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September 9, 2008

INDEPENDENT REGULATORY
REVIEW COMMISSION

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Attn: Arthur Coccodrilli, Chairman
Re: Final Regulation 6-307, Gifted Education (IRRC #2635)

Dear Chairman Coccodrilli;

My name is Todd McIntyre. I am the parent of two identified gifted students attending public school in Methacton School District. I work as a special education advocate with parents and gifted students. I also train district personnel for ACT48 credit on gifted educational issues. I testified before both the State Board of Education at their public hearing in King of Prussia and in Harrisburg to the House Standing Committee on Education regarding this proposed regulation. My input from those proceedings is reflected directly in the final form revisions.

I am a former Board member of the Pennsylvania Association for Gifted Education (PAGE), PAGE's Parent of the Year for Outstanding Support of Gifted Programs for 2004, and a member of the National Association of Gifted Children (NAGC). I will be serving as a national Board Member of Supporting the Emotional Needs of the Gifted (SENG) beginning in January, 2009.

Last year I attended over thirty GIEP meetings and five Mediation Hearings in districts throughout the Commonwealth as an advocate. I also conducted full day training seminars for ARIN IU and Central Susquehanna IU for ACT48 credit. Teachers have also received ACT48 credit for attending evening gifted education presentations I have conducted at local district parents group meetings throughout the Commonwealth.

I reviewed the language of the proposed regulation and the comments made by the State Board of Education regarding their decisions about the proposed final form regulatory language, I have several concerns about the regulation as presented by the State Board of Education. These concerns are:

1. A lack of awareness by the State Board of Education (SBoE) about fundamental situations which have a profound negative effect on the regulated community
2. Implementation of this revised regulation is dependent on the Pennsylvania Department of Education (PDE) reestablishing enforcement and advisory processes, which did not work previously, and are again dependent on the PDE providing resources and staffing for gifted-specific activities which they have never done.
3. The regulation establishes no timeline for the PDE to create these advisory, and enforcement processes
4. There are inconsistencies, including mutually-exclusive requirements in the revision,

I provide a full description of each of these issues along with citations to the proposed regulations and supplementary data in an included attachment to this letter.

September 8, 2008

Re: Gifted Ed Regulation 6-307
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In my opinion, the State Board of Education should recall this revised regulation and address these issues, specifically clarifying key aspects of the regulation itself. The Board should consider the willingness and ability of the PDE to accept its regulatory role in a timely fashion. This recall could be done in an expedited fashion, if the State Board of Education so chooses.

The regulated community in this case, in addition to the educational professionals, districts, and parents, includes approximately 68,000 students. These students currently are exceptional under Pennsylvania educational regulations. The proposed regulations provide their only safeguards to receive a free, appropriate public education.

The signatories to this letter support what I am requesting. These people include several current Presidents of PAGE Local Affiliate Chapters - the people who deal with these issues day-in and day-out, Past Presidents of PAGE Local Affiliates, the former Pennsylvania Department of Education Special Education Adviser for Gifted, a PAGE Neubler-Pregler Award winner for Lifetime Achievement, a mayor and parent of a gifted child, and many parents of gifted children from districts throughout the Commonwealth.

Absent any action taken by the State Board of Education which meaningfully addresses the concerns listed above, I – and those who have signed this - recommend the Independent Regulatory Review Commission **disapprove** the proposed final regulation #6-307, in the interest of the well-being of the regulated community.

