

Original: 1986

Beaver County Chapter
Pennsylvania Association for Gifted Education

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2000 MAY 23 AM 8:38

REGULATORY
REVIEW COMMISSION

May 16, 2000

Mr. John R. McGinley, Chairman
IRRC
333 Market Street
Harrisburg, PA 17126-0333

Dear Chairman McGinley:

The Beaver County PAGE is concerned that the proposed Chapter 16 new regulations for special education for gifted students need a few important additions in addition to protection from the Empowerment Act. We feel that while the regulations are recalled they should be looked at again for the following problems:

First, of course, is protection from waivers. We suggest a simple renaming of the chapter to Chapter 14 Part B or 2. We also suggest an amendment to the Empowerment Act removing 24 PA Code 13-1371 and 1372 from waivers.

Secondly, mentioning compliance in the Preamble does not codify this provision. As a mainly advocacy group, Beaver County PAGE hears numerous complaints from parents monthly. By far the largest portion of these complaints are regarding compliance. Usually having the parent merely mention the appropriate section of the current regulations solves the disagreement, because districts know that parents have recourse to Division of Compliance. They wish to avoid audits and the awarding of compensatory time, as happened to one district in the last few weeks following a parent complaint which we encouraged. We are concerned that removing compliance from the chapter will increase the likelihood of districts thumbing their noses at the regulations. No amount of letters or sections in the Preamble will legally protect recourse to compliance.

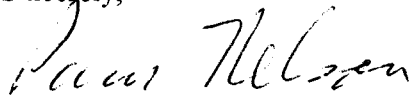
Thirdly, we are distressed at the lack of a provision for allowing accelerated students to use courses taken early or tested out of toward graduation requirements. This is called awarding "credit" under the Graduation Plan. While we understand the reluctance to use the word "credit" as in Carnegie Units, which does not appear in Chapter 4 Regulations, this word does not always have to be used in this context. One of the biggest compliance problems we hear regularly is that certain districts do not count courses that a student has taken early or testing out of a class. We have filed compliance complaints in the past over this and have used the results to end many recent problems without having to bring in a compliance officer. Merely telling parents they have to put this in the IEP does not assure that their children will be allowed to count these courses. At due process this will not hold up if it is not in the regulations.

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140 Silver Lake Lane
Fombell, PA 16123

Finally, we ask for the return of language requiring parent conferences to be held at a time and place where working parents who cannot get time off may attend. A ten day notice is simply not assurance that a parent is able to attend a meeting held during school hours. There needs to be some agreement with the parent, not merely notification.

We thank you for recalling Chapter 16 and hope you will reconsider these few points for changing the Chapter to reflect what is current regulation.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Nelson".

Pamela Nelson, Advocacy Chair
Beaver County PAGE
140 Silver Lake Lane
Fombell, PA 16123
724-452-6720



An affiliate of the
American Psychological
Association

PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION RECEIVED

416 Forster Street • Harrisburg, Pennsylvania 17101
Telephone 717-232-3817 • Fax 717-232-7294 • www.PaPsy.org

2000-AUG 11 AM 8:46
INDEPENDENT REGULATORY
REVIEW COMMISSION

Original: 1986

August 7, 2000

Ms. Kim de Bien
Independent Regulatory Review Commission
333 Market Street-14th Floor
Harrisburg, PA 17101

Dear Ms. de Bien:

On behalf of the Pennsylvania Psychological Association I am writing in support of the proposed Chapter 16 regulations, dealing with gifted students. We are pleased to see that these proposed regulations require the assessment of a school psychologist before a child can be admitted to the gifted program. We believe that this requirement is essential so that the GMDT can be assured that it is receiving data which is useful and relevant to the educational placement of the child. Of course the GMDT has the option of receiving additional information from other school or professional personnel in making the best educational placement.

Without an assessment by a certified school psychologist, the GMDT could be beset with a myriad of obscure tests with questionable validity, reliability, and usefulness in identifying students who are gifted. Currently, a plethora of tests is produced every year ranging from those developed by well-established test manufacturers who adhere to responsible professional standards, to those developed by entrepreneurial manufacturers who do little to ensure professional standards in the development and/or administration of their tests. We would anticipate many unwanted and unnecessary conflicts between parents and the schools if the door were opened to permit the submission of unstandardized tests or tests administered and interpreted by unqualified persons. The retention of certified school psychologists in the evaluation process prevents many potential abuses.

We are pleased to see that the Department of Education concurs with our concerns and consequently we support Chapter 16 as written.

Sincerely,

Samuel Knapp, Ed.D.
Director of Professional Affairs

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2000 JUL 25 AM 11:47

REVIEW COMMISSION

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION
Office of Chief Counsel
(717) 787-5500
July 12, 2000

SUBJECT: Chapter 16 and Education Empowerment Act Waivers

TO: Eugene W. Hickok, Jr.
Secretary of Education

FROM: Ernest N. Helling
Assistant Chief Counsel

Linda C. Barrett
VIA: Linda C. Barrett
Chief Counsel

I write regarding your memorandum of May 22, 2000. You asked that we analyze whether a regulation that was nonexistent at the time of the passage of the Education Empowerment Act (EEA) could be waived under that Act. This question arises because of concerns that were voiced when Chapter 16, final rulemaking for gifted students, was recently before the Independent Regulatory Review Commission. Advocates of the gifted were concerned because Chapter 16 is not specifically excluded from waiver under the EEA.

Our short answer is that Chapter 16 cannot be waived, notwithstanding that it is not specifically listed, because the rights of gifted students, at the time of the passage of the EEA, were set forth in and protected under Chapter 14, which was specifically excluded from waiver by the General Assembly.

Section 1714-B of the EEA creates a mandate waiver program. This program permits boards of school directors to apply to PDE for waivers from the requirements of the Public School Code, State Board regulations or department standards, with certain specified exceptions. One of the specific exemptions from waiver is Chapter 14 of 22 Pa. Code regarding special education programs and services. 24 P.S. §17-1714-B(h). Both when the EEA became law and upon its July 1 effective date, Chapter 14 provided the policies and procedures for providing special education to students with disabilities and those who were gifted. Thus, boards of school directors are specifically prohibited under the EEA from applying to the Department to waive any protections afforded by law to students with disabilities, including students who are gifted. In addition, from this one can argue that it was the expressed intention of the General Assembly to protect both disabled and gifted students from any erosion of their rights upon passage of the EEA. Because gifted students are now protected, neither the Department nor the State Board of Education should in the future be able to frustrate this legislative intent simply by removing the gifted from Chapter 14 and, for example, creating a new chapter. We may certainly alter the State Board's existing regulatory scheme and, for example, move forward with the final adoption of Chapter 16. However, the new Chapter 16 will carry with it the protections previously afforded to the gifted when they fell within the ambit of Chapter 14.

Based upon the above analysis it is our opinion and you are so advised that the best

interpretation is that the proposed Chapter 16 regarding special education for the gifted will be exempt from waiver under the EEA because the rights and protections afforded to these students were protected from waiver under Chapter 14 when the EEA was enacted.

If you have any questions about this opinion, please call us.

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