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**Commonwealth of Pennsylvania**  
**STATE BOARD OF EDUCATION**

INDEPENDENT REGULATORY  
REVIEW COMMISSION

September 10, 2008

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of additional responses to public comments on final form State Board of Education regulation 22 Pa. Code, Chapter 16 Special Education for Gifted Students (#006-307). A transmittal notice and regulation package on this regulation was sent to you on August 12, 2008. The addendum further addresses issues raised by the Independent Regulatory Review Commission on November 8, 2007.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Buckheit".

Jim Buckheit  
Executive Director

Enclosure

cc: Secretary Zahorchak  
Gregory Dunlap, Esq.  
Teresa Colarusso



Commonwealth of Pennsylvania  
State Board of Education  
22 PA Code, Chapter 16

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Responses to Official Public Comments  
Addendum – September 10, 2008

INDEPENDENT REGULATORY  
REVIEW COMMISSION

*§ 16.6. General supervision*

The Independent Regulatory Review Commission had two concerns about the proposed regulation. First it questioned whether the Secretary of Education has the authority to develop the process and schedule for monitoring gifted education programs. Second, it questioned the inclusion of monitoring requirements in a non-regulatory document in light of concerns expressed by numerous commentators that school districts have not complied with existing regulations and the Department has not provided appropriate monitoring of gifted education programs. The comments from the Commission suggest that one way to ensure that gifted education programs administered by school districts are in compliance is to include monitoring methods and frequencies in the regulations; that regulations have the full force of law and effect of law and are binding on both the regulated community and an agency. It recommends that monitoring and compliance provisions be added to the final-form regulation.

*Response:*

Section 1372 of the Public School Code of 1949 charges the Board with the responsibility “to adopt and prescribe standards and regulations for the proper education and training of all exceptional children by school districts...” (24 P.S. § 13-1372(1)). Section 1372 also states, “The Secretary of Education shall superintend the organization of such special classes and such other arrangements for special education and shall enforce the provisions of this act relating thereto... (24 P.S. § 13-1372(3)).

Together these provisions provide a clear distinction between the policymaking role of the Board and the administrative and oversight responsibilities of the Secretary with respect to programs and services for exceptional students. The final-form language in § 16.6 recognizes this distinction by providing a framework for the Secretary to carryout his statutorily established responsibilities, which includes a requirement that he publish, for the first time, an official Department document (a Basic Education Circular) that outlines the schedule for the Department to monitor school districts, a description of the elements to be reviewed, the criteria for determining compliance, a process and procedure the Department will follow to present and for districts to respond to monitoring findings. In addition, the regulation requires the Department to establish a complaint process, the objective of which is to amicably resolve complaints before they escalate into enforcement action. Under authority granted to the Secretary by the School Code, the Secretary may withhold funding, seek revocation of the commission of a school district superintendent, or take legal action to compel compliance.

In addition to these provisions, the Board added language that requires the Department to report to the Board, no later than October 1, the number and disposition of complaints filed and the schedule and results of monitoring activities. The Board will carefully review this information each year to determine whether further action or a review of the regulation is necessary.

*§ 16.63. Impartial due process hearing.*

The Independent Regulatory Review Commission had two concerns regarding this section. First, it recommended that the final-form regulation specify the types of assurances that will be acceptable. Second, it questioned if parents or others have access to these assurances. The assurance refers to the language in § 16.63(q) requiring the school district, upon receipt of a final decision, to provide the Department of Education with an assurance of its implementation of the order.

*Response:*

The requirement for the school district to file an assurance has been provided in § 16.63 in response to comments and recommendations from parents and advocates. A similar requirement is found in Chapter 14. The process for filing an assurance will require the school district superintendent, or other designated commissioned officer of the school district, to specify in writing that the school district has implemented the final decision from a hearing officer, or if appealed to a court of competent jurisdiction, the final decision of that court. As stated in the regulation, the school district would have 30 days from the date of receipt of a final decision to implement the decision and file this document with the Department of Education. Instructions on filing the assurance will be provided with the assurance form. The assurance form will be sent to the school district along with the decision of the Hearing Officer. The State Board determined that there would be no need to specify the type of assurance that will be acceptable in the final-form regulation because the process includes a form that is utilized for this purpose.

Once filed with the Department of Education, the assurance would be a document that would be accessible by the parent. The parent would have the right to review this document at the school district because it would be part of the student's record. The parent would make such a request in accordance with the school district's published policy regarding access to student records. The parent could also request to review the document at the Department of Education. In order to review the document at the Department of Education, the parent would make a written request to the Department of Education.

Access to the assurance by individuals other than the parent or legal guardian of the student would be governed by the Family Education Rights and Privacy Act (FERPA) and parental consent would be required for release.

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

**I.D. NUMBER:** State Board # 006-307; IRRC # 2635  
**SUBJECT:** 22 PA Code, Ch 16 Special Education for Gifted Students  
**AGENCY:** 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

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
9/10/08	<u>Paul Edwards</u>	HOUSE COMMITTEE ON EDUCATION ; Rep. Roebuck
9-10-08	<u>Sandra Panoose</u>	Rep. Stairs
9/10	<u>M. Armstrong</u>	SENATE COMMITTEE ON EDUCATION ; Sen. Rhoades
9-10-	<u>A. Rybarczyk</u>	Sen. Musto
9/10/08	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

April 20, 2001



# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

IRRC Number: 2635

(1) Agency

State Board of Education

(2) I.D. Number (Governor's Office Use)

#006-307

3) Short Title

Chapter 16 – Special Education for Gifted Students

(4) PA Code Cite

22 Pa. Code Chapter 16

(5) Agency Contacts & Telephone Numbers

Primary Contact: Jim Buckheit, (717) 787-3787  
[jbuckheit@state.pa.us](mailto:jbuckheit@state.pa.us)

Secondary Contact: Deborah Wynn, (717) 787-3787  
[dewynn@state.pa.us](mailto:dewynn@state.pa.us)

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking  
☒ Final Order Adopting Regulation  
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No  
☐ Yes: By the Attorney General  
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Chapter 16 establishes requirements for identification, screening and evaluation of students who are gifted. It defines requirements for the development of an individualized education program for each identified student, describes policies for placement in appropriate educational settings, and establishes procedural safeguards for the resolution of complaints.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Public School Code of 1949 24 P.S. 13-1372 and 26-2603-B





### **Regulatory Analysis Form**

(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 state law in section 1372(1) of the Public School Code of 1949 (24 P.S. 13-1372(1)).

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

Chapter 16 establishes requirements for public schools to provide appropriate educational services to students who are identified as gifted and in need of a program of specialized instruction.

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

Approximately 70,000 students identified as gifted would have reduced levels of educational services and programs and limited due process protections without state regulation.

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

Approximately 70,000 of Pennsylvania's 1.8 million school-age children are identified as gifted and receive services and programs as provided in Chapter 16.



### Regulatory Analysis Form

(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 one will be adversely affected by the regulation.

(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.)

School districts and school boards (501), administrative staff (7,000), instructional staff (122,000) and support service staff (15,000).

(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.

The Committee on Chapter 14 and 16 met to discuss Chapter 16 and comments received from members of the public, legislative committees and Independent Regulatory Review Commission on July 18, 2007, September 19, 2007, November 14 2007, January 16, 2008, February 25, 2008, and March 19, 2008, in Harrisburg. Additionally, the Council of Basic Education discussed the regulation and offered an opportunity for public comment before the council took action at its meeting held on March 19, 2008. The State Board of Education also discussed the chapter and accepted public comment before it approved the regulation on March 20, 2008. Notice of the roundtable meetings and public hearings were posted on the State Board web page, announced at public meetings of the State Board, email notices sent to all school administrators and to the Board's stakeholders list and mailings to the Chapter 16 interested parties list, Sunshine Meeting Notices were posted and legal notices placed in newspapers. In addition, the Department of Education alerted its contacts about the roundtable meetings and hearings as did numerous advocacy and state education associations through their own communication networks. Drafts of Chapter 16 were posted on the State Board web page throughout the drafting 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.

The Commonwealth provides school districts nearly \$1.0 billion in state funding for special education, which includes funding for educational services and programs for students who are gifted. These regulations will have minimal impact on the regulated community as they clarify or update existing requirements.



### **Regulatory Analysis Form**

(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.

The Board believes the proposed regulation will not result in any additional costs or savings to school districts.

(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.

The Department of Education began to conduct compliance monitoring under its existing statutory authority provided in 24 P.S. 13-1372 during the 2006-07 school year. Section 16.6(d) of these regulations require the Department to conduct compliance monitoring based on a process to be outlined in a Basic Education Circular. In the past, it cost \$21,000 to conduct compliance monitoring of school districts each year.



## Regulatory Analysis Form

(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government	\$21,000	\$21,000	\$21,000	\$21,000	\$21,000	\$21,000
<b>Total Costs</b>	\$21,000	\$21,000	\$21,000	\$21,000	\$21,000	\$21,000
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>	0	0	0	0	0	0

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

Previous monitoring visits cost approximately \$2,100 per school district per year. This includes the cost of providing honoraria to peer monitors, mileage, lodging and subsistence costs for school district compliance reviews each year at 2 1/2 days each.





### Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Special Education	\$904.6 million	\$929.175 million	\$953.064 million	\$980.619 million
General Govt Operations	\$26.21 million	\$25.06 million	\$24.72 million	\$25.49 million

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

Costs associated with the revisions to Chapter 16 are minimal while the educational programs and services provided to students identified as gifted are significant.

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

The Secretary has authority under Section 1372 of the Public School Code to supervise the provision of special education, which includes gifted education. This regulation will require the Department to outline its policy regarding compliance monitoring in a Basic Education Circular. The alternative is to maintain current practice of permitting the Department to establish its policy and practice without public notice.

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

Through the public roundtables, hearings and correspondence received by the Board during the development of these regulations numerous comments were provided urging the Board to mandate compliance monitoring of school districts by the Department. The Board believes the changes to this regulation provide an appropriate balance to assure that the compliance monitoring policy of the Department is described in a publicly available Basic Education Circular while providing the Department the flexibility to conduct monitoring consistent with annual staff availability, financial resources and workload priorities.



### **Regulatory Analysis Form**

(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.

Federal standards do not exist for gifted education.

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

The regulations do not put Pennsylvania at a competitive disadvantage with other states. These regulations are generally consistent with the policy and practice of other states.

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

No.

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

The Board's Chapter 16 committee held numerous public roundtable meetings, public hearings and committee meetings beginning in July 2007 through its adoption of final regulations in March 2008. Therefore additional public hearings are not needed.



### **Regulatory Analysis Form**

(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. The Department is required to conduct monitoring of school districts as described in a new Basic Education Circular to be issued by the Department and posted on its web site.

(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.

The entire chapter addresses the needs of students who are gifted.

(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?

The regulation becomes effective upon publication in the Pennsylvania Bulletin.

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

State Board of Education policy reviews its regulations every four years.



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FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

Copy below is hereby certified to be a true and correct  
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Executive or Independent  
Agencies

By: \_\_\_\_\_  
(Deputy Attorney General)

State Board of Education  
(Agency)

By: \_\_\_\_\_  
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. #006-307

DATE OF ADOPTION: March 20, 2008

DATE OF APPROVAL

JUL 16 2008

DATE OF APPROVAL

BY: \_\_\_\_\_

*[Signature]*

Deputy General Counsel  
(~~Chief Counsel~~),  
(~~Independent Agency~~)

(Strike inapplicable title)

TITLE: Executive Director  
(EXECUTIVE DIRECTOR, ~~CHAIRMAN OR SECRETARY~~)

( ) Check if applicable  
Copy not approved.

( ) Check if applicable.  
No Attorney General approval  
Or objection within 30 days  
After submission.

FINAL REGULATIONS  
COMMONWEALTH OF PENNSYLVANIA

22 PA. CODE, CH. 16  
Special Education for Gifted Students





## **Title 22—EDUCATION**

### **STATE BOARD OF EDUCATION**

#### **[22 PA. CODE CH. 16]**

#### **Special Education for Gifted Students**

The State Board of Education (Board) amends Chapter 16 (relating to special education for gifted students) to read as set forth in Annex A. Notice of proposed rulemaking was published at 37 Pa.B. 4872 (September 8, 2007), with an invitation to submit written comments.

#### *Statutory Authority*

The Board acts under the authority of sections 1372 and 2603-B of the Public School Code of 1949 (Code) (24 P. S. §§ 13-1372—26-2603-B).

#### *Background*

This rulemaking sets forth requirements for gifted education programs and services in the public schools of this Commonwealth. It addresses the screening and evaluation process, gifted individualized education program, educational placement and procedural safeguards for students identified as gifted. As provided in the section 1749-A of the Code, these regulations do not apply to charter schools and cyber charter schools.

A committee of the Board (committee) held five regional public roundtable meetings during December 2006 and January 2007 where stakeholders were provided the opportunity to share their concerns about gifted education. The committee then circulated draft regulations and conducted three regional public hearings to solicit public input on the draft regulations in March 2007. Notices of the meetings were distributed to those on the Board's stakeholder list, school district superintendents, intermediate unit executive directors, area vocational technical school directors and others through the Department's PennLINK email system. Legal notices of the hearings were published in regional newspapers, public notice was posted on the Board website, and Sunshine Act notices were posted at the meeting sites. State education groups alerted their members and others about the meetings through e-mail distribution lists, websites and publications.

Throughout the process of drafting the proposed and final-form rulemaking, the Board prepared and posted updated drafts on the Board's website. The Chapter 16 committee met in public meetings during 2007 on September 19, November 1 and November 14, and during 2008 on January 16, February 25 and March 19. Drafts of both the proposed and final-form rulemaking were reviewed and discussed at the meeting. Members of the public were provided opportunities to provide comments at these meetings.



Notice of proposed rulemaking was published in the *Pennsylvania Bulletin* on September 8, 2007, at 37 Pa.B. 4872. The Board received comments from 47 individuals and organizations during the 30-day public comment period. Additionally, the Board received 21 letters and e-mails after the 30-day public comment period.

#### *Summary of Public Comments and Responses to Proposed Rulemaking*

The proposed rulemaking was published in the *Pennsylvania Bulletin* on September 8, 2007, at 37 Pa.B. 4872 and was available on the Department of Education's website at [www.pde.state.pa.us](http://www.pde.state.pa.us). The Board accepted formal written comments during a 30-day public comment period that began upon publication of the proposed rulemaking. The House Education Committee held a hearing on October 4, 2007. The Board also discussed the proposed regulations with numerous individuals, education groups and individual members of the General Assembly.

The Board received written comments directly from 47 individuals and organizations during the 30-day public comment period. An additional 21 comments were received after the comment period. Rather than provide a lengthy listing of the organizations and comments and responses in the Preamble, the Board has prepared a separate document that outlines the comments and the Board's response. This document was sent to each commentator and is posted on the Board web page of the Department of Education web site.

#### *Summary of the Final Regulations*

A summary of substantive changes is provided as follows:

##### *§ 16.1. Definitions.*

The definition of GIEP is changed to Gifted Individualized Education Plan.

##### *§ 16.4. Strategic plans.*

A requirement is added stipulating that the gifted education portion of each school district's strategic plan address the process for identifying children who are gifted and in need of specially designed instruction. It also is to outline the gifted special education programs offered by the school district and to provide the Department of Education with reports of students, personnel and program elements.

##### *§ 16.6. General supervision.*

The final rulemaking adds a requirement that the Department of Education conduct on-site monitoring of school entities to ensure compliance with this chapter, as well as an obligation to establish a complaint procedure for parents to file complaints and school districts to respond. The Department is directed to outline the process and schedule for monitoring in a Basic Education Circular (BEC), which would become



available on the Department's website with other BECs. The Department also must report to the Board, by October 1 of each year, the number and disposition of complaints filed and the schedule and results of monitoring activities.

*§ 16.7. Special education.*

A new requirement is added stipulating the development of a single Individualized Education Program for students who are both gifted and have a disability under Chapter 14 (relating to special education services and programs).

*§ 16.21. General.*

The final form rulemaking adds new language outlining the types of awareness activities that school districts are to conduct each year to inform parents about gifted education. Additional new language clarifies the criteria each school district shall use to determine whether a student is mentally gifted. Also, new language is added stipulating that deficits in memory or processing speed cannot be the sole basis for determining that a student is ineligible for gifted education services. Finally, new language was added referring to the federal definition of disabilities at 34 CFR 300.8 (relating to child with a disability).