Sincerely,

Todd McIntyre

cc: State Board of Education
House Standing Committee on Education, Chairman and Members
Senate Standing Committee on Education, Chairman and Members
Pennsylvania Department of Education, Secretary of Education

Additional Signatories:

Barbara Thrush, PDE/Special Education Adviser for Gifted, 2001-2006 (retired)
Carolyn Kottmeyer, Downingtown School District
Faye Shapiro, Lower Moreland School District
Tim McGuire, Big Beaver Falls Area School District
Margaret McGuire, Big Beaver Falls Area School District
Bridget Huerbin, City of Pittsburgh School District
Wendy Rakus, Blackhawk School District
Paul Rakus, Blackhawk School District
Stephen Wiley, Palisades School District
Sharon Wiley, Palisades School District
Ray Givler, Camp Hill School District
Sherry Bowman, Camp Hill School District
Joseph Brouch, North Penn School District
Jay Clark, Penn Manor School District
Alan Fiermonte, Colonial School District
Kristie McIntyre, Methacton School District
Barbara Cousins, Central York School District
Karen Sauter, Saucon Valley School District
Ethan Sauter, Saucon Valley School District
Adelle Bergman, North Penn School District
Jim DeFillippis, North Penn School District
Vasanji Narang, Lower Merion School District
Donna Connor, Chichester School District
Carol Connolly, West Chester School District
Julie Pickholz, Abington School District
Michael Ginsberg, Abington School District
Ronna Dewey, Downingtown School District
Marilyn Thomas, Hempfield School District

Attachment:

1. A lack of awareness by the State Board of Education of common situations which have a profound, negative affect on the regulated community

The State Board of Education's explanation for its decision to not clarify key concepts through the regulation revision process reveals a fundamental lack of understanding on its part regarding the needs of the regulated community. Their lack of understanding is revealed in these comments:

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. cite: [cite page 22]

...
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. [cite: Page 25]

...
The term "meaningful benefit," has been defined repeatedly by the courts, and therefore, is unnecessary to include in regulation [cite: Page 33]

Unfortunately, there is little, perhaps no, evidence in the education community that the term "present levels of educational performance" as it applies to the gifted student's educational plan, is clearly understood by educators or, more importantly, their parents.

In my experience training educators for ACT48 credit regarding gifted education, the term "present levels of educational performance" is the least well understood requirement of an appropriate GIEP. Last year, I attended GIEP meetings in over twenty-five districts. In each case, the student's PLEP section was deficient and the other members of the GIEP Team, the teachers and administrators, were unsure how to conduct this testing. While training districts or teachers I expect to spend about one-third of my time addressing this specific issue. This is the case despite the fact that the term is, per the comment from the State Board of Education, self-explanatory.

Also, as a special education advocate who works with parents, attends Gifted IEP meetings and Mediation Hearings, I have personally reviewed GIEPs from dozens of districts. The following shortcomings are commonly found in the present levels of educational performance section of GIEPs:

- It is entirely missing
- It consists solely of a checklist of gifted characteristics
- It contains report card grades and PSSA scores and thus lacks any objective measurement of what the State Board of Education says is self-explanatory

This so-called "term of art" requires clarification in the regulations as does the concept of goals. Recent findings from Due Process Hearing Officers and the opinions of Appeals Panel Members illustrate this need.



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Listed below are excerpts from a sampling of recent Appeals Panel decisions which illustrate a widespread, systemic lack of understanding by Districts regarding their obligations under Chapter 16:

The District additionally argues, erroneously, that the Parents praised teacher efforts and Student's positive state of mind, and thus established Parental approval of the GIEP and placement. We heartily disagree. There is no authority cited by the District, nor does any exist, supporting their position that a parent's positive comments about a child or the child's teacher reforms or ratifies an inappropriate program and placement ... the GIEPs provided no measurable goals or objectives against which to gauge progress or determine present levels of achievement. Consequently, inappropriate GIEPs resulted and remain. The District's Exceptions are dismissed.

North Penn SD - <http://odr.pattan.net/ODRapps/App1737.pdf>

The District's GIEPs for the 2004-2005 and 2005-2006 school year are inappropriate. In both the 2004-2005 GIEP and the proposed 2005-2006 GIEP, the annual goals are in no way measurable: the student "will be introduced to" and will be "given opportunities to explore" are simply not measurable. Likewise, as the hearing officer himself points out, the measurability of many of the short-term learning outcomes is flawed when the evidence of learning is "will be exposed to" or "will participate in".

