person and approve the recommended assignment within 5- calendar days, the school district may not implement the GIEP for at least 5-calendar days, to give the parents an opportunity to notify the district within the 5-day period of a decision **[not to approve] to revoke the previous approval** of the recommended assignment.

§16.63. Impartial due process hearing.

(a) Parents may request **in writing** an impartial due process hearing concerning the identification, evaluation or educational placement of, or the provision of a gifted education to, a student who is gifted or who is thought to be gifted if the parents disagree with the school district's identification, evaluation or placement of, or the provision of a gifted education to the student.

(b) A school district may request **in writing** a hearing to proceed with an initial evaluation or an initial educational placement when the district has not been able to obtain consent from the parents or in regard to a matter under subsection (a).

(c) The hearing shall be conducted by and held in the local school district at a place reasonably convenient to the parents. At the request of the parents, the hearing may be held in the evening. These options shall be set forth in the form provided for requesting a hearing.

(d) The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request

a closed hearing 5 days in advance of the hearing. If the hearing is open, the decision issued in the case, and only the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public.

(e) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented [at] during the course of the hearing.

(f) The hearing officer shall have the authority to order that additional evidence be presented.

(g) A written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

(h) Parents may be represented by any person, including legal counsel.

(i) A parent or a parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(j) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5 calendar days before the hearing.

[(k) A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based]

[(l)(k) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

[(m)](1) The decision of the impartial hearing officer may be appealed to a panel of three appellate hearing officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken.

[(n)](m) The following applies to coordination services for hearings and to hearing officers:

(1) The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if its procedures similarly provide for procedural consistency and ensure the rights of the parties. In the absence of its own procedures, a school district which receives a request for an impartial due process hearing shall forward the request to the agency providing coordination services under paragraph (1) without delay.

(3) A hearing officer may not be an employe or agent of a school district in which the parents or student resides, or of an agency which is responsible for the education or care of the student. A hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

[(o)](n) The following timeline applies to due process hearings:

(1) A hearing shall be held within 3-calendar days after a parent's or school district's initial request for a hearing.

(2) The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing.

~~[(p)](o)~~ Each school district shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts shall provide parents with information as to the availability of the list and shall make copies of it available upon request.

§16.64. Mediation.

(a) Mediation is a process in which parents and agencies involved in a special education for gifted students dispute may obtain the assistance of an impartial mediator in attempting to reach a mutually agreeable settlement.

~~[(a)] (b)~~ The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Joint session--A stage of the mediation conference when the mediator meets with the parties and participants together and each party is given a reasonable uninterrupted opportunity to present the issues and concerns. [The mediator shall help the parties to arrive at a satisfactory resolution to the conflict by encouraging parties to explore possible solutions.]

[Mediation--A process whereby parents and agencies involved in a gifted education dispute may

obtain the assistance of an impartial mediator in an attempt to reach a mutually-agreeable settlement of issues in dispute.]

Mediation agreement--A written record of agreement reached by the parties.

Mediation conference--A structured, but informal meeting of the parties and participants with a mediator. The purpose of the conference is to develop a mutually acceptable, written agreement that is binding on the parties.

Mediator--An impartial, neutral person who helps parties involved in a conflict to develop their own solutions to the dispute. The term does not include a person who makes decisions about the conflict for the parties.

Participants--Other persons appearing at the mediation conference on behalf of either party, such as other family members and specialists.

Parties--The parents and designated agency personnel involved in the conflict. **[Each party shall come to the mediation conference with the authority to commit resources to the resolution agreed upon by the parties.]**

Private session (caucus)--A private meeting between the mediator and only one of the parties to further clarify that party's position and to explore possible solutions to the conflict. The mediator may not share information from the private session without consent of the party.

[(b)] (c) If a dispute is resolved through mediation, a written agreement shall be prepared and placed in the

child's education record. The agreement shall also be incorporated into the GIEP [, if appropriate].

[(c)](d) During a mediation conference the mediator shall meet with the parties together in a joint session and individually in private sessions.

[(d)](e) Discussions occurring during the mediation session shall be confidential, and no part of the mediation conference shall be recorded.