*§ 16.22. Gifted multidisciplinary evaluation.*

The final form regulation requires school districts to have readily available an evaluation request form that professional staff and administrators can provide to parents who request an evaluation of their child. The regulation requires the parent be provided the evaluation request form within 10 calendar days of an oral request. Additionally, this regulation adds a requirement that the Gifted Multidisciplinary Team include, in its written report, its recommendations for each student's educational programming. This section also revises the number of days in which the initial student evaluation must be completed from 45 school days to 60 calendar days after the school receives written parental consent for the evaluation or an order of a court or hearing officer. The calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term shall not be counted. This aligns the timeframe with the requirements of Chapter 14 so that school districts have just one standard to follow.

*§ 16.23. Gifted multidisciplinary reevaluation.*

New language provides that the reevaluation be completed and presented to parents no later than 60 calendar days after the school district receives written permission to reevaluate. The calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term shall not be counted.



*§ 16.31. General.*

The final form regulation revises the regulation to “grandfather” students already receiving gifted education services at the time the regulation becomes effective.

*§ 16.32. GIEP.*

The final form regulation requires present education levels to be included in both the initial and all revisions to the GIEP. Additionally, the regulation adds a requirement that a teacher of the gifted be included on the GIEP team. The final form regulation also requires that the GIEP be based on the gifted multi-disciplinary team’s written report. New language is also added to require the GIEP to include accommodations and modifications as required by federal regulation at 34 CFR 300.320(a)(4) (relating to definition of individualized education program) for students with a disability identified as eligible under federal regulation section 34 CFR 300.8 (relating to child with a disability). Additional language is added requiring the GIEP to include the anticipated frequency, and location of gifted education. New language is also added to require the school to notify teachers of their responsibilities to each of their students who are identified as gifted as provided in the students’ GIEP. Finally, the final form regulation adds language requiring a GIEP meeting to be convened at the request of a GIEP team member, the parent, the student or the school district.

*§16.41. General.*

The final form regulation revises the total number of gifted students on an individual gifted teacher’s caseload from 75 to 65 and stipulates that this change occur beginning July 1, 2010. It requires the total number of gifted students on an individual teacher’s class roster to remain at the current level of 20 students. These changes reflect feedback provided from schools regarding the current caseload and class roster limitations.

*§ 16.63. Impartial due process hearing.*

The final form regulations require a student involved in a due process hearing to remain in his or her current educational placement until the outcome of the hearing, unless the school district and the parent of the student agree otherwise. It also adds language allowing a school district to request a hearing to proceed with an initial evaluation or reevaluation when a parent fails to respond the district’s proposed evaluation or reevaluation. Additionally, these regulations permit a school district to request an impartial due process hearing when a parent rejects the district’s proposed educational placement that is different from the initial placement. The regulation further stipulates that if the parent fails to respond or refuses to consent to the initial provision of gifted services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.





The final form regulation provide for the compensation of hearing officers for hearings related to a child who is gifted or thought to be gifted. Additional language is added stating that the compensation of hearing officers does not cause them to become employees of the Department.

Additionally, the final form regulation requires the Department to provide an annual report to the Board as to the number and summarized results of the due process hearings. The report shall also include actions taken by the Department as well as future plans to strengthen the due process hearings.

Finally, the regulation requires the school district, upon receipt of a final decision from the hearing officer or court, to provide to the Department an assurance of its implementation of an order within 30 school days of the date of the final decision.

#### *Effective Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

#### *Sunset Date*

In accordance with its policy and practice regarding regulations, the Board will review the effectiveness of these chapters after 4 years. Therefore, no sunset date is necessary.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2007, the Board submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 4872, to IRRC and the chairpersons of the House and Senate Committees on Education for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on \_\_\_\_\_, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, and approved the final-form rulemaking.



### *Contact Person*

The official responsible for information on this final-form rulemaking is Jim Buckheit, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333, (717) 787-3787, TDD (717) 787-7367.

### *Affected Parties*

The final-form rulemaking will affect the students and professional employees of public schools in this Commonwealth.

### *Findings*

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking 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, 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 final-form rulemaking is necessary and appropriate for the administration of the code.

### *Order*

The Board, acting under authorizing statute, orders that:

(a) The regulations of the Board, 22 Pa. Code Chapter 16, are amended at 37 Pa.B. 4872, by amending §§ 16.1, 16.6, 16.21, 16.22, 16.23, 16.31, 16.32, 16.41, and 16.63 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Executive Director will submit this order, 37 Pa.B. 4872 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, 37 Pa.B. 4872 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

JIM BUCKHEIT,  
Executive Director



**Commonwealth of Pennsylvania  
State Board of Education  
22 PA Code, Chapter 16**

**Responses to Official Public Comments  
Proposed Rulemaking Published  
Pennsylvania Bulletin  
September 8, 2007**

The State Board of Education published proposed regulations in the September 8, 2007, edition of the Pennsylvania Bulletin (37 Pa.B. 4872). Interested persons were invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the State Board of Education. The Board received written comments via mail and email. The following document outlines groups of comments received and provides 1) the list of commentators, 2) the substance of the comments, 3) the reasons given by commentators for the comment. After the discussion of comments, a description of the modifications to the regulation in response to the comment is provided. It also discusses why modifications were not made and the reason for the Board's action on the comment.

Comments were submitted and received from the following individuals during the 30 day public comment period: Robert Phillips and Deborah Brady from the Pennridge School District, Joan Wagman, Todd McIntyre, Murali Panen, Jennifer Hahn, Jacqueline Rosencrans, James Clark, Michelle Thomas, Michelle Warman, Michelle Ciora, B & C (Berdeau), Christine Kopacz, Meribeth and Al Peters, Representative Phyllis Mundy, Gina Zanolini Morrison, Cynthia Brandrethn, Daniel Currie, Robert L. Stevens, Jr., Leslie E. Stevens, Elizabeth Wisner, Laurel Terry, Raymond Givler, Nicole Saporito, Crystal Newcomer, Elizabeth Gerbert, S. J. Kroah, Michelle Bazala from the Pittsburgh Public Schools, Sandra Kroah, the Stevens family, Kristine Amtower, Heidi Eby, Lisa Ann Smith, Gigi Gerben, Debbie Beutler, Allison Brink, Shelly Peterson, Cheryl Kirk, David Livengood, Eric Gladfelter, Ellen Linky, Melissa Regnell, Ginny Boynton, Joan Grossman, Bernie Miller from PSEA and Daniel Carey.

Comments were received from the following individuals after the close of the 30 day public comment period: Kelly Lee Tatone, Kathy A. Burd, Anne Harris, Michelle Ciora, Senator Constance Williams, Jennifer Antall, Nicole Saporito, Staci Miller, Edward Wood, Susan Demko, Lisa Moses, Gina Z. Morrison from Wilkes University, James Clark, Mrs. D.M. Edwards Fisher, Christine Kopacz, David L. Mason from PAGE, Donna Benson, Felicia Hurewitz, Mary Peters Anater from the Pennsylvania Catholic Conference, Kimm Doherty, and Kimm Ebersole.

Comments were also received from the House Education Committee and Independent Regulatory Review Commission.

The following is a consolidated listing of comments received on each section of the proposed regulations followed by the Board's response to the comments.

### § 16.1. Definitions.

Public comments expressed the following concerns about this section:

- The words “and needs specially-designed instruction beyond that required in Chapter 4 (relating to academic standards and assessment)” should be removed. A student that meets the definition of mentally gifted should not also have to prove that the person needs specially designed instruction in order to be considered a gifted student. Gifted education is already defined as specially designed instruction to meet the needs of a gifted student and the definition of mentally gifted defines what it means to be gifted.
- The definition of gifted student should read “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 **therefore** needs specially designed instruction beyond that required in Chapter 4 (relating to academic standards and assessment).” (Add therefore)
- The term “GIEP” should be defined and referred to as the Gifted Individualized Education Plan as opposed to the current definition of Gifted Individualized Education Program. This change will reduce the practice of school districts treating gifted education programs as group based and encourage schools to talk about a student’s “plan” and then determine to what extent the districts existing programs fulfill the needs described by the plan.
- The definition of mentally gifted should read “Outstanding intellectual or creative ability the development of which **therefore** requires specially designed programs or support services or both, not ordinarily provided in the regular education program.” (add therefore)
- Additional terms should be clarified and new definitions should be added and the following words were highlighted as being particularly important: Present Level of Educational Performance (PLEP), educational needs, screening process, and meaningful benefit.
- The term “present education levels” could be misconstrued to mean a student’s existing placement as opposed to the “present levels of educational performance” referenced in the renamed section 16.32(d)(1). “Present education levels” needs to be reworded or clearly defined as the placement that aligns a gifted student with his or her ability and achievement.
- Leaving the term “acceleration” undefined leaves the door wide open to misinterpretation. Some of the forms of acceleration in the study include early admission to kindergarten, grade,-skipping, subject-matter acceleration, curriculum compacting, telescoping curriculum, early graduation, dual enrollment, advanced placement, and credit by examination. By defining acceleration and its components we will help schools to understand how they can address the learning needs of gifted students.

**Response:**

The Board considered deleting the words “and needs specially-designed instruction beyond that required in Chapter 4” and determined that this phrase provided clarity and hence, the phrase was not deleted. The recommendation to change the definition of GIEP to a Gifted Individualized Education Plan was considered by the Department and the definition was changed as requested by the commentators.

The Board considered adding definitions for present levels of educational performance, educational needs, and the screening process; however the Board determined that since these are all terms of art within the education community, it is unnecessary to include a definition within the regulation. The term “meaningful benefit,” has been defined repeatedly by the courts, and therefore, is unnecessary to include in regulation. The other terms were not defined because the Board determined them to be understood by educators

**§ 16.2. Purpose**

Comments received from the public expressed the following concerns:

- A parent advisory Board should be formed to work with the Department of Education and the State Board of Education to assist other parents and schools in developing and implementing programs that work for gifted students.
- Language referencing the reporting, monitoring and enforcement authority of the department should be included.
- A separate section relating to monitoring and enforcement should be added
- New language ensuring Chapter 16 is administered without bias, prejudice, racial, or cultural discrimination should be added.
- Reference to an individual gifted student’s native language or other method of communication should be included to bring full and meaningful parental participation within the identification of gifted students and the delivery of gifted education.

**Response:**

The Board considered comments on the need for a separate section relating to monitoring and enforcement and added new language in Section 16.6 (General Supervision) requiring monitoring and a complaint process. The Board determined that adding language ensuring Chapter 16 is administered without bias, prejudice, racial or cultural discrimination was not necessary since all regulations are to be administered as such and does not need to be reiterated in each chapter. The issue of an individual gifted student’s native language or other method of communication is already addressed in Section 16.61 and further language within the regulation is not necessary and was not added. The authority of the Department of Education to monitor and enforce the implementation of this chapter will be cited when this chapter is codified and is not necessary to be added at this point in time.

The Board considered the suggestion to add an advisory Board to work with the State Board of Education and determined that this activity should be left to the discretion of the Secretary and is not appropriate for the regulation.

### **§16.3 Experimental programs.**

Comments expressed the following:

- Informed written permission from parents is suggested prior to participation by a gifted student in any experimental program.
- Thirty days advance public notice should be provided through publication in one (1) general circulation newspaper and one (1) school district publication of general circulation.
- A description of how the program will provide full access to handicapped students and those subject to an IEP under Chapter 14, a 504 service plan under §504 of the 1973 Rehabilitation Act; and English as Second Language (ESL) programs should be added.

### **Response:**

The Board considered comments regarding experimental programs including requiring informed written permission, thirty days advance public notice and a description of how the program will provide full access to students with disabilities or students for whom English is a Second Language. However, the Board determined that the language on experimental programs for gifted students has remained unchanged for over a decade and no evidence has been presented that such amendments or additions are needed and hence the language was not changed.

### **§16.4. Strategic plans.**

Public comments include the following:

- Dis-aggregation of data relative to gifted programming, including statewide assessments, would assist with procedural monitoring of individual school districts and parental understanding of district planning goals.
- Language should be included requiring school districts to base the strategic plan on an analysis of internal and external needs, leading to the specification of priorities for enforcement action and action plans for gifted education
- Add meaningful parental participation in the creation of the strategic plan
- Add the phrase “and programming” to 16.4(b)(2) to items to be included in the gifted education plan. Programs are not individualized under the statute. However, the GIEP requires individualized programming necessary to serve the unique needs of the individual.



- Strategic plans should describe the staff development plan for educating those responsible for development of the programming plan and implementation of the specially designed instruction for gifted students.
- The language added in Section 16.4 of the final form regulation allows parents and staff to see what process a district will use for the identification of gifted children and in need of specially designed instruction. This is a valuable addition giving equal access and has the potential of saving time and resources.

**Response:**

Parents are required members of school district strategic planning committees as per 22 Pa Code 4.13 (d) and therefore, the Board feels it is unnecessary to repeat this requirement in Chapter 16. Likewise, Chapter 4 requires strategic plans to include internal and external needs assessments; therefore, these additions have not been made.

With respect to the comment that strategic plans should describe the staff development plan for educating those responsible for developing the programming plan and implementing the specially designed gifted instruction, professional development is legislated through Act 48 of 1999 and teacher certification is regulated through Chapter 49. Act 48-1999 requires all Pennsylvania education professionals to acquire 6 credits or 180 continuing education hours or any combination every 5 years to maintain an active certificate. The Board decided changes in this area were not necessary.

In response to the suggestion to add the phrase “and programming” to 16.4(b)(2), the Board determined that this would not add to the meaning of the phrase nor would it provide clarification. Therefore, this change was not made.

**§16.5. Personnel.**

Comments received from the public expressed the following:

- Gifted education should be provided by highly qualified and properly certified teachers and professional employees to align with federal No Child Left Behind provisions.
- Clarify the qualifications and training requirements for those responsible for identifying, providing and monitoring gifted education and support services.
- Designate the professional staff member responsible for reporting to the Department of Education compliance with the requirements of this regulation.
- Caseload limits in § 16.41(c) be moved to this section relative to personnel.
- Further clarify that caseload limitations reflect a full-time caseload without additional teaching or special assignments
- With respect to caseload, address the implementation of differentiation and cluster grouping within the regular education classroom to permit gifted student peer interaction with other identified gifted peers.

- Any teacher or support staff instructing a classroom of students composed entirely of gifted students shall be required to have earned a 12-credit Gifted Program Endorsement Certificate.
- Any teacher or support staff instructing a classroom of students composed in part by gifted students shall be required to have completed at least 3 college credits of gifted education (pre-service) or 32 hours of training (in-service).

**Response:**

NCLB already requires “highly qualified teachers” for core content subject areas; the Board has determined that it would be duplicative and unnecessary to repeat those requirements in Chapter 16. The Board believes the designation of an individual within the school district is required to report to PDE on compliance with Chapter 16 should be left to the discretion of the school district and does not need to be regulated within this regulation. The Board has considered clarifying that caseload limitations reflect a full time assignment and moving them to Section 16.5 (Personnel); however, in both cases the Board determined that such changes were unnecessary and would not necessarily add clarity for the reader. The Board considered addressing differentiated instruction, cluster grouping, etc. within the section on caseload however, it was determined that methodology should be left to the discretion of the local school district and should not be regulated.

In response to the suggestion that teachers and support staff of classrooms comprised entirely of gifted students shall be required to possess a 12-credit gifted program endorsement certificate, the Board determined that areas of teacher professional development and/or certification are best regulated through Chapter 49. The same response is offered to the request that teachers and support staff instructing classrooms comprised in part by gifted students earn at least 3 college credits of pre-service gifted education or 32 hours of in-service training. These changes were not made.

**§ 16.6. General supervision.**

Public comments expressed the following concerns about this section:

- The final form regulations should require the Department of Education to conduct ongoing compliance monitoring of programs offered by school districts to assure parents that the quality and availability of programming for gifted students is maintained. The requirement should contain the method and frequency of the monitoring activities. Penalties for noncompliance should be stated.
- Simply determining the presence of a GIEP is not sufficient compliance monitoring. The Department of Education should be determining if a school district is in compliance with all aspects of Chapter 16. If a district is not in compliance after a specific time to become compliant, then a large monetary penalty should be dispensed or funding should be withdrawn.
- Compliance monitoring will never result in compliance with the regulations until two criteria are met: 1) naming the individual(s) responsible for implementing

Chapter 16 within each district, and 2) defining the repercussions on the individuals and/or district.