Butler SD - <http://odr.pattan.net/ODRapps/App1654.pdf>

The GIEPs for the previous year were better than the standard cookie-cutter template in some districts in that it provided for variation according to a limited checklist within a fixed pull-out group menu. Nevertheless, neither variety fits the requirements of the Chapter 16 regulations and related case law ... For example, the District would benefit from assistance with goals and short term learning outcomes that focus on the individual Student's intended progress, not the theme-based program that may well be part of the specially designed instruction to achieve said goals/outcomes.

Penn Manor SD - <http://odr.pattan.net/ODRapps/App1604.pdf>

A sample listing of the shortcomings in this case are: failure to consistently include regular education teachers in the GIEP meetings, failure to give Parents a notice of parental rights/procedural safeguards, failure to convene the GIEP meetings at least annually, and failure to include substantive information and prescription for progress within the GIEP documents themselves. Importantly, the GIEPs for this Student are woefully inadequate. They are sparse documents which provide little or no useful information for the development of meaningful educational progress for the Student.

North Schuylkill SD - <http://odr.pattan.net/ODRapps/App1598.pdf>

The District cites to a number of Pennsylvania decisions that speak to gifted education in Pennsylvania. We agree that the cases cited by the District are persuasive, but they persuade us that the District is in error in this case.

Methacton SD - <http://odr.pattan.net/ODRapps/App1407.pdf>

Please note the systemic nature of the problems highlighted by these cases. In each of these situations, the district had clarifying information regarding its regulatory obligations from the Pennsylvania Department of Education in the form of the Basic Education Circular for Gifted (now lapsed) and the *Gifted Guidelines*. And yet the district failed to meet this critical education metric.

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Furthermore, the term “meaningful benefit” as it applies to gifted students has not been, and is not now, a well-defined or settled issue in the courts. Here is one explanation of “meaningful benefit” from the Pennsylvania ODR Appeals Panel

Finally, as the exceptions acknowledge, the substantive standard for FAPE is the same for Chapter 16 (education of gifted children) as it is for IDEA/Chapter 14 (education of children with disabilities) – “reasonably calculated to yield meaningful benefit.”⁴⁰ As we have previously pointed out, this standard, which is not particularly high for students with disabilities,⁴¹ is floor based rather than ceiling-based; thus, it represents an even more relaxed criterion for gifted students. {emphasis added}

cite: <http://odr.pattan.net/ODRapps/App1564.pdf>

Of particular concern is the lack of consideration given for the rate at which these students learn when considering the question of “meaningful benefit”. This lack of consideration directly affects the question of whether the gifted student receives a free, appropriate public education

Pennsylvania Appeals Panel member Perry Zirkel has published extensively on the subject of “meaningful benefit” for gifted education. My understanding of Mr. Zirkel’s research is that, absent clarifying language found in a regulation, the standard used to determine “meaningful benefit” for gifted remains “much more relaxed” – whatever that means.

The standard called for in the proposed revisions does not translate from Federally-based IDEA/Chapter 14-based concepts to that which addresses the needs of the regulated community as identified and defined by the Commonwealth. So, the courts look to the regulation for guidance. Therefore, the standard for this regulated community must be defined by regulation.

Lastly, the State Board of Education exhibits through its comments an unfounded faith that the PDE, by creating a second Basic Education Circular (BEC) for Gifted Education, will clarify the requirements of the regulation and thus protect the educational rights of the regulated community. The PDE has not fulfilled similar commitments in the past.

This BEC-based approach did not work the last time it was tried in 2003. There is no reason provided by the State Board of Education or the Pennsylvania Department of Education for the regulated community to believe that an identical approach will work this time. The regulation itself needs to be recalled, clarified, and resubmitted, not explained through a BEC.

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2. Implementation of the revised regulation is dependent on the PDE reestablishing processes which did not work previously and is dependent on the PDE providing resources and staffing for gifted-specific activities.