[(e)](f) The mediator may not be called as a witness in future proceedings.

[(f)](g) The designated agency involved in the dispute shall send a representative who has the authority to commit resources to the resolution agreed upon by the parties.

[(g)](h) The written mediation agreement is not a confidential document and shall be incorporated into the student's GIEP and is binding on the parties.

[(h)](i) The mediation agreement shall be enforceable by the Department.

[(i)](j) A GIEP team shall be convened, within [20] 10 school days following the mediation agreement, to incorporate the mediation agreement into the GIEP.

[(j)](k) When the mediation conference results in a resolution of the dispute, each party shall receive an executed copy of the agreement at the conclusion of the mediation conference.

[(k)](l) Mediation may not be used to deny or delay a party's right to a due process hearing.

§16.65. Confidentiality.

Each agency shall protect the confidentiality of personally identifiable information regarding a gifted student or a student thought to be gifted in accordance with section 13(a) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. §1232g), 34 CFR Part 99 (relating to family educational rights and privacy) and Chapter 12 (relating to students) and other applicable law.

[IMPLEMENTATION

§16.71. General.

(a) Students receiving gifted education under Chapters 14 and 342 (relating to special education services and programs) prior to final publication of this chapter in the Pennsylvania Bulletin are entitled to continue to receive gifted education under this chapter.

(b) School districts and agencies shall continue to implement gifted education for students described in subsection (a) until students have graduated from high school or would no longer be eligible under this chapter.

(c) The Department will assure that this section is implemented.]

Readers Note: Language identified for deletion on proposed rulemaking is found in [brackets] . New language on proposed rulemaking is underlined . Changes from proposed rulemaking to this final-form are further noted as ~~strikeout~~ for deletion and ALL CAPITALS for new language.

CHAPTER 14: SPECIAL EDUCATION SERVICES AND PROGRAMS

§14.1. Definitions.

The following words and terms, when used in this Chapter have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Exceptional student--[A student who meets one of the following criteria:

(i) **FOR PURPOSES OF THIS CHAPTER, AN eligible student.**

[(ii) A student other than an eligible young child who is gifted as set forth in Chapter 342.

(iii) A student receiving special education and related services as a gifted and talented school-aged person under Chapter 13 prior to July 1, 1990.

(iv) A school age child in a detention home.]

* * * * *

§14.2. Purpose.

* * * * *

(d) To provide services and programs efficiently, the Commonwealth will delegate operational responsibility to its school districts. Each school district shall, by direct service or through arrangement with other agencies, provide the following:

* * * * *

[(8) An education for gifted students which enables them to participate in acceleration or enrichment programs, or both, as appropriate, and to receive services according to their intellectual and academic abilities.]

* * * * *

SCREENING AND EVALUATION PROCESS

§14.24 Instructional support.

(a) This section does not apply to students **[who are thought to be gifted, to students]** beyond the sixth grade who are thought to be eligible, to students attending nonpublic schools who are thought to be exceptional or to young children not yet of kindergarten age or not enrolled in a public school program.

* * * * *

§14.25. Multidisciplinary evaluation.

* * * * *

(c) A multidisciplinary evaluation shall be initiated if one of the following applies:

* * * * *

(5) The student is **[thought to be gifted, the student is]** beyond the sixth grade and thought to be eligible, the student attends a nonpublic school and is thought to be exceptional or the young child thought to be eligible is not yet of kindergarten age or not enrolled in a public school program.

IEP

§14.38. Planned courses.

Planned courses for exceptional students shall be conducted under Chapter **5-(relating to curriculum) 4 (RELATING TO ACADEMIC STANDARDS AND ASSESSMENT)**, this chapter and Chapter 342 (relating to special education services and programs). Planned courses shall include provisions for:

* * * * *

[(5) Development of curricula for gifted students which include acceleration, enrichment, or both, as appropriate.]

* * * * *

PROCEDURAL SAFEGUARDS

§14.67. Independent educational evaluation.

(a) The parents of an eligible student or eligible young child or student or young child thought to be eligible have the right to obtain an independent educational evaluation of the student or young child, subject to subsections

(b)--(f). [The parents of students who are gifted or thought to be gifted have the right to obtain an independent educational evaluation of the student subject to subsections (b)--(e).]