- Compliance monitoring of each district shall occur at least once every five years.
- A complaint management system should be developed by the Department of Education for parents when they feel compliance has been compromised. This system should identify how parents can submit complaints and how complaints will be processed and addressed. The complaint process should include the process for parents to file, an opportunity for the school district to respond, a plan for the department to resolve complaints and a system of annual reporting to the State Board and public that sets forth the numbers of and the substantive and procedural issues of complaints filed by parents.
- The method and frequency of the monitoring activities should be contained in the regulation and not in a non-regulatory document, such as a Basic Education Circular (BEC). Allegedly, school districts have not complied with existing regulations and the Department has not provided appropriate monitoring of gifted education programs. Regulations have the full force and effect of the law and are binding on both the regulated community and an agency. Additionally, a BEC takes time to write and is subject to change by future administrations.
- The Secretary's responsibility to superintend, monitor and enforce the provisions of Chapter 16 including the collection and analysis of dis-aggregated data through PDE tracking systems should be clarified.
- The authority of the Secretary of Education to develop the process and schedule for monitoring gifted education programs was questioned.
- Follow up on a scheduled basis is equally important, and there must be an enforcement mechanism.

**Response:**

The Board considered the request that the Secretary's responsibility to superintend, monitor and enforce the provisions of Chapter 16 including the collection and analysis of dis-aggregated data be clarified and determined this was not necessary; hence this was not added to the regulation.

Language was added to the final form regulations requiring the Department of Education to conduct onsite monitoring of school districts on a cyclical basis or more frequently when needed. The department will create a Basic Education circular outlining the process and schedule for the monitoring activities including a description of the elements to be reviewed and the criteria for determining compliance with each element. The Board added language that compliance monitoring shall occur on a cyclical basis

The final form regulations also include new language requiring the department to create a complaint process that includes a process for parents or guardians to file complaints, for school districts to respond, an opportunity to reach an amicable resolution, the development of a corrective action plan, and enumeration of enforcement steps to be employed by the department if the district does not implement the corrective action plan.

#### **§ 16.7. Special education.**

Comments to this section include the following:

- Change the title of this section to “Dually exceptional students.”
- Include a reference to Chapter 15 (protected handicapped students) to better ensure an understanding of the interplay between chapters 14, 15 and 16 protections.
- Clarify the services for the mentally gifted should be considered at the same time as the services for the disabilities, except for a single primary GIEP for gifted students with an IEP element for speech.
- Gifted services, including “Short term Learning Objectives (STLO’s),” should be included in the IEP for dually exceptional students.
- Gifted identification processes consider the “masking effect” mental giftedness and disabilities may impact on one another.
- New language added to section 16.7 that provides for a single document in which all issues related to a specific student are documented and used as the tool driving instruction and services is good for the child.

#### **Response:**

The Board considered changing the title of this section from “Special Education” to “Dually exceptional students,” and determined that such a change would significantly change the meaning of its intent. This section applies to all students who are identified as gifted not just to those who are identified as both gifted and a student with disabilities. The single IEP/GIEP which is required in Section 16.7 clarifies that services for the mentally gifted should be considered at the same time as the services needed to address disabilities. The final form regulation includes new language requiring the development of a single IEP for students identified as eligible under this chapter and Chapter 14 as suggested by public comment. Short term objectives are required in all GIEPs. The regulation already sufficiently addresses consideration of the “masking effect” mental giftedness and disabilities may have on one another.

#### **§ 16.21. Screening and Evaluation. General.**

Comments expressed the following concerns about this section:

- The Child Find and Screening processes should be separate. More specific wording should be added describing when screening should occur, how often it should occur, and what procedures should be followed (including what types of assessments).
- School Districts shall provide and make public annual notification of Child Find activities and an evaluation of the success of these activities.

- Screening shall begin at registration for kindergarten, first grade where kindergarten is not provided, so that gifted programming can begin on the first day of school.
- The school entity shall adopt a statement of its policy for the screening and identification of gifted students and shall distribute the policy statement to parents. The policy statement shall specify:
  - The criteria and methods the district uses to screen and evaluate students;
  - The sources of assessment data the district uses to select students for further testing and an explanation for parents of the multiple assessment instruments required to identify gifted students;
  - Methods for resolving disagreements between parents and the school entity concerning identification and placement decisions.
- To prevent school district confusion about the difference between screening and evaluation, the regulations should explicitly state that matrices and other gifted identification procedures containing criteria not validated for gifted identification are not appropriate for evaluation. It should be clarified that the screening criteria need to be objective and less restrictive than evaluation criteria.
- Child Find, screening and evaluation should be addressed in a different section.
- Child Find should be similar to existing Section 14.121 in Chapter 14.
- Additional guidance concerning early identification of a gifted student is needed.
- Add language that requires school districts to annually conduct awareness activities that include providing information in local newspapers, other media, student handbooks and on the school entity website.
- A concern was raised about the proposed language which read “Deficits in memory or processing speed, as indicated by testing, cannot be the SOLE basis upon which a student is determined to be ineligible for gifted services.” This sentence implies that while these deficits cannot be the ONLY reason but can be a reason for refusing gifted identification.
- Delete the sentence that reads “Determination of gifted ability will not be based on IQ score alone” from 16.21(d).
- Strike the addition of “Deficits in memory and/or processing speed, as indicated by such tests, cannot be the sole basis upon which a student is determined to be ineligible for gifted special education. A nationally normed and validated IQ test should stand alone, without alteration of the scoring.
- It is good to see the clarification that deficits in memory or processing speed cannot be the sole basis for determining that student is ineligible for gifted education services.
- A recommendation was made to explicitly recognize the General Ability Index (GAI), verbal index scores and nonverbal index scores as acceptable alternatives to full scale IQ (FSIQ) for identification. It was also recommended that nonverbal IQ tests be used when indicated.
- It was also recommended that the regulations explicitly mention nonverbal IQ measures. Students with autism, hearing loss or auditory processing problems, for example, are prone to having deflated IQ scores when tested with the standard WISC-IV or Stanford Binet V, which fail to identify their strengths.

- Screening processes should be established to avoid eliminating possible gifted students. Additionally, they should be weighted fairly and not designed as checklists intended for exclusion rather than inclusion.
- Reference to nondiscrimination should be included to make it clear that the application of all evaluations be free of cultural, racial, or ethnic bias.
- The screening and evaluation process should include language concerning the masking of mental giftedness due to Other Health Impairments (OHI under IDEA) or social/emotional issues.
- Commentators recommended the removal of new overly restrictive language. Protections in evaluations must apply to all students with disabilities; regardless of whether they have learning needs to meet the second prong of the IDEA. For example, a student with a temporary condition such as a broken arm should not be given an IQ test that requires rapid writing, and then penalized for a low score owing to the temporary disability. An individual should not need to have a “documented or validated” disability in order to have protections in evaluation. Sometimes the disability is only discovered in the course of the educational evaluation. If disability is SUSPECTED, that should be enough to protect the student in testing so that tests yield accurate information about the student’s strengths and needs.
- Language should be adopted to include students with an IQ score of 130 or higher **OR** multiple criteria to determine if a student is mentally gifted and therefore in need of an individualized gifted education program.
- Section 16.21(d) should read “This term refers to a person who has an IQ of 130 or higher and when multiple criteria . . . . A person with a lower than 130 shall be provided gifted education when the multiple criteria as set forth in this chapter and in department guidelines strongly indicated gifted ability.”
- The IQ number of 130 may be misleading and a reference to two standard deviations above the norm on IQ tests and within the standard of error are better measures.
- Consider lowering the IQ score below 130 if justified by the research on giftedness and insert language that helps school districts identify dually exceptional children, rather than allow these children to slip through the cracks because of the overemphasis school districts place on the 130 IQ.
- Multiple criteria should be used to identify mental giftedness, especially with the very young.
- Examples of “multiple criteria” might enhance the guidelines for school districts and charter schools.
- Provide gifted student with more flexibility in standardized testing by permitting a +/- 5 point range in test scores.
- Screening tools should be scientifically based and administered by employees trained by certified school psychologists. If screening tools are created locally, they should be designed and delivered under the supervision of certificated school psychologists. Additionally, the screening tools should be peer reviewed.
- Only professionally validated measures/tests/scales that have been nationally normed should be allowed. Locally developed instruments should only be allowed if they have been professionally validated and nationally normed.

- Age norms shall be used to determine percentile rank for purposes of identification. Grade-level norms may be used to yield academic instruction levels.
- Evaluation requirements should prohibit a group evaluation method.
- Requests for evaluation of children below school age but demonstrating gifted ability must be honored upon written request. Additionally, an evaluation should occur upon a parent's request of a child who, if determined to be mentally gifted, could begin school as early as age four.
- Districts do not identify children as gifted before 3<sup>rd</sup> grade.
- Early admission to kindergarten should be available for gifted students.
- Parents should not be required to pay for evaluation for early entrance.
- At the request of a parent, the school shall conduct an evaluation of any such potential gifted child by a certified school psychologist or licensed psychologist, to determine if the child possesses outstanding mental and cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent's reason for requesting the child's early admission to kindergarten prior to the legal age.
- In order to qualify for early enrollment, the child must meet the criteria for mentally gifted in this chapter. In addition, the evaluation must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten.
- Following the completion of the evaluation, the GMDT shall meet to determine whether the student should be admitted early to kindergarten.
- In order to ensure that a gifted child entering school is given appropriate placements, the regulations need to stipulate that a child is eligible for a gifted multidisciplinary evaluation six months prior to the earliest age of school age as defined in chapter 11.
- Evaluation should include the assessment of rate of acquisition and rate of retention, which are two separate and distinct measures that must be clearly delineated.
- The assessment instruments should have high enough ceilings to accurately reflect academic performance in the gifted range and should be used for appropriate instructional placement.
- The results of the evaluation testing must provide instructional levels in all subject areas including core academic subjects and others, not limited to music and technology as indicated as gifted student needs, and shall be used in determining educational placement.
- PEGS does not support a multiple criteria shift from "one year or more" to some higher increment of achievement.
- It should be clarified that the Gifted Multidisciplinary Team (GMDT) determines and recommends that a student is mentally gifted and that the report provide documentation of the needs to be considered by the GIEP team.

- School district matrices need to be drafted so that students not achieving the 130 will still be capable of proceeding through the testing stages and being admitted to the gifted program at their schools based on multiple criteria.
- If a student who was thought to be mentally gifted does not meet the requirements of the screening process, documentation in support of that decision shall be provided to the parents along with notification of procedural safeguards.
- Section 16.21(a) should read “Each school district shall adopt and use a system to locate and identify all students with that district who are thought to be gifted.” Delete “and in need of specially designed instruction.”
- A comment was received questioning the authority of the State Board to delegate the identification of gifted students to individual school districts. The delegation of the process and thereby the determination of whether a student is gifted rather than having a set of standards established by the State Board as required in statute is inappropriate and not a permitted delegation.
- Add language acknowledging the need for a score of “Advanced” on the statewide assessment in at least one area that tests academic skills in reading, writing or math.
- Change the word “subjects” to subtests.”
- Change the following sentence so that it reads as follows: “Each school entity shall adopt and use a system to identify and locate, and evaluate all students residing within **its jurisdiction** who are thought to be gifted and **therefore** in need of specially designed instruction. (bolded words are added).

#### Response:

The Board added language requiring school districts to conduct annual awareness activities, including providing information in local newspapers, other media, student handbooks and on the school district website as suggested by public comment.

The Board received public comment asking that the child find and screening processes be separate with language describing when screening should occur, how often it should occur, and what procedures should be followed (including what types of assessments). The Board has determined that there is no need to separate child find and screening section in the regulation. Screening is part of the child find process. As to the frequency and screening procedures along with the assessments used, the Board believes these are matters best left to the discretion of local educator and not required through regulation.

In response to the suggestion requiring school districts to adopt a policy for resolving disagreements between parents and the school district on identification and placement decisions, the Board determined that the final form regulation provides three formal ways to resolve disagreements. They are mediation, due process and the complaint process. School districts are not prohibited from using additional methods for resolving disagreements. However, the Board has determined that no additional procedures need to be included in the regulation.



The Board considered requiring evaluation of the child find procedures and determined that any school district may conduct such an evaluation. However, it is not appropriate to regulate this activity. The Board believes that the Child Find requirements are similar to existing requirements in 22 PA Code, Ch. 14 (relating to special education programs and services). Direction concerning early identification of giftedness may be addressed in PDE guidance; however, the Board has determined it is not necessary to include this level of detail in the regulation. As indicated earlier, the Board has determined that methodology for screening, including sensitivity to “masking effect,” evaluating and programming should be left to the discretion of the school districts. All schools have adopted nondiscrimination policies and to regulate such within Chapter 16 would be duplicative and unnecessary.

With respect to the public comment that the wording “and in need of specially designed instruction” in Section 16.21(a) be deleted, the Board determined that such action would fundamentally alter the meaning of this section and there is no desire on the part of the Board to do so. Therefore, this amendment has not been made.

Additionally, the Board considered the recommendation that a clearer distinction was needed between screening and evaluation and the Board determined that additional clarity was not needed and hence, this change was not made. Consideration was given by the Board to the suggestion that the wording be changed regarding processing speed and memory deficits; the Board does not see the wording to be confusing and did not make the recommended change. The Board determined that requiring a +/- 5 point range in test scores, the use of specific tests for students with disabilities should be left to the discretion of the school district and should not be part of the regulation. It was determined that identification of gifted students by individual school districts is appropriate and may be delegated by the Board. It was determined that wording regarding evaluation procedures is not overly restrictive as commentators suggested and the change recommended by those commentators was not made.

Screening tools and evaluation procedures are left to the discretion of the school district. All screening and evaluation tools are to be used by appropriately trained staff and used for the purposes for which they were designed and further regulation to this effect is unnecessary.

The Board received much public comment surrounding IQ and determined that eligibility language should be changed such that an IQ score of 130 or higher OR multiple criteria are the determinant for gifted identification and the change was made accordingly. However, the Board disagrees with the commenter that the IQ number of 130 is misleading and chooses not to change it. With the change in eligibility to “an IQ of 130 OR multiple criteria” the Board has addressed the concern that using multiple criteria is more appropriate for younger children. Using multiple criteria, along with other methodology issues is left to the discretion of the local school districts.

An additional comment suggested that school district matrices be drafted to allow student not achieving the IQ score of 130 to continue proceeding through testing stages

and be admitted to the gifted program based on other multiple criteria. The board has determined that eligibility criteria beyond what is outlined in final form Chapter 16 is best left to the local educators who are more cognizant of the available district financial resources. Therefore, this amendment has not been made.

In response to the suggestion that the regulations include examples of multiple criteria to enhance the guidelines, the Board found that the regulations have included and continue to include examples of multiple criteria. Therefore, no changes were made.

With respect to the comment that only professionally validated measures/tests/scales that have been nationally normed should be allowed, the Board has determined that methodology decisions are best left to the local educators and should not be regulated. This amendment has not been made.

The Board offers the same response to the suggestion that age norms be used to determine percentile rank for the purposes of identification. Methodology decisions are best left to local educators and should not be regulated.

The Board considered the requests for evaluation of children below school age and early admission to kindergarten for gifted students. It determined that regulating responses to such requests go beyond the scope of Chapter 16 and hence decided not to address this in this chapter. Specifically, Section 13-1304 of the School Code stipulates that children can begin first grade no earlier than the age of five years. "Admission shall be limited to beginners who have attained the age of five years and seven months before the first day of September if they are to be admitted in the fall, and to those who have attained the age of five years and seven months before the first day of February if they are to be admitted at the beginning of the second semester. . . ." The term "beginners" means any child entering the lowest grade above the kindergarten level.

With respect to the entry age of kindergarten, 24 PS 5-503 of the School Code indicates that children can begin kindergarten as early as four years of age.

In response to the public comment that gifted children entering school be evaluated six months prior to the earliest permissible school entry age, the board determined that methodology and procedures associated with early admission are best left to the local educators and should not be regulated. The same response is given to the suggestion that screening should begin at registration for kindergarten or first grade where kindergarten is not provided, so that gifted programming can begin on the first day of school. Local school officials are best equipped to make this determination. They are aware of the resources of the school. Therefore, the suggested change was not made.

The regulation clarifies that the GIEP team determines eligibility for Ch. 16 upon review of the written report of the Gifted Multidisciplinary Team. The report must make recommendations on the student's programming for the GIEP team to consider. The written report includes a summary of the findings of the multidisciplinary evaluation and the Board believes this should address the need for documentation to the parent on

eligibility requirements. The Board does not believe additional requirements are necessary regarding a recommendation of the GMDT on giftedness and therefore, that change was not made to the regulation.