The SBoE comments:

... 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. [cite: Page 7]

There are three main concerns with this explanation of the proposed regulatory revision. These are:

1. The PDE compliance monitoring program for gifted education addresses issues of procedural compliance rather than content issues.
2. The PDE itself does not have the resources in-place, nor are there any apparent plans for the PDE to increase resources specific to the regulated community, to meet the requirements of the regulation.
3. The timeliness with which the Complaint Process can be developed and implemented, given the PDE's history of allocating resources specific to the needs of the regulated community, requires clarification.

My school district, Methacton SD, was part of the initial Gifted Compliance Monitoring program that took place in 2006. Soon after that monitoring was completed I spoke with Richard Brown at the PDE, Bureau of Special Education, regarding the overall compliance monitoring program. Mr. Brown was in charge of the PDE's compliance monitoring process at the time and remains the Bureau of Special Education's point-of-contact for gifted-related issues. Per Mr. Brown, the PDE's Compliance Monitoring program looks at procedural compliance only.

Given this focus on procedures and not examining content, the lack of properly defined present levels, appropriate goals, or individualization in the district's GIEPs would not matter in terms of the compliance monitoring. For example, under the current and proposed Compliance Monitoring program ten (10) gifted children could have GIEPs with identical goals, short term learning outcomes, and specially designed instruction, and that situation would not trigger any "red flags" during the compliance monitoring process – the district would be found to be compliant when, in fact, it is not.

Also, the compliance monitoring program itself is not of sufficient scope to meaningfully benefit the regulated community. Compliance monitoring takes place in only 10 out of 501 districts per year. Also that process also reviews only ten gifted student records per district. That translates to a total of only 100 gifted student records reviewed for procedural compliance out of a population of over 68,000 gifted students or 0.15% of the total regulated population.

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One issue is that the State Board of Education expects that the Pennsylvania Department of Education can provide meaningful compliance monitoring when fewer than one-fifth of one percent of the regulated community's individualized educational plans are reviewed per year.

A further concern is that, given the size of the regulated community, which consists of over 68,000 students plus educators, parents, and administrators, it is not realistic to think that the PDE can or will dedicate the staff or resources necessary to meet its regulatory obligation.

It is worth noting the cost of the current Compliance Monitoring program and the timeliness with which it was implemented. The current compliance monitoring program, per the Regulatory Analysis, costs \$2,100 per monitored district for a total program cost of \$21,000 per year. So the PDE's commitment to monitoring the GIEP process has an approximate carrying cost of only \$0.30 per gifted student per year.

Yet, the PDE took approximately five years to commit to compliance monitoring for gifted education. It took five years for the PDE to develop a model program and put in-place a pilot program. The regulated community has every reason to be skeptical of PDE claims that it will expand or extend in either funding or staffing this program of its own accord. The regulated community has every reason to expect the SBoE to share our skepticism.

For comparison, the Bureau of Special Education's staffing ratio for fulltime employees to gifted students would be approximately *one full time employee per 204,000* gifted students if the PDE had one fulltime employee working on GIEP issues. The Bureau of Special Education currently allocates 1/3rd of a Full-Time Employee's time to GIEP-specific issues. Per Ms. Patricia Hozella, Assistant Director, Bureau of Special Education, the PDE/Bureau of Special Education staffing results in a ratio of approximately one full-time employee per 8,500 special education students (as defined under Chapter 14).

Shockingly, the Pennsylvania Department of Education-Bureau of Special Education allocates less than 1/30th of its full-time employee resources to address the needs of over 1/5th of the Commonwealth's identified students with exceptionalities. This regulated community comprises the single largest group of uniquely identified and protected students in the Commonwealth, yet the PDE has not had, nor does it have any staff solely dedicated to understanding, supervising and/or monitoring the programs which affect this population. This has been the case since Chapter 16 was first adopted in 2001.

