



PENNSYLVANIA ASSOCIATION
FOR GIFTED EDUCATION

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Aug. 31, 2008

Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

RECEIVED
2008 SEP - 5 AM 9:30
INDEPENDENT REGULATORY
REVIEW COMMISSION

Dear Ms.Kaufman:

The Pennsylvania Association for Gifted Education, PAGE, supports the adoption of Chapter 16, Special Education for Gifted Children Final Form Regulations. The PAGE Board of Directors feels that the final form regulations have been revised to incorporate critical components essential to ensure a high quality and appropriate education for the gifted and higher ability students. These changes were recommended and supported by PAGE, other associations and gifted advocates. Throughout the process of revising Chapter 16, the Pennsylvania Department of Education officials met with the PAGE Legislative Committee, discussed, adopted and/or modified proposed language submitted by PAGE and worked to develop regulations that will benefit gifted students in Pennsylvania.

PAGE's prime concern has been addressed in the general supervision section of the final form regulations, which now require cyclical, on-site monitoring and more frequent monitoring, when necessary (target monitoring). PDE would be required to develop elements for auditing and criteria to evaluate each element, a procedure for parents to file a complaint, PDE to present the findings to a school district, a process for district response, and a resolution process, which may include corrective action plans and a report from PDE to the State Board by October 1. PAGE fully supports the establishment of this process of complaint.

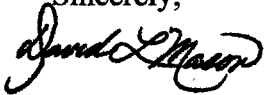
PAGE has been an effective advocate for gifted education for the past 55 plus years and wants to make certain that the language that has been included in these regulations is followed and fully supported by the Department of Education and the State Board. We need strong language in the regulations to guarantee that the requirements of the law are enforced and that all 501 school districts provide for the needs of the gifted learner.

Even though PAGE would like to see the number of students on a case manager's full-time case load reduced to 60 effective upon the adoption of the regulations, and a requirement for a graduation plan, PAGE believes we have reached a point where having these regulations

published and made effective as expeditiously as possible will benefit the gifted students in Pennsylvania. We believe that these final form regulations represent substantial gains and the revisions made by the Department benefit parents and educators.

PAGE asks IRRC to reinforce our position that the next step for implementation within PDE must be to develop a BEC publication on the requirements of Chapter 16 to provide a system of complaints and outlining the process of compliance monitoring. We would also ask that training of district personnel be scheduled and implemented in a timely manner. The gifted children of Pennsylvania deserve to have the law passed and a strong message sent to districts that the needs of gifted students must be met.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Mason". The signature is written in a cursive style with a large, stylized initial "D".

David L. Mason, Ed.D.
PAGE President



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PAGE Board Endorses Final Form of Chapter 16

The PAGE Board believes that the final form regulations have been revised to incorporate a critical mass of the suggestions recommended by PAGE and gifted advocates. Throughout the process of revising Chapter 16, Department officials have met with the PAGE Legislative Committee, discussed and adopted or modified proposed language submitted by PAGE.

HISTORY

The path to the final form regulations has been long and arduous. It dates back to a meeting of the State Board on June 17, 1996 before the adoption of the original Chapter 16. At that meeting, the State Board was discussing the elimination of state requirements in Chapter 14, which exceeded the Individuals with Disabilities Education Act ("IDEA") and the implementing regulations. Because gifted is not an eligibility category under IDEA and the statutory requirements of the School Code are limited, the Committee discussed removing the definition of gifted from Chapter 14 and replacing all other regulations and standards by inclusion of an enrichment program as part of the district's strategic planning. This enrichment program for the gifted would have been outside Chapter 14 and would have eliminated due process and the IEP as part of gifted services and programs. The Standing Committee also discussed changing the definition to include students with IQs of 145 or higher.

From the beginning of consideration of Chapter 16, the Legislative Committee has met with three Secretaries of Education, Secretaries Vicki Phillips, Francis Barnes, Gerald Zahorchak; four Directors of Special Education, William Penn, Fran Warmkoski, John Tommassini, and Linda Rhen; Division Chief Marian Sutter; and Gifted Specialist, Barbara Thrush. PAGE's Legislative Committee also met with Karl Girton, the Chair of the State Board, and Jim Buckheit, Executive Director of the State Board. The process of advocating for Chapter 16 has spanned the terms of seven presidents of PAGE: Franny McAleer, Joyce Clark, Judy Cunningham, Judy Johnston, Revely Paul, Donna Benson and David Mason. In the most recent revision of Chapter 16, the Committee has met with Deputy Secretary, Diane Castelbuono, Special Assistant, Linda Rhen, Elizabeth Stanley Swope, Director of Teaching and Learning Support, Edward Vollbrecht, and Director of Special Education, John Tommasini, Education Policy Director for the Governor's Office, Ian Rosenblum, Special Assistant to the Secretary, Angela Kirby-Wehr, and Special Education Specialist, Rich Brown. The Department has included PAGE in the process of developing the criteria for pilot audits for gifted education and in the training of gifted liaisons.