With respect to the request that the evaluation include rate of acquisition and rate of retention, the Board determined that methodology decisions are best left to the local educators. The same response is given to the request that evaluation requirements prohibit a group evaluation method. These amendments were not made.

Additionally, the Board received comments that assessment instruments should have high enough ceilings to accurately reflect academic performance in the gifted range and should be used for appropriate instructional placement. Similar public comments suggested that the results of evaluation testing must provide instructional levels in all subject areas and be used in determining educational placement. The Board determined that these suggestions also deal with methodology and those decisions are best left to the local educators who are familiar with the financial status of the district and its ability to provide such services.

In response to public comment requesting added language acknowledging the need for a score of "Advanced" on the statewide assessment, the Board has determined that eligibility criteria beyond what is outlined in final form Chapter 16 is best left to local educators and should not be regulated. Therefore, this amendment was not made.

The Board decided that changing the word "subjects" to "subtests" as suggested in public comments is an assessment requirement that goes beyond what is outlined in final form chapter 16 and is best left to the local educators. Thus, this change was not made.

The Board received a suggestion that a sentence be changed to read as follows: "Each school entity shall adopt and use a system to identify and locate, and evaluate all students residing within **its jurisdiction** who are thought to be gifted and **therefore** in need of specially designed instruction." With the advice of legal counsel, the Board decided such a change was not necessary.

Finally, the Board received a comment asking that if a student who was thought to be gifted does not meet the requirements of the screening process, then documentation in support of that decision should be provided to parents along with notification of procedural safeguards. Section 16.22(j) of the current regulation requires the gifted multidisciplinary team to complete an evaluation report within 10 school days of the evaluation and to deliver the report to the parents with 5 school days after its completion. The Board determined that these provisions provide adequate notice to parents and did not make the suggested change.

#### **§ 16.22 Gifted Multidisciplinary Evaluation.**

Comments expressed the following concerns about this section:

- The regulations should clarify the procedures to be implemented when parents orally request an evaluation for mental giftedness, including when the written request form, with specific testing instruments listed, be provided to parents.
- The school district must respond to the parent/teacher request for testing within 15 working/school days by either mailing a parental permission for an initial evaluation or by mailing a letter of denial that gives specific reasons or other factors that indicate that the child should not be tested.
- PSEA supports the clarification in Chapter 16 that requires school districts to send home a permission slip for child find when a parent makes an oral request.
- The steps to complete the multidisciplinary evaluation must be clearly specified.
- Parents must be given written notice of procedure safeguards.
- Add the following language to 16.22(c) (Gifted Multidisciplinary Evaluation):  
“Parents may request a gifted multidisciplinary evaluation at any time, with a limit of one request per school term, and the request shall be made in writing.
- School districts must take precautions to ensure parental consent is meaningful, informed consent. This protection requires school districts to provide parents with a listing of the possible assessment instruments anticipated to be administered including a short description of each.
- Parents should be permitted to request additional testing instruments to ensure evaluation of possible dual exceptionalities.
- A calendar day standard should be used as opposed to a school day standard.
- The regulations need to clarify that the GMDT is a team, not an individual, psychologist, or a school employee.
- GMDT meetings should be required instead of a written report. The GMDT determines eligibility, but a GMDT team meeting is not required. Parents should have the opportunity to discuss the child’s needs prior to the district making gifted determination
- All independent evaluation data should be included in the multidisciplinary report to ensure a full consideration of the available data
- If the GMDT disregards the findings of an independent evaluation or parental input, reasons shall be documented in the Gifted Written Report (GWR) for the basis of that weighting.
- The Gifted Written Report should include a statement of needs of the whole child in order to support the educational choices made within the individual Gifted Education Plan (GIEP). A statement of details concerning cultural, environmental, physical and language barriers must be included. Parental statements disagreeing with the GMDT report must be attached in the addendum of the Gifted Written Report (GWR)
- The Gifted Written Report shall include the signatures of the members of the GMDT.
- The Gifted Written Report shall include information relevant to the student’s suspected giftedness including cognitive ability, academic achievement, social and emotional functionality, and educational needs.
- The word “therefore” should be included in the statement the “report shall make recommendations as to whether the student is gifted and *therefore* in need of specially designed instruction.”

- Evaluators should apply scientifically based research practices to determine appropriate measurement instruments and indices to assess giftedness including a consideration of the use of gifted composite indices, general ability indices, and nonverbal IQ assessments.
- The timeline for evaluations should be 60 calendar days. Sixty school days is an excessively long time.
- The timeline for evaluations should be 45 school days. If schools are competent enough to formulate a grade with 45 days (one marking period), they can evaluate a student for giftedness and draft a GIEP within that timeframe.
- In order to meet the needs of the proposed time line (moving the multidisciplinary Team Evaluation process from 60 school days to 60 calendar days) psychologists would need to limit their involvement in building level activities such as child study teams, SNAP teams, RTI Interventions, and consultations and focus strictly on testing or the district would need to increase the number of psychologists it retains in order to provide the necessary support to students. Where does a district mandated to conform to Act 1 requirements secure additional funds for new staff members?
- Use Tennessee's approach to assessment of gifted ability. It requires children to be assessed in four areas: cognition or IQ, Achievement, Academic Performance, and Creative Thinking. A student must qualify under at least one option.
- Academic performance may be evidenced by excellence of products, portfolio or research, as well as criterion referenced team judgment.
- Creative thinking shall be determined through the use of informal or formal assessment measures of a student's capacity for original thought, fluency, elaboration, and flexibility of thought. Documented evidence of creative thinking ability may include; creative writing samples; high scores on tests of creative ability (e.g., Williams or Torrance, etc.); behavioral checklists or observations specific to creative behavior; or observation of original ideas, products, or problem-solving.

#### **Response:**

Chapter 16 currently defines the term "GMDT" as a gifted multidisciplinary team. Therefore, the Board determined that no further clarification is needed. Additionally, Chapter 16 already provides parents with the ability to request an evaluation at any time with a limit of one request per school term. Therefore, those requested changes are not needed.

The regulation has been amended regarding oral parental requests for evaluation or re-evaluation. The new language requires school district to give parents the written form within 10 calendar days of the oral request. Likewise, the timeline to complete the evaluation and re-evaluation procedures has been amended to occur no later than 60 calendar days after the agency receives written parental consent, excluding calendar days that occur during the summer break. Parents may always request additional testing or assessment, however, if the school believes the testing which they have conducted is sufficient, the parent has the right to due process to demand further testing at the school district expense. If such additional testing is conducted, it must be considered by the school entity.

The Board considered requiring GMDT meetings rather than written reports, however, the change in regulation wording was not made as recommended because parents are part of the GMDT; having GMDT meetings is permitted by the regulation and should be left to the discretion of the district. Additionally, this wording aligns with Chapter 14 (relating to students with disabilities). The Board considered indicating that the GMDT is not an individual, but decided not to make that change because the term includes the word team in the definition section.

Specifics regarding the Gifted Written Report such as evaluators; evaluation methods including cognitive ability, academic achievement, education needs, cultural, environmental, physical, and language barriers; and signatures of team members are communicated to districts through PDE guidance and forms. Therefore, the Board has determined it is not necessary or appropriate to require them through regulation.

#### **§ 16.23. Gifted multidisciplinary reevaluation.**

Public comments expressed the following concerns about this section:

- Clarify that Present levels of Educational Performance (PLEPS) are not reevaluations. Reevaluations related to declassification are not routine and are the exception.
- Substitute “educational placement” with “before a change in the determination that the student is mentally gifted” to make clear that the purpose of reevaluation is to establish or reestablish a determination of mental giftedness from which placement follows.
- Delete the phrase “and when the conditions under § 16.22(b)(1) or (3) (relating to gifted multidisciplinary evaluations) are met” to eliminate potential confusion as to any limitations upon when a reevaluation is required.
- Clearly stipulate the conditions that require a reevaluation.
- The full GIEP team shall review the student’s GIEP.
- The reevaluation review shall be documented in the Gifted Written Report (GWR).
- The Gifted Written Report (GWR) should include present levels of educational performance. Without PLEPs how can one assess in an unbiased fashion if the current placement and instruction is sufficient.
- The timeline for reevaluations should be 45 school days.

#### **Response:**

The Board has considered the suggestions regarding clarifying language and has determined that it is not necessary and may, in fact, confuse the meaning as intended. The Board believes it is unnecessary to stipulate the conditions that require a reevaluation. Regulating this would enter the school’s and parent’s realm of expertise. The Board believes the language as it is written, is clear that the GIEP team in its entirety is to participate in the development of the complete GIEP. The Board considered

requiring documentation of the re-evaluation review in the Gifted Written Report and determined to do so is unnecessary and did not make the suggested change.

With respect to the comment that the GWR should include present levels of educational performance, the Board determined that PLEPS are already included as part of the evaluation process. Therefore, no change was necessary.

In response to the request from the public that the timeline for reevaluations should be 45 school days, the final form regulation added language requiring the re-evaluation to occur no later than 60 calendar days after the agency receives written parental consent, excluding calendar days that occur during the summer break

#### **§ 16.24. Independent evaluation at public expense.**

Comments from the public expressed the following concern:

- Create a new section which would mirror the IDEA protection that disputed evaluations may be supplemented by second independent evaluations at public instead of private expense.
- To avoid unreasonable charges for independent educational evaluations, a school district may establish maximum allowable charges for specific tests. The maximum shall be established so that it allows parents to choose among the qualified professionals in the area and eliminates only unreasonably excessive fees. The school district shall allow parents the opportunity to demonstrate unique circumstances to justify an independent evaluation that falls outside the district's allowable charges.
- When a school entity is notified in writing by the parents that the parents disagree with the school entity's educational evaluation, the school entity has ten business days following the receipt of the notice to initiate a due process hearing to show that its evaluation is appropriate. If the school entity does not initiate a due process hearing within the ten business days, the independent evaluation shall be at public expense.
- If in a due process hearing, the hearing officer finds that the school entity's evaluation is appropriate; the parents still have the right to an independent evaluation, but not at public expense.
- If the parents request an independent evaluation, the school district may ask for the parents' reasons why they object to the public evaluation. However, the explanation by the parents may not be required and the school entity may not unreasonably delay either provide the independent evaluation at public expense or initiating a due process hearing to defend the public evaluation.
- If the parents obtain an independent evaluation at private expense and the independent evaluation meets the criteria in this chapter, then the results of the evaluation shall be considered by the school district. Any decision made with respect to the provision of a free appropriate public education to the student may be presented as evidence at a hearing regarding the student.

- The school district is not required to use the independent evaluation obtained at private expense as its only criteria for deciding the content of the student's special education program.

**Response:**

The Board chooses not to expand to Chapter 16 to include supplemental independent evaluations funded at public expense. Schools may extend this opportunity to parents. The regulation does not prohibit it; however, the Board believes requiring such is unnecessary and unwise.

**§ 16.31. General.**

Comments to this section include the following:

- Clarify that the initial and all subsequent GIEPs shall be based upon and responsive to the results of the evaluation and present level of performance testing. The GIEP must be developed annually according to the needs (cognitive ability, academic achievement, and social and emotional functionality) of the gifted student and implemented and monitored in accordance with this Chapter. The provision of services and specially designed instruction must be determined with consideration of peer reviewed research to the extent practicable. A condition for declassification must be a GIEP team determination made after a reevaluation.
- Strike the newly inserted language in 16.31(b) that reads "from another state outside the Commonwealth."

**Response:**

The Board considered these suggestions and determined most of the items are already addressed in Chapter 16 Section 16.22 in language not amended by proposed or final regulation and addition of these requirements in this section is unnecessary and in some cases, duplicative.

The board could not find any newly inserted language in 16.31 reading "from another state outside the Commonwealth." Therefore, the board did not make the suggested change.

**§ 16.32 GIEP.**

Public comments expressed the following concerns about this section:

- Each school district shall establish written school district policy and procedures that are developed with meaningful parental input to appoint a GIEP team and shall be made public to appoint a GIEP team.



- Include definitions of Present Levels of Performance (PLEPS), Annual goals, and Short Term Learning Objectives (STLO) in this section or added to the definition section in the same way that Special Designed Instruction (SDI) is defined.
- Make annual goals “measurable.”
- Clarify how all initial and subsequent GIEPs are to be based upon and responsive to the results of the evaluation and Present Level of Performance testing.
- The GIEP must contain results of standardized achievement testing, above-grade level testing, and curriculum-based assessments.
- A description of how the gifted student’s progress toward meeting annual goals will be measured, when periodic reports on the filed student’s progress toward annual goals shall be issued, and a statement of specially designed instruction, related services, supplementary aids and service should be included in this section.
- A statement of the program modifications or supports for school employees that will be provided to enable the gifted student to advance appropriately toward annual goals should be included.
- A Notice of Recommended Educational Placement (NOREP) shall be issued along with the proposed GIEP document upon which the parent may designate approval, disapproval or partial approval.
- Clarify the specificity necessary for inclusion in the individual plan. The GIEP should include written statements concerning academic strengths and weaknesses, parental concerns, results of initial or most recent evaluation, special factors that intervene to impede the gifted student’s academic progress, and transition services including outcome oriented gradation plans within a results-oriented process for periods within the School District Kindergarten-12 continuum.
- There should be a separate IEP for speech and giftedness.
- The GIEP should include the anticipated frequency, location, and duration of all services, accommodations, and modifications. Language should be included that makes it clear that a GIEP must be in effect at the beginning of each school year for every identified gifted student and must be tailed to the needs of the gifted student for that school year.
- The GIEP shall draw upon information from a variety of sources, including ability and achievement tests, parent input, and teacher other educational personnel recommendations, as well as information about the child’s physical condition, social or cultural background, and where appropriate, adaptive behavior and ensure that information obtained from all sources is documented and considered.
- Annual individual curriculum based assessments should be an essential part of determining and meeting the instructional needs of intellectually and creatively gifted and talented students. Percentile ranks on group achievement tests are inadequate for this purpose.
- A requirement should be added stipulating that progress toward annual GIEP Goals and short term goals shall be reported at least as often as other progress reports/ report cards.
- School district procedures designed to ensure that parents of the gifted student are offered the opportunity to be present at each GIEP meeting shall be included in school district policies and be made public.

- Invitations to GIEP meetings shall notify parents and others that they have the opportunity to invite other participants to the team meeting and note the availability of an interpreter for parents with deafness or whose native language is other than English.
- The GIEP of each exceptional student should contain a graduation plan for the completion of necessary credits for graduation developed at least three years prior to the anticipated date of graduation and an analysis of acceleration on high school credit requirements and admission to post-secondary schools. The regulation should allow for early graduation based on merit.
- Chapter 16 should explicitly require graduation planning when a student enters middle school or the equivalent.
- The GIEP shall include a statement of the credits earned for graduation for high school courses taken prior to high school.
- A school district should be required to record its attempts to arrange a mutually agreed on time and place for GIEP meetings, such as telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any response received and detailed records of visits made to the parent's home or place of employment and the results of those visits.
- The Chairperson of the GIEP team shall have knowledge and training in the requirements of this Chapter as well as the school districts general education curriculum and its modifications to accommodate the needs of the gifted student.
- All students taking high school classes or having successfully tested for high school class credit should be given credit toward graduation regardless of the physical location of the course and overall grade level of the student.
- School districts should be authorized to award credit toward high school graduation for the following activities, on the condition that the activities incorporate any applicable state content standards. Before awarding credit for any of the following activities, the school entities shall have adopted a policy approving the activity for credit and establishing any specific conditions for the award of credit for the activity. Such policy shall be applicable to each school within the district or each charter high school.
  - Courses taken at or through an accredited community college, two or four year college.
  - Voluntary community service
  - Supervised work experience in the school and the community, which meets the educational objectives or special career interest of the individual student.
  - Independent study
  - Correspondence courses
  - Distance learning courses. These courses may be delivered by the teacher to the learner in real time, online or by video.
  - High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high schools). Such credit shall also transfer to a high school in another district or to a charter school
  - Course credit transferred from another high school.