Further concerns about staffing include the "State Special Adviser for Gifted". This position was previously held by Ms. Barbara Thrush and, most recently, Dr. Jacquelyn Fowler. The position is open and advertised and interviews are being held. However, that position is budgeted to spend only half its time on issues related to students in the regulated community. The other half of the position is budgeted to work with the Governor's Schools. Also, that position works solely in an advisory capacity to the regulated community and does not have enforcement capabilities.

In fact, having asked several times over the past three years, there are not, to my knowledge, any defined, documented procedures within the PDE-Bureau of Special Education on how to handle, investigate, and escalate non-compliance with gifted-specific GIEP issues. Based on the PDE's history with this regulated community, it is not realistic for the State Board of Education - or IRRC Commissioners - to expect that the revised regulations, as-proposed, will benefit the regulated community to the extent indicated by their comments.

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3) No time line is established for the PDE to create these clarifying processes

The proposed regulations call for PDE to create clarifying documents to ensure that the needs of the regulated community are met. This approach was also adopted when gifted education became its own, distinct regulation in 2000-2001 as Chapter 16. Please keep in mind that “giftedness” has been considered an exceptionality requiring individualized educational planning under Commonwealth regulations and, in theory, part of the PDE’s responsibility for over fifty years. This was not new territory for the PDE.

The PDE took more than two years to publish its “BEC, Special Education for Gifted Students” after Chapter 16 was adopted and published. The publish date for the BEC was March, 2003. Further clarification of this BEC and Chapter 16 was released the following year in the PDE’s *Gifted Guidelines* in the Spring of 2004. Here are links to each document:

Basic Education Circular, Special Education for Gifted Students
(lapsed, June 2007)

<http://www.pde.state.pa.us/k12/cwp/view.asp?A=11&Q=91423>

Gifted Guidelines - 2004

http://www.pde.state.pa.us/gifted_ed/lib/gifted_ed/Gifted_Guidelines.3.pdf

Based on the PDE’s past performance, one can expect a two-to-three year delay in addressing core concerns, which means that children in elementary school could be in high school by the time the regulation is clarified.

It is in the interest of the regulated community for the State Board of Education to address these implementation concerns and set clear, time-based expectations for publication of these documents in the revised regulations.

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4) Inconsistencies, including mutually-exclusive requirements, within the proposed regulation itself

The regulation requires further revision to clarify language and conclusions which are not supported by the rationale provided by the State Board of Education

These areas include:

1. GMDT / GIEP Team Determination
2. “Teacher of the Gifted”
3. Inclusion of Licensed Psychologists
4. Timeframe for Reconvening of a GIEP Team Meeting
5. Graduation Planning

1. GMDT/GIEP Team Determination:

Per the commentary provided by the SBoE to the proposed Regulation, the Gifted Multidisciplinary Team (GMDT) determines the eligibility of the student to receive gifted educational services. The comment is excerpted here:

The regulation clarifies that the GIEP team determines eligibility for Ch. 16 upon review of the written report of the Gifted Multidisciplinary Team. [cite: page 14]

Yet, the proposed regulation states this:

Section 16.22(i) The GMDT shall determine eligibility as defined in 16.1 and 16.21 (relating to definitions; and general).

Identification and eligibility are the first issues encountered when determining the child’s educational status. Clarifying this core issue alone should be sufficient cause for the SBoE to withdraw its regulation and revise as appropriate.

2. Teacher of the Gifted

The SBoE Comments:

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. [cite: page 4]

...

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. [cite page 46]

The phrase “teacher of the gifted” is not a well-defined position under any Pennsylvania educational regulation nor is “teacher of the gifted” a certificated position.

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While the term “teacher of the gifted” might be considered by the SBoE as either a “term of art” or self-explanatory, districts are free to interpret the prepositional phrase “the gifted” as referring to an individual student or, possibly, referring to a teacher who is responsible for the district’s gifted educational program which consists solely of identified gifted students – if the district has such a program and, further, if that position is staffed.

As described in the regulation, the “teacher of the gifted” can be designated as such by the district’s Local Education Agency (LEA) five minutes before the GIEP meeting and still satisfy the regulatory requirements.