MOST RECENT ROUND OF CHANGES (in final form regulations)

PAGE's prime concern has been addressed in the general supervision section of the final form regulations, which now require **cyclical, on-site monitoring and more frequent monitoring, when necessary (target monitoring)**. PDE is required to develop elements for auditing and criteria to evaluate each element, a procedure to present the findings to a school district, a process for district response, and **a resolution process, which may include corrective action plans**.

In response to PAGE, the House and Senate Committees, and the IRRC comments of November 8, 2007, the State Board has required the Department to establish a complaint process for parents, an opportunity for amicable resolution, a review process of the complaint by the Department, an individual corrective action plan to address findings of a complaint, and an enumeration by the Department of steps to enforce the corrective action plan. Finally, the number and disposition of complaints and a schedule of the results of monitoring activities shall be reported to the State Board by October 1.

New language has been added to align gifted education regulations with Chapter 14 special education regulations. Where possible, keeping gifted and disability law aligned in the legal process is beneficial. Section 16.22 is revised as follows: *"The school district shall 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 ten (10) calendar days of the oral request."*

In Section 16.22(j)(3), the School District no longer has sixty (60) **school** days to evaluate, but rather sixty (60) **calendar** days after receipt of the consent for evaluation, except during the summer. Language has been added in 16.63 that mirrors pendency under IDEA and prevents the school district from proceeding to due process if the parents refuse to consent to the provision of gifted education. Parallel to the Chapter 14 of state regulations under IDEA, the due process system has been reduced to one tier. Although this may not be ideal, this is an area where the paralleling of gifted and disability special education would appear to be necessary for uniform and effective administration of state special education law. This should ensure the training of special education hearing officers to include gifted law. Language has been added that any gifted student with a disability eligible under IDEA (twice-exceptional) would include accommodations and modifications under that law.

In the final form, the GIEP must include "anticipated frequency and location." Under Section 16.41, the total number of gifted students on a caseload is reduced to 65 students from 75 students beginning July 1, 2010.

All these parent-friendly changes are in addition to other improvements in the proposed regulations.

FIRST ROUND OF IMPROVEMENTS (in proposed regulations)

- The strategic plan must now include a gifted education plan, 16.4(a), which has defined components
- required school district reports to the Department with regard to the delivery of gifted education
- a single IEP for dually-diagnosed students
- a requirement for annual publication of information with regard to gifted
- a definition of mentally gifted as an IQ of 130 or higher, **OR** instead of *and*, when multiple criteria are set forth, 16.21(d)
- a required consideration of deficits in memory or processing speed to prevent exclusion of a student as eligible for gifted special education
- a requirement that the evaluation be completed no later than sixty (60) calendar days after receipt of written consent
- the GIEP must now contain present levels of educational performance
- a requirement that a teacher of the gifted be present at the GIEP meeting and be part of the GIEP team
- a requirement that the school district notify teachers who work with a student that the student is identified as gifted and of their responsibilities for specially-designed instruction under the student's GIEP
- the GIEP team meeting shall be convened at the request of the parent

On August 20, 2008, PAGE Executive Board members learned during a meeting with Dr. Zahorchak, Secretary of Education, that the regulations are currently in the hands of the Independent Regulatory Review Committee (IRRC) and the Senate and House Committees. IRRC, the Senate and the House have heard what they thought was opposition to the final form of Chapter 16 from others from other state organizations. Dr. Zahorchak and his staff suggested that in order to expedite the review process; PAGE should write letters to IRRC and our state legislative leaders letting them know that PAGE supports the final form of Chapter 16. Members of the PAGE Board are currently in the process of getting these letters sent.

If IRRC were to disapprove the final form regulations then the State Board would have 40 additional days to (1) resubmit the final form without changes, (2) resubmit with additional changes, or (3) withdraw the regulations.

If the Committees and IRRC approve, the final step is the Attorney General's review, which must occur within 30 days of submission. To remove the final form regulations from the publications track by disapproval of the Committees or IRRC will, at a minimum, delay implementation until after the beginning of the 2008-2009 school year. The greatest downside risk would be that the Department withdraws the final form regulations and we lose the substantial gains in what is now final.

The final form regulations are a compromise of PAGE's requests.

- *A 60 student maximum caseload effective upon adoption of the regulation.* PAGE will continue to seek clarification of the full-time teacher and proportionate reduction language related to 65 students.
- *The regulations do not include a requirement for a graduation plan.* PAGE will seek to have a graduation plan included in the revised guidelines.
- *Expansion of the notice section of the GIEP 16.61(e) to include the complaint process.* PAGE will ask that PDE include in the BEC on monitoring notice to the parents of the complaint process.

What was not achieved directly in the final regulations, PAGE will seek to have PDE address in the guidelines, Basic Education Circular, or will assist the affiliates in addressing through the complaint process. PAGE believes we have reached a point in the regulatory review process where it is in the best interest of our members to, as expeditiously as possible, have the regulations published and made effective. We believe it is effective advocacy to recognize the substantial gains and revisions made by the Department that benefit parents and educators.