- Course credit earned through summer or evening school classes or as a member of the military service.
- Tutoring programs taught by a teacher certified in the subject being taught.
- Course credit awarded by agencies or instrumentalities of the state other than public schools, which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district or charter school prior to receipt of credit.
- A school district should be required to record its attempts to arrange a mutually agreed on time and place for GIEP meetings, such as telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any response received and detailed records of visits made to the parent's home or place of employment and the results of those visits.
- The Chairperson of the GIEP team shall have knowledge and training in the requirements of this Chapter as well as the school districts general education curriculum and its modifications to accommodate the needs of the gifted student.
- The school district shall give a minimum of ten days advance notice if legal counsel is to be present.
- The specifically designed instruction of the GIEP shall specify the performance levels to be achieved through the GIEP based on the rate of acquisition and rate of retention, academic acceleration needs, and academic enrichment needs.
- A copy of the GIEP shall be provided to the parents, along with a notice of parental rights at no cost to the parent. A copy of the Notice of Recommended Educational Placement (NOREP) shall be provided to the parent.
- Put a signature page on the GIEP and eliminate the use of a NOREP having to be signed by a superintendent and a parent each year.
- The regulations should require a time period of 30 calendar days as the maximum time between the request for a GIEP meeting and the actual meeting.
- If a proposed GIEP is refused in full or part by a parent, the school district and parents shall document the understanding and reasons for such refusal. Unless specifically stated in writing, a refusal to specific components of the plan or the entire plan shall not be interpreted as a withdrawal from participation or delivery of any and all services. The school district shall implement such portions of the GIEP that have been approved by the parents.
- The term "present education levels of educational performance" should be changed to "present level of educational performance" and the new term should be defined.
- Group GIEP meetings have occurred and are a concern.
- Some Gifted IEPs are devoid of child specific information, other than a name and birth date.
- It is frustrating that gifted children are not taught an everyday all day gifted curriculum and that advanced/accelerated students are only offered two advanced courses: math and science
- Gifted education should be integrated into the regular classroom and not limited to pull-out programs, which often lack sustained and challenging curricula.

- Stipulate that whatever is written into the GIEP is the responsibility of the school district to fund. Parents should not have to pay college tuition and provide the transportation when their children enroll in classes in a post-secondary institution.
- The GIEP of each student shall be implemented no more than 10 school days after a Notice of Recommended Assignment (NORA) is signed. Currently, the GIEP is not signed. The NORA is signed.
- PSEA supports the new clarifying language identifying gifted teachers as required members of the GIEP team.
- The change to include the present levels of educational performance (PLEP) in the creation of a GIEP creates a concern that the intent of Chapter 16 is not to provide a separate, disconnected curriculum. Although it is agreed that the PLEP should include a student's current levels of performance, the use of curriculum based assessment, teacher observations and student grades should suffice unless a clear need for acceleration is warranted. Chapter 16 should never provide a separate, disconnected curriculum.

**Response:**

The Board received public comment requesting a definition of the term "present level of educational performance." This is a term of art that educators understand clearly and it is really self explanatory. Therefore, this change was not made.

Public comment asked that Chapter 16 require a time period of 30 calendar days as the maximum time between the request for a GIEP meeting and the actual meeting. The Board decided not to make this change because this should be left to the discretion and schedules of those comprising the GIEP team. Section 16.32(g)(1) of the current regulation does require a GIEP to be developed within "30 calendar days after issuance of a GMDT's written report." Additionally, changes to Section 16.22 (gifted multidisciplinary evaluation) require the initial evaluation and a copy of the report be presented to parents no later than 60 calendar days after receiving written parental consent. These requirements provide sufficient assurance that a GIEP will be implemented.

With respect to the suggestion that the school district be required to develop procedures designed to ensure that parents are offered the opportunity to be present at each GIEP meeting and include these procedures in school district policies as well as make them available to the public, the Board determined that the current provisions of Chapter 16 adequately address this issue. According to Chapter 16, the GIEP team shall include one or both of the student's parents; the student if the parents choose to have the student participate; 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; one or more of the student's current teachers; and other individuals at the discretion of either the parents or the district.

Also, Chapter 16 presently requires the school district to establish and implement procedures designed to ensure that the parents are given the opportunity to be present at each GIEP team meeting. Section 16.32 specifically orders the procedures to include any one or a combination of the following: "documented phone calls, letters and certified letters with return receipts." Agencies are obligated by Chapter 16 to document their efforts encouraging parents to attend. Therefore, the Board decided no additional changes were needed.

Additionally, Chapter 16 presently addresses the requirements for the Chairperson of the GIEP team. Therefore, the Board did not include the additional suggested requirements. Furthermore, the Board determined that it does not need to regulate invitations to GIEP meetings since the concerns expressed are addressed in the invitation to GIEP meeting form.

Since the present regulations require sufficient measures to include parents and adequately address the required participants of the GIEP team, the Board determined that it was not necessary to obligate school districts to establish written policies and procedures that are developed with parental input regarding the appointment of a GIEP team.

The current provisions cited above also provide the GIEP team with sufficient resources from which to draw. For this reason, the Board did not incorporate the suggestion that new language be added requiring the GIEP to draw upon a variety of resources.

With respect to the public comment asking the regulations to require the school district to provide a minimum of ten days advance notice if legal counsel is to be present, the Board determined that this action is not necessary. Presently, Section 16.32(d)(6) orders the school district to establish and implement procedures notifying parents and others who will be attending at least 10 calendar days in advance in order to ensure parents will have an opportunity to attend the GIEP meeting.

Annual goals and short term learning objectives have been part of the gifted regulation for decades. Section 16.32(e)(2) stipulates that the GIEP must contain "a statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report." This is clearly understood by educators and parents and is unnecessary to define. There is no evidence that these terms are misunderstood or misused. The Board found that it was not necessary to make the suggested changes. Additionally, the Board has considered the suggestion that the GIEP be tailored to student needs and finds that this concern is already adequately addressed in existing language in Section 16.32 and therefore, has chosen not to add more.

Progress toward meeting the annual goals is measured and reported to the parents on the same time schedule as regular school district report cards; therefore, the Board has determined it is unnecessary to address this schedule in regulation.

Furthermore, the Board believes the current language in existing Section 16.32 adequately addresses the issues of specially designed instruction, accommodations and modifications in this same section. Typically, specially designed instruction is synonymous with supplementary aids and services.

With respect to the comment requesting the GIEP to specify the performance levels to be achieved, the academic acceleration needs and the academic enrichment needs, the Board determined that methodology should be left to the school district.

The Board did add language in Section 16.32 of the final form regulations requiring the GIEP to include anticipated frequency, location and anticipated duration of gifted education as suggested in public comments. The Board determined that it does not need to regulate invitations to GIEP meetings since the concerns expressed are addressed in the invitation to GIEP meeting form.

The practice of issuing a NOREP along with the proposed GIEP document is already in effect in the public schools within the Commonwealth and has been for a significant period of time. This is part of the gifted education process and is generally understood by all involved. The Board has determined no reason exists to regulate this since there is no data that it is misunderstood or abused. Additionally, school districts routinely provide a copy of the Notice of Recommended Educational Placement (NOREP) and although this is not mandated in the regulation, the Board has no data that this practice has been misunderstood or abused.

With respect to the public request to require the GIEP to include graduation planning, the Board determined that graduation planning is currently regulated by Chapter 4 (relating to curriculum and student assessment) and does not need to be addressed in Chapter 16. More specifically, Section 4.24(a) requires each school district to “specify requirements for graduation in the strategic plan under § 4.13 (relating to strategic plans).”

Similarly, the Board received public comments requesting that the GIEP include a statement that high school courses taken prior to high school be recognized as meeting high school graduation requirements. Again, the Board determined that graduation planning is currently regulated by Chapter 4 and did not make the suggested change.

The Board considered the suggestion requiring an explanation for the refusal of a GIEP and has addressed it in Section 16.63 of the final form regulation by requiring the student to remain in his or her current educational placement pending the outcome of a due process hearing.

With respect to the public comment that annual goals are made “measurable,” the Board believes that annual goals are understood to be measurable and this wording change is not necessary in regulation.

In response to the suggestion that there be a separate IEP for speech and giftedness, the Board does not agree that a separate IEP is needed and that a single GIEP is just as appropriate for students with speech impairments as with other impairments and therefore this change has not been made.

The Board considered the suggestion to use annual individual curriculum based assessments to determine and meet the instructional needs of gifted students and has determined that assessment issues are best left to the local educators and should not be regulated. Local educators are aware of the resources available to conduct such activities.

The Board received public comment seeking the inclusion of a signature page on the GIEP and elimination of the required signatures on the NOREP and determined that the current practice of a signature on the NORA is satisfactory and the requested change is not viewed by the Board as an improvement. Therefore, the change was not made.

With respect to the suggestion that gifted education be integrated into the regular classroom and not limited to pull out programs, the Board determined that curriculum decisions are the purview of the local school district.

In response to the comment that the regulations stipulate that whatever is written into the GIEP is the responsibility of the school district to fund, the Board determined that it is generally understood that services and programs included in the GIEP are funded by the school district.

#### **§16.33. Support services.**

Comments received from the public expressed the following:

- It should be clarified that the term “support services” could include career guidance, counseling, transportation, assistive technology, translators for English as Second Language (ESL), and interpreters.
- The ability to use teleconferencing and video technology shall be considered support services.
- The ability to use GIEP facilitators during communication breakdowns between parents and school districts shall be considered support services.

#### **Response:**

The term “support services” is sufficiently defined in Section 16.1 and needs no additions. It is clear the definition only includes examples and can be expanded as appropriate and necessary as determined by the GIEP. Support services are also addressed in Section 16.33.

The use of technology is not prohibited by the regulation and falls within the category of methodology and is therefore, left to the discretion of the school district.

The use of a GIEP facilitator is not prohibited by the regulation and is therefore, left to the discretion of the GIEP members.

**§ 16.41 General.**

Comments expressed the following concerns about this section:

- The provision of services and specially designed instruction shall be determined with consideration of peer-reviewed research.
- The word “full-time” should be inserted into the regulations on caseload size maximum. This term is needed to clarify the intent to have a teacher provide the needed services to the gifted student without other duties taking precedent. Without this word addition, teachers of gifted students will continue to be assigned many other responsibilities.
- Lower the caseload number to 60 students to avoid standardized GIEPs and inadequate services. Teachers need lower numbers of students on their cases to provide the complex and higher level teaching for gifted students. Many gifted specialists handle multiple buildings and sometimes entire districts. Frequently these educators have other regular education responsibilities in addition to their roles as developers and implementers of the GIEP, staff support and in-service providers, and student screeners.
- Lowering the caseload number from 75 to 60 students is a good step that recognizes the growing complexity of case management as this field matures.
- Dropping the caseload roster from 75 students to 60 students is expensive. Hiring another teacher is a quarter of a million dollar investment over five years. This appears to be an unfunded mandate.
- By limiting caseloads, districts will be forced to hire additional personnel. This is fiscally irresponsible.
- Add language giving full-time teachers of the gifted scheduled time to meet with regular education teachers, design individual instruction, and implement such instruction in small group settings to maximize acceleration and/or enrichment.
- Add language giving part-time teachers of the gifted who are responsible for teaching regular classes or who are assigned to supervisory duties, proportionally reducing their caseload and giving them time in their schedules to meet with regular education teachers, design individual instruction, and implement such instruction in small group setting to maximize acceleration and/or enrichment.
- A change to a maximum caseload to 50 students or less would be more effective. Many students have GIEPS written for them by a teacher they have never met. It is difficult to understand how an appropriate individualized education plan can be made for a child who the teacher hasn’t met and has no idea what their needs are.
- Class size should be limited to 20 students. Meeting the needs of gifted students requires an individualized plan. An increase in class size would be detrimental to the gifted program and serve to undermine the success of each student and the productivity of each teacher.



- The class size issue proposed in Chapter 16 to raise class size from eighteen to twenty-five students in a class would make the specially designed instruction in core classes impossible.
- Class size should be limited to 15 students. A class size of 25 constitutes a regular education class and does not allow sufficient time to meet specially designed instructional goals for each student as stated in the GIEP, particularly if the class meets once or twice a week, or two times in a six day cycle.
- At the middle school or secondary levels, groupings of 25 may encourage districts to actually create full classes of gifted students where a teacher can meet with them in counseling or academic sessions.
- Will a teacher with a class roster of 25 gifted students be able to provide the necessary instruction to all of those students?
- If a school district is providing gifted students with an appropriate education but does not meet the requirements of this subsection, can that school district receive an exemption from these requirements? If so, the criteria for granting an exemption should be included in the final-form regulation.
- Acceleration is the most effective curriculum intervention for gifted children and the regulation should require districts to offer acceleration as an option.
- It should be clarified that educational placement and instructional strategies and techniques go far beyond just “acceleration or enrichment or both.”
- The provision of appropriate instruction will recognize the rate of acquisition and rate of retention of material by the gifted student.
- Terminology related to specifically designed instruction and educational placement, should be included.
- The practices of compacting, placing the gifted student in more than one grade level, grouping across grades, ability grouping, concurrent course credit and credit for learning obtained outside the school district and advanced placement with the school district should be encouraged.
- Specially designed instruction and support services shall be designed as differentiation within the regular classroom to remediate gaps in knowledge or skills that may be present as a result of whole grade acceleration.
- Educational placements shall, if determined by the GIEP team, support the emotional and social challenges of the individual gifted student.
- Move the caseload and class size details in § 16.41(c) to § 16.6.

**Response:**

The Board considered the suggestion to provide services and specially designed instruction based on peer-reviewed research. The compilation of peer-reviewed, scientifically based, research-proven methods for gifted students is still relatively young and incomplete. Therefore, the Board determined requiring such activity through regulation unwise.

Public comments regarding educational placement and instructional strategies are addressed in the current regulations. Section 16.41 reads that the placement shall “ensure that the student is benefiting from the rate, level and manner of instruction” and “the

opportunities shall go beyond the program that the student would receive as a part of general education.” No additional requirements are necessary.

With respect to the suggestion regarding the practices of compacting, placing the gifted student in more than one grade level, grouping across grades, ability grouping, concurrent course credit and credit for learning obtained outside the school district, advanced placement, and acceleration, the Board has determined that methodology is best left to the discretion of the school district and should not be required through regulation.

The Board received several public requests to lower class size and decided to reduce the number of gifted students that can be on an individual gifted teacher’s class roster to a maximum of 20 students. While not required by the regulation, this change would not prevent a school district from establishing or maintaining class size that is lower than twenty students.

With respect to the suggestion from the public that language be added giving gifted teachers time to meet with regular education teachers, design individual instruction and implement this instruction in small group settings, the Board determined that these matters are best left to the discretion of school districts. However, the regulation does not prohibit such time to teaching staff. Also, this may be more appropriately dealt with in collective bargaining agreements.

Additionally, the Board received many, and sometimes conflicting, public comments on the caseload number. The Board chose to reduce the maximum caseload that can be on an individual teacher’s roster to a maximum of 65 students. To give school districts time to implement this change, the Board established an implementation date of July 1, 2010.

In response to a related public request, the Board decided against moving the caseload and class size requirements currently contained in Section 16.41(c) to Section 16.6. The current location of this language is appropriate.

With respect to the request that education placements shall support the emotional and social challenges of the individual gifted student, the Board determined that this activity should be left to the discretion of the student’s family and school district.

The Board received comments requesting that the regulation add language giving full-time teachers of the gifted scheduled time to meet with regular education teachers, design individual instruction, and implement such instruction in small group settings to maximize acceleration and/or enrichment. The Board determined that this is a working condition subject to collective bargaining. However, the regulation does not prohibit this activity.

Similar public comment asked that the regulation give part time teachers of the gifted a proportionately reduced caseload in order to provide time to meet with regular education teachers, design instruction, and implement such instruction. The Board

determined that this item was also a matter that is subject to collective bargaining. Therefore, the change was not made. Again, the absence of this language does not prohibit this activity.

With respect to acceleration, the Board has determined that methodology is best left to the local educators and should not be regulated and therefore, this amendment has not been made.

#### **§ 16.42. Parental placement in private schools.**

Public comments included the following concerns:

- Clarify that the cyber school and charter school education programs shall be governed by 24 P.S. §§ 17-1701-A
- Suggest that reference to a possible private school placement at public expense be a remedy for certain violations of this Chapter

#### **Response:**

Charter and cyber charter schools are addressed in 22 PA Code, Ch. 711. Neither Charter schools nor cyber charter schools are regulated by Chapter 16.

#### **§ 16.43. Facilities.**

Comments expressed the following concerns:

- Language comparable to that included in Section 14.144 which ensures that gifted students shall be provided appropriate classroom space and resource facilities. Gifted education should not occur in the hallway or in isolation within a classroom.