* * * * *

CHAPTER 342: SPECIAL EDUCATION SERVICES AND PROGRAMS

§342.1. Definitions.

* * * * *

(b) Additional definitions. The following words and terms, when used in this Chapter, have the following meanings unless the context clearly indicates otherwise.

* * * * *

[Mentally gifted Outstanding intellectual and creative ability the development of which requires special services and programs not ordinarily provided in the regular education program. This term includes a person who has an IQ of 130 or higher and when multiple criteria as set forth in Department Guidelines indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria n the profile of

the person strongly indicate gifted ability. Determination of mentally gifted shall include a full assessment and comprehensive report by a public school psychologist specifying the nature and degree of the ability.]

* * * * *

[(c) Eligible young child. The classification of eligible young child includes all of the classification listed in this section except mentally gifted.] (C) ELIGIBLE YOUNG CHILD. THE CLASSIFICATION OF ELIGIBLE YOUNG CHILD INCLUDES ALL OF THE CLASSIFICATION LISTED IN THIS SECTION.

SCREENING AND EVALUATION PROCESS

§342.25. Multidisciplinary evaluation.

(a) Referral for multidisciplinary evaluation shall be made when special education referral criteria have been met and are in accordance with §14.25 (relating to multidisciplinary evaluation). Referral for multidisciplinary evaluation is indicated when the student is suspected of being exceptional and one or more of the following exist:

[(1) The instructional assessment of the student indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom.

(2)] (1) ***

[(3)](2) ***

* * * * *

IEP

§342.38. Planned courses.

(a) Curricula for exceptional students shall be designed to:

* * * * *

[(5) Provide higher level thinking skills and advanced content acceleration and enrichment for the gifted.]

* * * * *

EDUCATIONAL PLACEMENT

§342.42. Educational placement.

* * * * *

(h) School districts may establish classes for exceptional students in the following categories:

(1) [Academic support.]

[(i) Gifted support class. A class for exceptional students identified as mentally gifted.]

[(ii)] Learning support class. A class for exceptional students whose primary identified need is academic learning.

* * * * *

(j) Class sizes and class loads for assignments for special education services and programs shall conform to the following table:

Caseload and Class Size for Special Education

This chart presents the caseload allowed on a single teacher's rolls; the number in parenthesis is the maximum number of exceptional students in the room with the teacher at one time.

Type of Service	Itinerant	Resource	Part-time	Full-time
Academic Support Class:				
[Gifted Support	15-75(15)	12-50(15)	10-30(15)	10-15(15)]

* * * * *



Commonwealth of Pennsylvania
STATE BOARD OF EDUCATION

July 13, 2000

Mr. Robert E. Nyce
Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17126

Dear Mr. Nyce:

Enclosed is a copy of the final-form of State Board of Education regulations 22 Pa. Code, Chapter 16 (special education for gifted students) (#6-266) for review by the Commission pursuant to the provisions of section 5(c) of the Regulatory Review Act. The act provides that the Commission shall approve or disapprove final-form regulations within 10 days of the close of the Committee review period or at its next scheduled meeting.

The State Board of Education will provide the Commission with any assistance it requires to facilitate a thorough review of these final-form regulations.

Please let me know if there is anything that you need.

Sincerely,

A handwritten signature in cursive script, appearing to read "Peter H. Garland".

Peter H. Garland
Executive Director

Enclosure

cc: Gregory E. Dunlap, Esquire
Linda C. Barrett, Esquire

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

ID. NUMBER: 6-266
SUBJECT: Special Education for Gifted Students
AGENCY: DEPARTMENT OF EDUCATION - State Board of Education

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/13/00	<i>M. Lemprey</i>	HOUSE COMMITTEE ON EDUCATION
7/13/00	<i>Wendy C. Kuyhl</i>	
7/13/00	<i>Rebecca B. Lion</i>	SENATE COMMITTEE ON EDUCATION
7/13/00	<i>Debra M. Givens</i>	
		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

RECEIVED
 2000 JUL 13 PM 4:07
 REVIEW COMMISSION

July 13, 2000