Because there is no defined or verifiable requirement for certification or in-servicing regarding gifted education, the parent is effectively precluded from inquiring as to the “teacher of the gifted’s” training or experience involving gifted educational issues, and would not know those facts unless the teacher or district volunteers such information.

Under the current regulation there is no requirement for “teachers of gifted” to have anything other than a Pennsylvania teaching certificate. Under the proposed regulation the “Teacher of the Gifted” is not required to have any specific certification or specialized training.

Further, the regulations specify that the district create a plan which meets the gifted student’s needs. The lack of specificity with regard to the ability of the student’s teachers to create and/or implement a plan requires regulatory clarification.

The only mention of training specific to gifted deals with an in-servicing requirement to occur once every three years. Districts are also required to file ACT48 training plans which comply with the provisions of Chapter 16,5 c3. This information is available in the PERMS database but after speaking with the PDE on several occasions, I found no evidence that district-submitted PDE-required ACT48 training plans are actively vetted by the PDE against Chapter 16 training requirements prior to their approval and subsequent disbursement of the initial allotment of funding.

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3. Inclusion of Gifted Evaluation by Licensed Psychologists

Gifted evaluation is the first step towards identification of an exceptionality. The SBoE provides this comment:

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.*

School psychologists are not “licensed” they are “certified”. The meaningful difference between certification and licensure is that licensed psychologists are required by law to follow a Code of Ethics. Licensed psychologists are subject to discipline and loss of licensure through the Licensing Board of Psychology. Certified school psychologists are only required to follow the generic Code of Conduct that all educators must follow.

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Also, the Code of Conduct followed by certified school psychologists is not psychologist-specific. Enabling licensed psychologists to perform gifted evaluations for the regulated community provides a form of consumer-protection. The consumer, in this case, is a gifted child.

The SBoE provides a rationale that is confusing, and based on a fundamental mischaracterization. In my opinion, the SBoE, through its comments and lack of action, excludes a resource that would benefit the regulated community.

4. Timeframe for Reconvening of a GIEP Team meeting

The SBoE comments:

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)(l) 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. Page 54

The SBoE fundamentally misses the point of this comment. The answer given addresses situations involving initial identification, not reconvening a GIEP Team meeting for an already identified student.

It is commonplace for parents of gifted students to ask to reconvene a GIEP Team meeting at other times to discuss their child's educational progress being made under the current plan and, if indicated, seek to modify the gifted student's GIEP.

As there is no regulatory requirement to reconvene the GIEP Team within any specific timeframe districts are able to deal with gifted educational situations on a non-prioritized basis. Parents ask to reconvene the GIEP Team in October to address a concern and can be made to wait until March or April.

The only option available in a situation where the parent waits for two months or longer is for them to file for Mediation and/or Due Process. If the State Board of Education favors mediation and due process as the means to ensure a timely response, they should indicate as much explicitly.

It would be advisable, however, to notify the Office of Dispute Resolution that a large contingent of this 68,000+ member regulated community will be advised to seek its services. That way the ODR can staff appropriately for the coming school year.

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5. Graduation Planning

The SBoE comments:

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)."

The SBoE fails to note in its response that it is common for members of the regulated community to be put in situations where the gifted student is unable to meet district graduation requirements.

This occurs, primarily, from the gifted student completing several high school level classes while enrolled as a middle school student but it is commonplace for district policy to prevent middle school students from receiving graduation credit.

The net effect of this situation is for the gifted student to be put into an untenable position. They have exhausted the district's curriculum, but failed to meet its graduation requirements in doing so.

This situation requires regulatory clarification for the benefit of the regulated community.

Cites:

State Board of Education - Final Form 6-307 Regulatory Analysis

<http://www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2635/AGENCY/Document-10369.pdf>

Chapter 16 – PA Bulletin

<http://www.pabulletin.com/secure/data/vol30/30-50/2124.html>