#### **Response:**

Newly constructed classroom space is regulated in 22 Pa Code 349.5 (building space allocation) and is neither appropriate nor necessary to be included in this chapter. According to the provisions of this 22 PA Code 349.5, the amount of space for a newly constructed elementary school shall approximate 58 square feet for each student in approved full-time equivalent project enrollment. The amount of space included in the schedule of space allocations for a newly constructed secondary school shall approximate 78 square feet for each student in approved full-time equivalent project enrollment.

#### **§ 16.61. Procedural Safeguards.**

Public commentators expressed the following concerns about this section:

- Directions on how to file a complaint with the State should be added to the written notice provided to parents regarding procedural safeguards.
- Clarify that procedural safeguards are procedural due process rights and that the regulations themselves safeguard the entitlements and rights of gifted students.
- Clarify the procedures necessary to promote open communication between disputing parties.
- Stipulate that parents are provided a written notice at least 10 school days before the GIEP or GMDT meeting.
- Modify the plain language notice requirements so that communication is appropriate for an individual parent as opposed to the general public. This reduces discrimination concerns and minimizes communication barriers for the physically disabled and those for whom English may not be a primary language (ESL).
- Create and make available a form for parents to use when initiating either a due process or departmental complaint.
- The notice to parents should include a full explanation of the availability for reimbursements for private evaluations and unilateral placement by parents in interim alternative educational settings or private schools at public expense, access to educational records, gifted student's placement during pendency of complaint and due process proceedings, state level appeals, civil actions and the time periods in which to file such actions, information relating to mediation facilitation and compliance complaints, and a statement of the prohibition against penalizing or discriminating against any individual because he has initiated, testified, participated or assisted in any enforcement proceedings.
- For a GIEP that has been accepted in part by the parents, the school district shall implement the accepted provision. The agreed upon provisions, when in conflict, supersede the pendant GIEP. When a parent's position is affirmed by a hearing officer or any other appellate order, the change in placement shall occur immediately. For subsequent adverse rulings to the parent's position, the gifted student shall remain in the interim educational setting pending the expiration of the time period specified for appeal, unless the parent and the school district agree otherwise.
- Encourage the use of e-mail notices under limited circumstances. Whenever a school district has internet web sites or e-mail communication with parents, the procedural safeguard notice disseminated electronically should be encouraged to supplement individual notices. The permission to consider such communications as notice shall be documented in writing and maintained in the individual gifted student's educational records. Confirmation of receipt shall be required. Permission to provide notice by electronic mail communication may be revoked by the parent at any time.
- Procedural safeguard notices may be placed on the school district internet web site but shall not be a substitute for personal service where required.
- Some form of coordination is necessary between and within the Office of Dispute Resolution and the department handling mediation.
- Case workers or some sort of facilitators should be willing and able to assist parents in order to acquaint them with due process and mediation procedures.

- The process needs to hold district's feet to the fire.
- Even when the parents receive a positive ruling from the due process hearing, the school district can still continue to defy the order, and there is little the parents can do, except face another painful and expensive due process.

**Response:**

Notice requirements are frequently reviewed by legal staff to determine that they are parent friendly yet comprehensive and complete. To regulate such a practice is not necessary. Suggestions regarding a full explanation of the availability for reimbursement for private evaluations and unilateral placement by parents in interim alternative educational settings or private schools at public expense and the placement of gifted students during pendency of complaint and due process proceedings go well beyond a revision of the form. The commenter is suggesting major changes in the process which the Board has chosen not to make because they are unnecessary.

Additionally, the Board determined that it was not necessary to clarify the procedures necessary to promote open communication between disputing parties. Chapter 16 in its entirety includes sufficient language regarding information that the school district is required to give parents. Plus, the parents are required participants in the GIEP team.

Similarly, the Board determined that it was not necessary to clarify that procedural safeguards are due process rights. Section 16.61 presently includes language requiring the notice to include information regarding impartial due process.

With respect to the suggestion from the public that procedural safeguard notices be placed on the school district internet web site, the Board determined that there is nothing in the regulation that would prohibit this activity and decided not to include it in the regulation.

In response to the comment that the regulations require school districts to provide parents with a written notice at least 10 school days before the GIEP or GMDT meeting, it is important to note that the current provisions of 16.61 adequately address this issue. Presently, school districts are required to give parents written notice within 10 school days before a gifted multidisciplinary evaluation or reevaluation, 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.

Additionally, it is not appropriate for the Board to regulate the creation and availability of a form for parents to use when initiating either a due process or departmental complaint.

Section 16.63 of the final form regulations addresses the comment regarding a GIEP that has been accepted in part by the parents by requiring the student to remain in his current placement pending the outcome of the due process hearing.

With respect to the suggestion that the regulations encourage the use of e-mail notices to communicate with parents under limited circumstances, the Board determined that school districts can do this activity without regulation. Additionally, there is nothing in the regulation that would prohibit the placement of procedural safeguards on school district internet web sites and to regulate such an activity is not necessary.

Public comment suggested coordination with the Office of Dispute Resolution. The Board determined that it is not appropriate for it to regulate the activities of that office. Similarly, the Board can not regulate the activity of case workers or facilitators as recommended by public comment. The Board does note the existence of language in current Chapter 16 requiring school districts to list addresses and telephone numbers of various organizations that are available to assist in due process hearings in the notice.

#### **§ 16.62. Informed consent.**

Public comments include the following:

- Add the term “informed” to the concept of consent
- Clarify that disagreements with part of a plan need not delay implementation of those portions of an individual plan upon which there is agreement. It should also be made clear that unilateral changes of educational placement are never permitted.
- Clarify the role of Notice of Agreement (NORA) and Notice of Recommended Educational Placement (NOREP) with guidance concerning those portions of a plan that are not consented to by a parent and the resulting triggering events and conduct necessary for initiation of due process.
- Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the educational records (if any) that will be released and to whom. The parent shall understand that the consent is voluntary and may be revoked at any time. Revocation of consent shall not be retroactive. Revocation shall not negate an action that has occurred after the consent was given and before the consent was revoked.
- During the pendency of any proceedings conducted pursuant to this Chapter, unless the State or School district and the parents otherwise agree, the gifted student shall remain in the then-current educational placement of the gifted student which is not in dispute, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed. A decision of the Special Education Appeals panel that agrees with the parents shall be construed as an agreement between the parents and the state regarding the gifted student

placement. That placement shall be pendant during the course of further proceedings.

- A school district shall not use a parent's refusal to consent to one service or activity of this section to deny the parent or gifted student any other service, benefit, or activity of the school district.

**Response:**

Section 16.61 (d) of the current Chapter 16 requires the notice to include a description of the action proposed or refused by the district, an explanation of the proposal or refusal, a description of options the district considered and the reasons why those options were rejected. Additional requirements include a description of each evaluation procedure, type of test, record or report used as a basis for the action and a description of other factors relevant to the district's action. A full explanation of the procedural safeguards is also mandated. The Board did not change these requirements in the final form regulation and believes the current regulations require sufficient information for parents to provide "informed" consent.

There is no evidence to suggest that disagreements with part of a plan delay the implementation of acceptable elements. Nor is there evidence that unilateral changes of educational placement have occurred. Therefore it is unnecessary to clarify this matter through regulation.

The pendency issue that was raised in public comments is addressed in Section 16.63 of the final form regulations. As discussed earlier in this document, during due process hearings, the gifted student shall remain in the student's current educational placement.

Additionally, there is no evidence indicating that a school district has used a parent's refusal to consent to one service or activity of this section to deny the parent or gifted student any other service, benefit, or activity of the school district. Therefore, the Board has determined this change was not necessary.

With respect to the suggestion to clarify the role of NORA and NOREP with guidance, the Board notes that under the current requirements 16.61, a school district must provide written notice to the parents of a gifted student at least (10) school days before certain events occur that could affect the provision of gifted education. At present, that notice occurs through a "NORA", Notice of Recommended Assignment. Under Chapter 16, that notice must contain information relating to the impartial hearing process. Therefore, the Board did not make the recommended changes.

There is no evidence that parental consent for evaluation has been construed as consent for placement for receipt of special education and related services. Nor is there evidence that there has been a problem with revocation of consent. The Board determined that these issues have been neither been misunderstood nor abused in the past decade. Therefore, there is no need to regulate these items.

### **§ 16.63. Impartial Due Process Hearing.**

Comments from the public include the following:

- Parents should be able to dispute any act that violates the protections of this Chapter using the protection of impartial due process.
- What can parents who do not have the financial means available for a due process hearing do to get their child an appropriate education? As long as there is no retribution for violating Chapter 16, districts will not change.
- A complaint process should be established within the Department's Bureau of Special Education for parents or others to be able to file a complaint if a district refuses to offer a child an appropriated gifted education. Currently parents are only able to file for a due process hearing, which is a costly and lengthy process. This new process has the potential to result in substantial savings for the state, given that a complaint investigation is less expensive than a due process hearing.
- The department shall develop model forms to assist parents and school districts in filing a due process complaint in accordance with this chapter and shall assist parents and other parties in filing a due process complaint. However, the department or school district shall not require the use of the model forms.
- The burden of proof should be that parents may in certain instances carry a burden of presentment, but shall never have the burden of persuasion because of the lack of access to evidence and the fundamental difficulty in proving a negative. Once parents have presented their claims, the burden of persuading the appropriateness of the individual plan must shift to the school district.
- Burden of production should be on districts in impartial due process hearings.
- After a due process complaint has been filed, if a school district has not sent a prior written notice of its determination to the parent regarding the subject matter contained in the parent's due process complaint, the school district shall, within ten days of receiving the due process complaint, send the parent a response.
- At the request of the parents, the hearing shall be held in the evening.
- A hearing officer conducting a hearing shall not be an employee of the school district agency involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.
- The department shall make public a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons. 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.
- A hearing officer's determination of whether a child received an appropriate gifted education shall be based on substantive grounds, and in matters alleging a procedural violation, a hearing officer shall find that a child did not receive an appropriate gifted education if the procedural inadequacies impeded the child's right to an appropriate gifted education; significantly impeded the parent's



participation in the decision-making process regarding the provision of an appropriate gifted education to the gifted student; or caused a deprivation of meaningful educational benefit to the individual gifted student.

- Although technical rules of evidence will not be followed, a hearsay objection shall still serve to block inappropriate testimony. Non-objected hearsay corroborated by properly admitted evidence can be used to support a finding of fact by a hearing officer.
- A hearing officer shall create a full record for appellant review but shall be limited to the issues identified within the complaint, unless the parties agree otherwise. The hearing officer shall also complete and supply to the department a report of all procedural violations identified in the course of the hearing process.
- At the option of the parents, an electronic verbatim record of the hearing shall be made and provided to parents at no cost.
- Parents may be assisted by interested parent organizations through the submission of amicus brief related to the issues in dispute.
- Copies of records shall be provided upon written request before any meeting regarding a GIEP, or any hearing or resolution session and in no case more than ten days after the request has been made
- Parties at the hearing shall be permitted to present evidence and confront, cross-examine, and compel the attendance of witnesses. If a school district does not voluntarily compel attendance of requested witnesses, an adverse presumption shall be included in the record with an indication that the parent's offer of proof is treated as evidence.
- Clarify access to records and evidence for due process proceedings and appeal procedures.
- Clarity concerning the ability of a school district to disclose gifted data as long as personally identifiable data is redacted would help parents gauge the appropriateness of an individual plan.
- Include the hearing officer rationale for determining compensatory education and other ordered remedies.
- Include language that clarifies the authority for a hearing officer and appeal panels to impose actual remedies including reimbursement of independent evaluations, appointment of outside parties to facilitate GIEP meeting, recommendation of third party consultation and training on creation of GIEP, calculations of compensatory education, and other appropriate equitable sanctions.
- Compensatory education should be described in the regulations as an award to occur upon the determination of a deprivation of an appropriate gifted education. The amount of compensatory education should be quantified according to the number of hours of deprivation unless such amount is not sufficient to qualitatively bring the gifted student to the position he or she would have occupied but for the school district's failure to provide an appropriate gifted education. Such award should be stated in terms of a dollar amount calculated according to a formula, which considers the cost of delivery of gifted education. Parents should be able to utilize compensatory education awards for services provided outside of the school district as determined by the parents.

- Stipulate that a due process order and compliance complaint order shall be enforceable by the Department of education and noncompliance with orders shall result in additional sanctions.
- The due process complaint must allege a violation that occurred not more than two years before the date the school district knew or should have known about the alleged action that forms the basis of the due process complaint. The complaint may allege violations prior to that date if they are of a continuing nature or if the parent has been prevented from filing a due process complaint due to specific misrepresentations that the school district had resolved the problem forming the basis of the due process complaint; or the school district's withholding of information from the parent that was required under this chapter to be provided to the parent.
- A party may amend its due process complaint with permission of the hearing officer or if opposing party consents. If the request for an amended due process complaint is denied, a new due process complaint may be filed without prejudice and with all the protections of this Chapter.
- Expedited due process hearings, which must occur within fifteen calendar days of the date the complaint requesting the hearing is filed, may be conducted upon request and good cause shown as determined by the hearing officer. If an expedited herein is conducted, the hearing officer decision shall be mailed within 45 days of the school district's receipt of the request for the hearing without exceptions or extensions.
- Continuances granting specific extensions of time may be granted by a hearing officer upon request upon good cause shown or agreement of the parties.
- The order of the hearing officer or appellate orders shall be enforced by the department. A party to the order may seek enforcement of the order in any state court of competent jurisdiction.
- Nothing within this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. Nor shall the filing of a due process complaint preclude a parent from filing a separate complaint under the department complaint resolution process.
- Penalizing or discriminating against any individual because they have initiated, testified, participated or assisted in any enforcement proceedings under this chapter shall be prohibited.
- Subsection (r) requires a school entity to provide the Department with "assurances" of its implementation of an order to the Department. IRRC recommended that the final-form regulations specify the types of assurances that will be acceptable. Also, will parents or others have access to these assurances?
- The decision of the impartial hearing officer is final, except that any party involved in the hearing may appeal the decision to a panel of three appellate hearing officers.
- List the specific action of the appeal panel.
- Strike the ability to appeal the decision of the impartial hearing officer to a court of competent jurisdiction and reinstate the eliminated appellate panel.
- Align the appellate hearing officers' panel elimination with Chapter 14.

**Response:**

Section 16.63 sufficiently addresses the ability of parents to dispute activities that violate the protections of Chapter 16. Model forms to assist parents and school districts in filing a due process complaint are provided by the Department of Education through the office of PaTTAN. School districts are not required to use the forms. However, school districts are required to address essential elements in Chapter 16. Additionally, present language in Chapter 16 permits due process hearings in the evening. The Board determined that it is not appropriate to require school districts to conduct this activity in the evening.

Section 16.63 of the current regulations gives a party “the right to present evidence and testimony, including expert medical, psychological or educational testimony.” The Board did not make any changes to this existing ability. Therefore, the Board determined that this issue is sufficiently addressed and further changes are not necessary. Furthermore, public comments concerning copies of records is already addressed by the federal Family Education Rights and Privacy Act (FERPA) and does not need further regulation in Chapter 16.

With respect to public comments regarding who should carry the burden of presentment and the burden of persuasion, the Board determined it does not have the authority to regulate this matter. It requires legislative action and is not appropriate for regulation. Furthermore, the Board determined that it did not have the authority to regulate the burden of production as suggested by public comments. Such a change in Pennsylvania law requires legislation and can not be appropriately addressed through regulation. Additionally, aside from the provisions in section 16.63, Chapter 16 does not address the procedures to be followed during a due process hearing. Therefore, the Board did not make the recommended changes regarding a hearsay objection.

In response to public comment requesting the department be required to make a list of those serving as hearing officers and their qualifications, the current regulations already stipulate that each school district to keep a list of individuals serving as hearing officers and the qualifications of each officer. School districts are further required by the present regulations to provide parents with information as to the availability of the list and shall make copies of it available upon request.

Current requirements contained in Section 16.63 of the regulations provide for the selection of the hearing office and already address the issues raised by public comment. The provisions stipulate that “a hearing officer may not be an employee 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.” Additionally, a hearing officer is required to promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties. Therefore, the Board did not make additional changes to this item.

