

2635

Inc.

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From: Schalles, Scott R.
Sent: Monday, September 15, 2008 9:29 AM
To: Gelnett, Wanda B.
Subject: FW: IRRC #2635 - Conflict between Agency Response and Final-form Reg

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Public comment on 2635

-----Original Message-----

From: James Clark [mailto:JayClark@jamesclarklaw.net]
Sent: Sunday, September 14, 2008 10:40 AM
To: Kaufman, Kim
Cc: Schalles, Scott R.
Subject: IRRC #2635 - Conflict between Agency Response and Final-form Reg.

Dear Mr. Kaufman and Mr. Schalles:

In drafting comments to present to the Commission, I discovered a contradiction between the agency's response to a comment and its proposed final-form regulation.

The response that I reference is on at the bottom of page 14 under Section 16.21 and is as follows:

The regulation clarifies that the GIEP team determines eligibility for Ch. 16 upon review of the written report of the Gifted Multidisciplinary Team. (emphasis added)

However, the agency contradicts itself in Section 16.22(i) of the final-form regulations, which is as follows.

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

Further, the agency has proposed in its final-form regulation to delete Section 16.32(a) which reads, in part, as follows:

16.32(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.]

As you can understand, who makes such determination of being gifted is a fundamental element of the Special Education for Gifted Students regulation. This contradiction in the agency's official comments and the final-form regulations should be resolved to provide clarity and to avoid confusion.

Would it be for the agency to resolve this contradiction? How does the Regulatory Review Act permit such corrections?

If the contradiction is not resolved before the Commission is asked to act, how will this inconsistency be presented for consideration to the Commission members?

Thank you.

9/15/2008

Sincerely,

James R. Clark, Esq.

9/15/2008