Furthermore, section 16.63 (n)(2) of the current regulation requires the hearing officer to issue a decision within 45 calendars after the parent's or school district's request for a due process hearing. The Board determined that this process is sufficient and chose not to reduce the time period for receiving a response to ten days as suggested in public comment. Similarly, this current provision sufficiently addresses public concerns regarding expedited due process hearings and the request that the hearing officer make a decision within 45 days of the school district's receipt of the request for the hearing. Therefore, no change to the present regulation is needed.

Many of the concerns regarding the basis of a hearing officer's determination are sufficiently addressed in Section 16.63. According to the regulations, "the decision of the hearing officer shall include findings of fact, a discussion and conclusions of law" and "the decision shall be based solely upon the substantial evidence presented during the course of the hearing." The Board determined that further amendments to this section are not necessary.

With respect to public comments on the appeal panel, the Board has determined to delete the appellate panel in these regulations in response to numerous and varied comments received on the appeals panel during its review of Chapter 14 on Special Education. The Board decided that due process proceedings should remain aligned for Chapters 14 and 16 and therefore, appeals for due process under either chapter must be made to a court of competent jurisdiction.

Aside from the provisions in section 16.63, Chapter 16 does not provide procedures for regulation of a due process hearing. Therefore, the Board did not make the suggested changes requiring a hearing officer to create a full record for appellant review and to provide the department with a report of all procedural violations identified during the hearing process.

In response to the concern from parents who do not have the financial means to pursue a due process hearing and other similar comments, Section 16.6 of the regulation has been amended to include a complaint procedure where parents may allege a violation of Chapter 16 by a school district and the allegation will be investigated by the Bureau of Special Education.

With respect to the suggestion that compensatory education be awarded when the school district did not provide an appropriate gifted education, the Board determined that this should be left to the discretion of the due process hearing officer and was not appropriate for this regulation and, thus, was not added.

In response to the remainder of the comments on this section, the Board determined that language contained in this section of the current regulations sufficiently addresses the issues raised and no further amendments are necessary.

#### **§ 16.64. Mediation.**

Public comments expressed the following concerns:

- Clarify the procedural steps parents should follow to compel mediation to aid in creation or implementation of a GIEP.
- Clarify the effect and enforceability of binding agreements.
- The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The department shall select mediators on a random, rotational, or other impartial basis.
- The mediation process shall be free to the parents and school districts.
- Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. When a mediation and due process request are filed contemporaneously, mediation shall be scheduled in such a way as not to delay a due process hearing if mediation process is unsuccessful.
- Add language listing criteria designed to obtain an impartial mediator.
- If a dispute is resolved through mediation, then the parties shall execute a legally binding agreement stating that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; is signed by both parties, and may be voided by the parents with 3 business days of the agreement's execution.
- Language should be added to permit a party to the mediation agreement to enforce the mediation in any state court of competent jurisdiction.

**Response:**

Mediation is addressed thoroughly and completely in section 16.64 of the current regulations. No other comments were received in either Ch. 14 or Ch. 16 regarding mediation and no data was received on misunderstanding or misuse of mediation procedures over the past decade. Therefore, the Board determined not to make any changes to this section.

**§ 16.65. Confidentiality.**

Remarks from the public conveyed the following concerns:

- Clarify the confidentiality of records requirements.
- Further clarify the ability of parents to acquire records, including any tests or reports upon which the proposed action is based.

**Response:**

Confidentiality is regulated by the Family Educational Rights and Privacy Act, and Chapter 12 (relating to students) and other applicable law and therefore the Board determined no changes to the current Section 16.65 were necessary.

**Compliance monitoring.**

Input received from the public includes the following:

- Add a new section, Section 16.66, addressing compliance duties and procedures. This section should require gifted students be included in departmental tracking systems; collected data be disaggregated with gifted student information easily identifiable; data from school districts should be collected according to procedures and policies made by school districts.
- Chapter 16 compliance monitoring of school districts by the department should be referenced to make clear the requirement that complaints be heard and investigated by the department.
- Expand standing to bring challenges to GIEP procedural issues to include interested parent groups in addition to individual students and their parents who may dispute both substantive and procedural deprivations.
- An employee should be designated by each school district to report progress monitoring of individual GIEP implementation, accurate Child Find data, and other monitoring criteria as required by the department.
- All reports resulting from compliance monitoring shall be available to the public on the website of the Pennsylvania Department of Education.

**Response:**

Compliance monitoring activities are now addressed now in Section 16.6 General Supervision. Any changes not included in Section 16.6 were considered by the Board to be unnecessary.

**Electronic Monitoring**

The Board received the following public comment on this issue:

- Add a new section on electronic monitoring requiring school districts to provide the Pennsylvania Department of Education with the following information on an annual basis:
  - A copy of the districts public awareness statement along with an indication of the publication(s) in which it appeared.
  - Contact information for the parents of all gifted students.
  - The number of children identified as gifted.
  - The average grade in which a gifted child is identified.
  - The average grade in which a gifted child is removed from gifted programming.
  - The percentage GMDEs that included parental involvement.
  - The percentage of GIEP meetings that included parental attendance.
  - The present levels of education performance by child.
  - The percentage of gifted students not scoring advanced on the PSSA in their area of giftedness (math or language arts)
  - The percentage of gifted students that started kindergarten early.

- The percentage of gifted students subject accelerated, whole-grade accelerated, and attending at least one class with above-grade peers.
- The percentage of gifted students in middle and high school with plans for early graduation.
- Parent questionnaires as defined by the department
- All student data related to complaints received in the web-based department complaint tracking system.

**Response:**

The Board has considered this suggestion and has concluded that the Secretary of Education has the authority to request this information from school districts and also has the ability to purchase necessary equipment and technology for expedient procedures within the Department and that it is inappropriate for such to be addressed in regulation.

**Enforcement remedies and sanctions:**

Public comments articulated the following issues regarding this section:

- Add a new section to Chapter 16, Chapter 16.67, which addresses enforcement of Chapter 16 requirements and remedies for violations.
- Listing the following sanctions the Secretary may exercise for noncompliance:
  - Sensitivity training
  - Withholding a portion of a district's Act 48 funding.
  - Removing an administrator's principal certification for one or more years.
  - Withholding a portion of the district's special education and/or general funding
  - Assuming operational responsibility of gifted programming within a non-compliant school or district by the state and withholding a portion of the districts special education and/or general funding.
  - Removal of, and barring from future office, one or more members of the local school board determined by the compliance monitoring team to be obstructing gifted education.
  - Withholding, until a subsequent compliance check, any per-student gifted funding from the state for each gifted student found to have inadequate gifted services
- Enforcement remedies should be available to Hearing Officers as part of a due process order and to the Secretary as part of the compliance process, including the ability to order training for educational staff, the hiring of educational consultants, and college courses when this is found to be equitable and appropriate.
- Include language stipulating that the Secretary shall take such action as the Secretary determines appropriate to enforce this Chapter.
- Include language requiring the Department of Education to include gifted students in departmental tracking systems so that collected data shall be disaggregated with gifted student information easily identifiable and data from school districts

be collected according to procedures and policies established by the Department of Education and made public by school districts.

- Require the Department of Education to hear and investigate complaints.
- Complaints may be filed in writing, by telephone or in person.
- The complaint shall involve a violation that occurred not more than one year prior to the date of filing unless a longer period is reasonable because the violation is continuing, or because the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint was received.
- More specifics regarding the complaint process from Louisiana's gifted regulations should be added to the regulation.
- Require the Department of Education to investigate findings of procedural noncompliance determined and referred by due process hearing officers.
- Clarify remedies resulting from failure to provide free and appropriate gifted education to individual students.
- The Secretary of Education shall require reports as it determines appropriate and shall monitor all school districts based on cyclical and complaint-driven audits.
- Results of compliance audits shall be made public.
- Results of individual school district monitoring shall be made public while applying appropriate confidentiality restrictions.
- The Department of Education shall establish a system to receive and investigate compliance complaints against school districts and complaints concerning mediators, hearing officers and appellate hearing panel officers. The Department of Education shall investigate the complaint without disclosing the identity of the requestor.
- The Department of Education shall enforce disciplinary and corrective actions against school district and personnel as a result of the complaints
- Attorney fees and incidental costs shall be recoverable by parents in proceedings to enforce final orders and mediation agreements.

**Response:**

The issue of compliance is now addressed in Section 16.6 General Supervision. Any changes not included in Section 16.6 were considered by the Board to be unnecessary.

The Board has considered the sanction suggestions but has determined the Public School Code to provide adequate sanctions against school entities that violate regulation and therefore, has not made these suggested additions to this section.

**Miscellaneous Clarity**

Comments conveyed the following concerns:



- Section 16.6(d) refers to the term “school entity.” The term is also used in Section 16.63(r). Other sections of the regulations use the term “school district.” One term should be used consistently throughout this chapter.
- The phrase “but not be limited to” in Section 16.21(b) is not needed.
- Section 16.23(d) uses the term “evaluation.” To be consistent with the title of this section, “Gifted multidisciplinary reevaluation,” we recommend that the term “evaluation” be amended to “reevaluation.”

**Response:**

These changes were made.

**Miscellaneous**

Public comments on miscellaneous topics include the following:

- There is a mass exiting of children from gifted identification upon entering high school.
- Gifted students educated in special classroom for gifted children do better than equally gifted students in heterogeneous classrooms.
- The state is extremely lacking in guidance, enforcement and communication about options for gifted education, both to the school districts as well as to parents.
- All teachers should be required to complete some continuing education credits on gifted education on a yearly basis. This training should include information about the social and emotional needs of gifted children and methods of curriculum modification.
- Require a 12-credit certificate of any full time gifted teacher or coordinated
- Pennsylvania does not properly fund gifted education. We must provide funding to educate our teachers to teach gifted students. We must provide funding so that there are appropriate resources in the classroom for gifted students. We must provide funding so that our gifted teachers are not overloaded.
- Why does the state want to take away a good thing? Gifted education has been around for years. If we take away this program, we are only giving into mainstream education.
- Include the word “individual” and “individualized” throughout the regulation. The Basic Education Circular for Gifted and the Gifted Guidelines provide a good model for emphasizing that Gifted Education at the Gifted IEP level is child-specific and child centered.
- Charter schools do not receive additional funds for gifted students.
- Gifted children do not receive the same level of educational services that other children with special needs receive.
- All deliberations and decisions must be conveyed in writing to families, and for there to be accompanying instructions that define and explain possible next steps.
- Add a section on pre-hearing conferences in order to reach an amicable agreement in the best interest of the gifted student. This section would align Chapter 16 with

Chapter 14. Costs for both parents and districts will be kept down if agreement can be reached at the pre-hearing conference.

- Gifted cases should have a minimal statute of limitations of two years – not one year.
- Licensed psychologists should be added as professionals qualified to conduct gifted evaluations throughout the regulation. Certified school psychologists are not licensed professionals.
- The State Board should take this opportunity to make adequate provision for appropriate educational services to be furnished to gifted students who are enrolled in nonpublic schools. There is no statutory basis for any determination by the State Board to exclude gifted students in nonpublic schools from the opportunity to receive special education services from school districts and/or intermediate units, while they maintain their enrollment in their nonpublic schools. The current provision of the Section 16.42(a) that merely allows parents to have their gifted children educated in private schools entirely at private expense, fails to satisfy the statutory mandates placed upon the State Board by Sections 1371 and 1372 of the School Code.
- Add a new section requiring Intermediate Units to provide early intervention services for gifted preschoolers. Preschoolers shall be eligible for gifted early intervention if referred by an educator within the district, a pre-school educator who knows the child, a pediatrician or psychologist who knows the child, or the principal of the elementary school which the child will eventually enter.
- Add a new section requiring districts to provide extended school year gifted services when there are known, narrow gaps in a child's knowledge preventing an otherwise beneficial grade skip, when there is a one or two course gap preventing early graduation, when the student is slightly behind schedule for long range GIEP goals, specifically in preparation for a future grade skip or early graduation two or more years in the future, or when the student desires to learn over the summer.
- Add a new section requiring gifted instruction to be provided by a specially trained teacher in an instructional setting of no less than 28 square feet per pupil.
- Add a new section permitting the department to allow charter schools to limit admission to students identified as mentally gifted as a targeted population group composed of at-risk students.

**Response:**

The final form of the Chapter 16 regulation does not take away gifted education as suggested by public comment.

With respect to the public comment requesting all teachers be required to complete some continuing education credits on gifted education, the Board determined that areas of teacher professional development and/or certification are regulated through Chapter 49. The same response applies to the comment that Chapter 16 should require a 12-credit certification for any full time gifted teacher or coordinator.

The Board received several comments regarding the funding for gifted education, gifted teachers and charter schools providing gifted education. The Board does not have the authority to appropriate funds for education. This is the purview of the legislature and school districts.

In response to the suggestion that the words “individual” and “individualized be included throughout the regulation, the Board determined that the Basic Education Circular for Gifted and the Gifted Guidelines provide a good model for emphasizing that gifted education at the gifted IEP level is child-specific and child centered. Therefore, this change was not made.

With respect to the comment that all deliberations and decisions must be conveyed in writing to families as well as accompanying instructions that define and explain possible next steps, the Board believes there is sufficient assistance and information for families and further regulation on this subject is not needed. For example, Section 16.61(d)(4) requires school districts to provide “a full explanation of the procedural safeguards, including the right to an impartial hearing.” Additionally, Section 16.61(e)(1) stipulates that the notice from the school district shall inform the parents of “the addresses and telephone numbers of various organizations which are available to assist in connection with the hearing.”

In response to the suggestion that a section on pre-hearing conferences be added to facilitate an amicable agreement, the Board decided not to add this section. The current regulation does not prohibit a school from holding a pre-hearing conference or a parent from requesting one.

The Board received remarks requesting that gifted cases have a minimal statute of limitations of two years – not one year. However, the Board did not make this change because this is not a matter for regulation.

With respect to the public comment that licensed psychologists be added as professionals qualified to conduct gifted evaluations throughout the regulation because certified school psychologists are not licensed professionals, the Board did not make this change. School psychologists are licensed professionals and are licensed by the Department of Education to perform the following duties and functions:

- Identify significant behavioral signs;
- Verify behavioral patterns;
- Analyze and diagnose atypical behavior;
- Promote understanding of the developmental expectations of children as to increase learning and achievement, appropriate behavior, and social function;
- Collect and interpret student-relevant data to assist school teams in identifying the nature of exceptionality and/or disability, as outlined in the PA School Code;
- Make prescriptive recommendation for short-term and long-term remedial and modification procedures;
- Identify learning and processing traits in individual students which can be used to

design effective academic and behavioral interventions and promote increased student achievement;

- Provide psychotherapy or psychoeducational counseling as necessary or advisable;
- Assist in planning all therapeutic, remedial, or behavioral modification activities sponsored by the public school entity;
- Contribute to an integrated and effective program of pupil personnel services as part of a multidisciplinary team;
- Promote positive education mental health practices in resolving individual, group and system level problems in school mental health related areas;
- Provide consultation to teachers, parents, and students on behalf of students receiving special education, gifted education or services to protected disabled students;
- Provide consultation and direct services which promote social-emotional function and learning for disabled and non-disabled students; and
- Provide consultation and direct service on behalf of at-risk students requiring primary prevention programs and crisis intervention services.

In response to public comment alleging that the current provision of Section 16.42(a) fails to satisfy the statutory mandates placed upon the State Board by Sections 1371 and 1372 of the School Code, the Board, having sought and received legal advice, disagrees with the commenter's interpretation and has determined that the regulation as currently written complies with the School Code and correctly communicates the intent of the Board.

The Board considered the suggestion to add a new section requiring Intermediate Units to provide early intervention services for gifted preschoolers. There is nothing in the regulation to prevent Intermediate units from providing such services. However, the Board does not want to require it.

Similarly, the Board considered the request to require district to provide extended school year gifted services and determined it is too expensive to add such a requirement. There is nothing in the regulation that would prevent a school from providing this service if it desired to do so. The Board, however, does not want to require it.

In response to the request that the Board add a new section requiring gifted instruction to be provided in an instructional setting of no less than 28 square feet per pupil, the Board determined that new class room construction is already addressed in 22 Pa Code 349.5 (building space allocation) and is neither appropriate nor necessary to be included in this chapter.

Finally, with respect to the request to allow charter schools to limit admission to students identified as mentally gifted as a targeted population group, the Board determined that it does not have the authority to limit admission to charter schools or cyber charter schools. Sections 17-1732-A and 17-1749-A of the Public School Code of 1949 stipulates that these regulations can not apply to charter schools and cyber charter

schools. As a final point, Section 17-1703-A of the School Code specifically defines an “at-risk student” as “a student at risk of educational failure because of limited English proficiency, poverty, community factors, truancy, academic difficulties or economic disadvantage.”



Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter A. MISCELLANEOUS PROVISIONS

CHAPTER 16. SPECIAL EDUCATION FOR GIFTED STUDENTS

GENERAL PROVISIONS

§ 16.1. Definitions.

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*GIEP* – Gifted Individualized Education ~~Program~~ PLAN.

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§ 16.4. Strategic plans.

(a) Each school district's strategic plan developed under Chapter 4 (relating to academic standards and assessments) [shall] must include procedures for the education of all gifted students enrolled in the district. The strategic plan shall be developed to ensure the [support of the] implementation of gifted education plans [developed under subsection (b)].

(b) Each 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.] address the following in its gifted education plan:

(1) The process for identifying children who are gifted and in need of specially designed instruction.

(2) The gifted special education programs offered.

(c) Each 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.





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## **§ 16.6. General supervision.**

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(d) The Department will conduct onsite monitoring of school entities DISTRICTS ON A CYCLICAL BASIS, OR MORE FREQUENTLY WHEN NECESSARY, to ensure school entity DISTRICT implementation of this chapter. The Secretary DEPARTMENT will outline the process and schedule for this monitoring in a Basic Education Circular (BEC). THE BEC SHALL INCLUDE:

- (1) A DESCRIPTION OF THE ELEMENTS TO BE REVIEWED AND THE CRITERIA FOR DETERMINING COMPLIANCE WITH EACH ELEMENT.
- (2) A PROCESS AND PROCEDURE TO PRESENT THE MONITORING FINDINGS TO SCHOOL DISTRICTS.
- (3) A PROCESS FOR SCHOOL DISTRICTS TO RESPOND TO MONITORING FINDINGS.
- (4) A PROCESS FOR RESOLUTION OF FINDINGS, WHICH MAY INCLUDE A REQUIREMENT THAT SCHOOL DISTRICTS DEVELOP CORRECTIVE ACTION PLANS.

(E) THE DEPARTMENT SHALL ESTABLISH A COMPLAINT PROCESS THAT SHALL INCLUDE:

- (1) A PROCESS FOR PARENTS OR GUARDIANS TO FILE COMPLAINTS AND FOR SCHOOL DISTRICTS TO RESPOND.
- (2) AN OPPORTUNITY FOR THE DISTRICT AND PARENT TO REACH AMICABLE RESOLUTION OF THE ISSUE OR, IF NECESSARY, A PROCESS FOR THE DEPARTMENT TO DETERMINE THE VALIDITY OF COMPLAINTS.
- (3) DEVELOPMENT OF AN INDIVIDUAL CORRECTIVE ACTION PLAN, IF NECESSARY, TO ADDRESS AND CORRECT FINDINGS OF A VALID COMPLAINT AGAINST A SCHOOL DISTRICT.
- (4) ENUMERATION OF ENFORCEMENT STEPS TO BE EMPLOYED BY THE DEPARTMENT IF THE DISTRICT DOES NOT IMPLEMENT THE CORRECTIVE ACTION.

(F) THE DEPARTMENT SHALL REPORT TO THE BOARD, BY OCTOBER 1 OF EACH YEAR, THE NUMBER AND DISPOSITION OF COMPLAINTS FILED AND THE SCHEDULE AND RESULTS OF MONITORING ACTIVITIES.

## **§ 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] Chapter 14 [and 342] (relating to special education services and programs) and sections 601—619 of the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400—[1485] 1419).



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

**(d) A single IEP shall be developed and implemented, revised and modified in accordance with this chapter and Chapter 14, for students who are identified as eligible under this chapter and Chapter 14.**

## SCREENING AND EVALUATION PROCESS

### § 16.21. General.

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(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. These awareness activities shall be designed to reach parents of students enrolled in the public schools and the parents of school age children not enrolled in the public schools. **Awareness activities shall be conducted annually and include, but not be limited to, providing information in local newspapers, other media, student handbooks and on the school district website.**

\*\*\*\*\*

(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 OR** when multiple criteria as set forth **in this chapter and** in Department Guidelines indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. **Deficits in memory or processing speed, as indicated by testing, cannot be the sole basis upon which a student is determined to be ineligible for gifted special education.** 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] must** include an assessment by a certified school psychologist.

(e) Multiple criteria indicating gifted ability include:

\*\*\*\*\*



(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]~~ judgment.

\*\*\*\*\*

(5) Documented, observed, validated or assessed evidence that intervening factors such as English as a second language, ~~learning disability, physical impairment, emotional disability~~ **DISABILITIES DEFINED AT 34 CFR 300.8 (RELATING TO CHILD WITH A DISABILITY)**, gender or race bias, or socio/cultural deprivation are masking gifted abilities.

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## **§ 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).

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(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]~~ must 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.]~~ The school district shall have readily available for this purpose an evaluation request form and if a request is made orally to any professional employee or administrator of the school district, that individual shall provide a copy of the evaluation request form to the parents within 5 school days of the oral request **MAKE THE PERMISSION TO EVALUATE FORM READILY AVAILABLE FOR THAT PURPOSE. IF A REQUEST IS MADE ORALLY TO ANY PROFESSIONAL EMPLOYEE OR ADMINISTRATOR OF THE SCHOOL DISTRICT, THAT INDIVIDUAL SHALL PROVIDE A COPY OF THE PERMISSION TO EVALUATE FORM TO THE PARENTS WITHIN 10 CALENDAR DAYS OF THE ORAL REQUEST.**

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



student's programming and [shall] indicate the names and positions of the members of the GMDT.

(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 and 16.21 (relating to definitions; and general).] The GMDT shall determine eligibility as defined in §§ 16.1 and 16.21 (relating to definitions; and general).

(j) [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.]

The initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the school district receives written parental consent for evaluation or receives an order of a court or hearing officer to conduct a multidisciplinary evaluation CALENDAR DAYS AFTER THE AGENCY RECEIVES WRITTEN PARENTAL CONSENT FOR EVALUATION OR RECEIVES AN ORDER OF A COURT OR HEARING OFFICER TO CONDUCT A MULTIDISCIPLINARY EVALUATION, EXCEPT THAT THE CALENDAR DAYS FROM THE DAY AFTER THE LAST DAY OF THE SPRING SCHOOL TERM UP TO AND INCLUDING THE DAY BEFORE THE FIRST DAY OF THE SUBSEQUENT FALL SCHOOL TERM SHALL NOT BE COUNTED.

### **§ 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 evaluation) are met]. In addition, gifted students may be reevaluated at any time under recommendation by the GIEP team.

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~~(d) The initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the school district receives written parental consent for evaluation or receives an order of a court or hearing officer to conduct a multidisciplinary evaluation.~~ THE REEVALUATION TIMELINE FOR GIFTED STUDENTS WILL BE 60 CALENDAR DAYS, EXCEPT THAT THE CALENDAR DAYS FROM THE DAY AFTER THE LAST DAY OF THE SPRING SCHOOL TERM UP TO AND INCLUDING THE DAY BEFORE THE FIRST DAY OF THE SUBSEQUENT FALL SCHOOL TERM SHALL NOT BE COUNTED.

## GIEP

### § 16.31. General.

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(c) [Every student receiving gifted education provided for in an IEP developed prior to December 9, 2000, shall continue to receive the gifted education under that IEP until the student's GIEP is developed. For a student also eligible under Chapters 14 and 342 (relating to special education services and programs), the student will continue to receive gifted education under that IEP until revised.

(d)] Every student receiving gifted education prior to [December 9, 2000,]  
~~\_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)~~ JULY 1, 2008, shall continue to receive gifted education until the student meets one of the following conditions [exists]:

\*\*\*\*\*

### § 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, present education levels of educational performance, as well as on information in the most recent evaluation.



[(c)] (b) \* \* \*

\*\*\*\*\*

(6) A teacher of the gifted.

[(d)] (c) \* \* \*

\*\*\*\*\*

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

\*\*\*\*\*

(3) A statement of the specially designed instruction and support services to be provided to the student. **FOR A STUDENT WITH A DISABILITY IDENTIFIED AS ELIGIBLE UNDER 34 CFR 300.8 (RELATING TO CHILD WITH A DISABILITY), THIS WOULD INCLUDE ACCOMMODATIONS AND MODIFICATIONS AS PER 34 CFR 300.320(A)(4) (RELATING TO DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM).**

(4) Projected dates for initiation, **ANTICIPATED FREQUENCY, LOCATION** and anticipated duration of gifted education.

\*\*\*\*\*

[(f)] (e) \* \* \*

(f) The school district shall notify teachers who work with a student who has been identified as gifted and in need of specially designed instruction of their responsibilities under the student's GIEP.

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

\*\*\*\*\*

(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].

(4) A GIEP team meeting shall also be convened at the request of a GIEP team member, the parent, the student or the school district.



## EDUCATIONAL PLACEMENT

### § 16.41. General.

\*\*\*\*\*

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

\*\*\*\*\*

(3) Limit the total number of gifted students ~~which~~ **THAT** can be on an individual gifted teacher's caseload to a maximum of ~~[75]~~ **60** 75 students. **BEGINNING JULY 1, 2010, THE TOTAL NUMBER OF GIFTED STUDENTS THAT CAN BE ON AN INDIVIDUAL GIFTED TEACHER'S CASELOAD IS LIMITED TO A MAXIMUM OF 65 STUDENTS.**

(4) Limit the total number of gifted students ~~which~~ **THAT** can be on an individual gifted teacher's class roster to a maximum of ~~{20}~~ **25** students.

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## PROCEDURAL SAFEGUARDS

### § 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. **UNLESS THE SCHOOL DISTRICT AND THE PARENT OF THE CHILD AGREE OTHERWISE, THE CHILD INVOLVED IN THE HEARING MUST REMAIN IN HIS OR HER CURRENT EDUCATIONAL PLACEMENT PENDING THE OUTCOME OF THE HEARING**

(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).~~ **A SCHOOL DISTRICT MAY REQUEST A HEARING TO PROCEED WITH AN INITIAL EVALUATION OR A REEVALUATION WHEN A PARENT FAILS TO RESPOND TO THE DISTRICT'S PROPOSED EVALUATION OR REEVALUATION. WHEN A PARENT REJECTS THE DISTRICT'S PROPOSED EDUCATIONAL PLACEMENT, OTHER THAN THE INITIAL PLACEMENT, THE SCHOOL DISTRICT MAY REQUEST AN IMPARTIAL DUE PROCESS HEARING. IF THE PARENT FAILS TO RESPOND OR REFUSES TO CONSENT TO THE INITIAL PROVISION OF GIFTED**



SERVICES, NEITHER DUE PROCESS NOR MEDIATION MAY BE USED TO OBTAIN AGREEMENT OR A RULING THAT THE SERVICES MAY BE PROVIDED.

\*\*\*\*\*

(l) 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~~ **THE** decision, the ~~panel~~ **HEARING OFFICER** shall indicate the courts to which an appeal may be taken.

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

(1) The Secretary may contract for coordination services ~~in support of~~ **FOR** hearings ~~conducted by local school districts~~ **RELATED TO A CHILD WHO IS GIFTED OR THOUGHT TO BE GIFTED**. The coordination services ~~shall be provided on behalf of school districts and~~ may include arrangements for stenographic services, arrangements for hearing officer services (**INCLUDING THE COMPENSATION OF HEARING OFFICERS**), 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 ~~employee~~ **EMPLOYEE** 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. **THE COMPENSATION OF HEARING OFFICERS DOES NOT CAUSE THEM TO BECOME EMPLOYEES OF THE DEPARTMENT.**

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(p) Impartial due process hearings, appeal panel proceedings and the hearing officers who conduct the hearings and proceedings shall be subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(q) The Department will report to the Board by September OCTOBER 1 each year on the number of impartial due process hearings and appeal panel proceedings held during the previous school year. The report will also provide a Statewide summary of the results of the proceedings HEARINGS in a manner that





will not violate the confidentiality of children and families. The report will also address actions taken during the previous school year and future plans to strengthen the activities of due process hearings and appeal panel proceedings.

(~~r~~) (Q) Upon receipt of a final decision from the A hearing officer, appellate panel or the A court of competent jurisdiction, the school entity DISTRICT shall provide to the Department an assurance of its implementation of an THE order. The assurance shall be filed within 30 school days of the date of the final decision.



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STATE BOARD OF EDUCATION  
PUBLIC COMMENTS RECEIVED ON CHAPTER 16 (SPECIAL EDUCATION FOR GIFTED STUDENTS)

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Mrs.	Kathy	Burd					2352 Sandy Avenue
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PUBLIC COMMENTS RECEIVED ON CHAPTER 16 (SPECIAL EDUCATION FOR GIFTED STUDENTS)

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Ms.	Leslie	Stevens					
Mr.	Raymond	Givler					
Ms.	Elizabeth	Gebert					
	Sandra	Kroah					
Ms.	Kristine	Amtower					
Ms.	Lisa Ann	Smith					
Ms.	Gigi	Gerben					
Ms.	Debbie	Beutler					
Mr.	Eric	Gladfelter					
Ms.	Kelly Lee	Tatone					309 West Keeling Avenue
Ms.	Joan	Wagman					
Mr.	Todd	McIntyre					
Mr.	Spencer	Stevens					
Ms.	Josette	Plank					





STATE BOARD OF EDUCATION  
PUBLIC COMMENTS RECEIVED ON CHAPTER 16 (SPECIAL EDUCATION FOR GIFTED STUDENTS)

	Collegeville	19426	
	Carlisle	17013	
	Enola	17025	
	Hershey	17033	
	Coopersburg	18036	
	Philadelphia	19130	
	Danielsville	18038	
	Danielsville	18038	
	Monroeville	15146	
			<a href="mailto:michelel@epix.net">michelel@epix.net</a>
			<a href="mailto:berdeau@comcast.net">berdeau@comcast.net</a>
			<a href="mailto:Peters6204@comcast.net">Peters6204@comcast.net</a>
			<a href="mailto:robmaria@ptd.net">robmaria@ptd.net</a>
			<a href="mailto:lstevens@swimusa.com">lstevens@swimusa.com</a>
			<a href="mailto:mikeneby@comcast.net">mikeneby@comcast.net</a>
			<a href="mailto:lsobernina@aol.com">lsobernina@aol.com</a>
			<a href="mailto:kmarda@comcast.net">kmarda@comcast.net</a>
			<a href="mailto:lisamt@adelphia.net">lisamt@adelphia.net</a>
			<a href="mailto:kasflerb@aol.com">kasflerb@aol.com</a>
			<a href="mailto:wbeut@aol.com">wbeut@aol.com</a>
			<a href="mailto:egladfelter@palisades.k12.pa.us">egladfelter@palisades.k12.pa.us</a>
	Derry	15627	
			<a href="mailto:jwagman@speakeasy.net">jwagman@speakeasy.net</a>
			<a href="mailto:ToddMcIntyre@AppliedGiftedEd.com">ToddMcIntyre@AppliedGiftedEd.com</a>
			<a href="mailto:rscgstevens@hotmail.com">rscgstevens@hotmail.com</a>
			<a href="mailto:jozet@earthlink.net">jozet@earthlink.net</a>





**Commonwealth of Pennsylvania  
STATE BOARD OF EDUCATION**

August 12, 2008

Mr. Kim Kaufman  
Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17126

Dear Mr. Kaufman:

Enclosed is a copy of final form State Board of Education regulation 22 Pa. Code, Chapter 16 – Special Education for Gifted Children (#006-307) for review and action by the Commission pursuant to section 5(c) of the Regulatory Review Act.

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

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Buckheit".

Jim Buckheit  
Executive Director

Enclosure

cc: Secretary Zahorchak  
Gregory Dunlap, Esq.  
Teresa Colarusso



TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 6-307  
SUBJECT: SPECIAL EDUCATION FOR GIFTED STUDENTS  
AGENCY: STATE BOARD OF EDUCATION

2008 AUG 12 PM 12:03

INDEPENDENT REGULATORY  
REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X 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

HOUSE COMMITTEE ON EDUCATION

MAJORITY CHAIRMAN

8/12/08 A. Edwards  
8-12-08 S. Hancock

James R. Roebuck  
Jesse Stairs

SENATE COMMITTEE ON EDUCATION

MAJORITY CHAIRMAN

8/12 M. Armstrong  
8-12 A. Ryba  
8/12/08 Dr. Helmer

James J. Rhodes

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

July 18, 2008

