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INDEPENDENT REGULATORY
REVIEW COMMISSION

From: Schalles, Scott R.
Sent: Tuesday, September 16, 2008 9:41 AM
To: Gelnett, Wanda B.; Wilmarth, Fiona E.
Subject: FW: IRRC 2635 - Gifted Education

public comment on 2635

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

From: Todd McIntyre, Applied Gifted [mailto:ToddMcIntyre@AppliedGiftedEd.com]
Sent: Tuesday, September 16, 2008 9:35 AM
To: Kaufman, Kim
Cc: Schalles, Scott R.
Subject: Re: IRRC 2635 - Gifted Education

Mr. Kaufman,

Attached are additional comments regarding IRRC 2635, Gifted Education. They provide the Commissioners and analyst additional data which, I believe, the Commissioners would find useful as they make their decision.

I plan to attend the meeting and explain why I believe that, as-proposed, the regulations do not benefit the regulated community for reasons I've explained in my prior comments.

Please contact me if you, Chairman Coccodrilli or any other person have questions regarding the attached document.

Sincerely,

Todd McIntyre
(484) 831-5394

September 15, 2008

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA

Attn: Arthur Coccodrilli, Chairman
Re: IRRC 2635 – Gifted Education

Dear Chairman Coccodrilli

This comment explains additional issues for the Commission to consider based on public comments made.

Per their public comment to the IRRC requesting the Commissioners approve the proposed regulation, the PAGE Executive Board said the following:

“... On August 28th, 2008, PAGE Executive Board Members learned during a meeting with Dr. Zahorchek, Secretary of Education, that the regulations are currently in the hands of the Independent Regulatory Review Committee [sic] (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. Zahorchek and his staff suggested that in order to expedite the review process; PAGE should write letters to the 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.
[emphasis added]

PAGE did as the Secretary of Education suggested. The justification the PAGE Board provides for its acceding to the suggestions made by the Secretary of Education and his staff is worrisome. The PAGE Board states in its final form regulations comment:

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

... [if not approved] delay the implementation until the beginning of the 2008-2009 school year. The greatest downside risk would be that the Department [sic] withdraws the final form regulations and we lose the substantial gains in what is now final.

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My observation is this: If a slight delay in approval results in a clear, meaningful set of regulations, then that delay seems appropriate. At the time the PAGE Board submitted its letter to the IRRC there was no chance that the final form revisions would be effective at the start of the "2008-2009 school year".

At present, were the proposed final form regulations approved as-is, the revisions would be published and take effect in late October or early November, 2008. As a practical matter, a publication date of January or February, 2009 would not be negatively impact the regulated community.

The downside risk feared by PAGE - "the loss of substantial gains in what is now final" - is somewhat dubious. Several of the gains touted by the PAGE Board as "substantial" are theoretical in nature, they do not yet exist. Given the Pennsylvania Department of Education's history of committing staff and resources with this regulated community - it's questionable that these gains will exist at all.

For example, one benefit cited was the reduction of teacher caseload. That provision would not take effect until after the 2010 school year. This change results in a caseload reduction of approximately 12%. While beneficial to teachers, and perhaps gifted students, this gain is hardly "substantial." In fact, the existing regulations allow teachers to be given sufficient time to prepare and implement plans, if the GIEP Team chooses to include those provisions.

As for the promise by the PAGE Board that it will "strive" to make the proposed, flawed regulation better through a subsequent advocacy effort – I applaud the PAGE Board for the sentiment and as a PAGE member I will support that effort, however the PDE does not have a history of addressing gifted educational issues in a timely manner or taking its obligations to gifted students seriously through staffing or budget.

This process allows the State Board of Education up to forty (40) days to make needed revisions and clarifications to its proposed regulation, and resubmit this matter to the IRRC if the proposed regulation is disapproved. The State Board of Education seems to have preemptively ruled out this option.

The IRRC Commission should consider representations made by the State Board of Education in this regard as the Commissioners gauge the support this proposed regulation has within the community.

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The PAGE Board issued this official statement made on July 25, 2008 through its public email system, PAGEList. PAGEList is available to both PAGE members and members of the public who subscribe to it. This is an official PAGE Policy notification:

PAGE: Chapter 16 reauth process
From: **pagelist-owner@list.edudirectories.com** on behalf of **PAGE** (page16@ptd.net)
Sent: Fri 7/25/08 4:21 PM
To: PAGEList (PAGElist@list.edudirectories.com)

The PAGE Board is concerned about the validity of some recent information about the re-authorization process of Chapter 16 that is being disseminated.

You need to be aware that the House and Senate Education Committees and IRRC have the ability to vote on the proposed regulation only as a whole.

According to Jim Buckheit, executive director of the State Board of Education, “an up or down vote of the final form regulations is the only possible vote at this time in the regulatory process. No changes except technical ones can be made.” **If either of the legislative committees or IRRC votes against the Chapter 16 final form regulations, the whole process will begin again.**

All of the positive changes and gains, such as compliance monitoring, complaint process, changes in identification, notification, case load, etc. that have been written into this round of revisions will be lost. Although PAGE recognizes that we have not gotten all of the changes in the final form regulations that we wanted, we believe that we have made much progress in the changes that are in the final form of Chapter 16.

We do not want to lose these important steps forward, **since according to Jim Buckheit, several years may pass before we get another opportunity.**
[emphasis added, paragraph breaks added]

Given this information and the pattern shown by the PDE and the SBoE, PAGE's support for these regulations seems – to me - to be based more on fear of losing supposed gains - gains which history has shown have a high likelihood of not materializing - than on the benefit of this revision, as-proposed, has to the regulated community.

What is left unmentioned in the PAGE Board's letter to the IRRC are the numerous flaws and omissions contained in the proposed regulation itself. These are flaws and omissions which have a direct impact on two members of the regulated community not considered to any meaningful degree in the PAGE Board's letter: the gifted students and the parents of those students.

These flaws and omissions are detailed at length in my public comment to the IRRC recommending the Commissioners disapprove the proposed regulation.

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Both the PAGE Board comment and my comment can be found at these links: :

PAGE's initial final approval comment to the IRRC:

http://www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2635/COMMENTS_FINAL/Document-10511.pdf

My AppliedGiftedEd final approval comment to the IRRC with signatories

http://www.irrc.state.pa.us/Documents/SRCDocuments/Regulations/2635/COMMENTS_FINAL/Document-10549.pdf

Also absent from any of PAGE's present decision-making is an understanding of what happened the last time Chapter 16 was considered by the IRRC. Chapter 16 was promulgated in late 2000, after a lengthy discussion and debate. That debate ended, in part, when PAGE agreed to stop advocating at the request of then Secretary of Education Eugene Hickock. PAGE stopped its advocacy efforts, and Chapter 16 was approved and published in December, 2000,

One month after Chapter 16 was passed, in January 2001, the PAGE President at the time, Judy Johnson, wrote to Secretary of Education Eugene Hickock. Here is an excerpt of her letter which was published on PAGE's website:

The PAGE Board met on January 19th and 20th, 2001, and the unanimous consensus was that the reorganization[of the PDE] is a symbolic and substantive retreat from the protections and rights of special education for the gifted

...

Yet, the PAGE Board asked [its] members to trust PDE administrators to make Chapter 16 work. The words in the regulations read well; the dialogue offered us was pleasing to our ears. We are now at a major crossroads. The Department's actions, planned actions and inactions have eroded our trust in its commitment to gifted special education. [emphasis added]

The full letter can be found here:

<http://web.archive.org/web/20010219210644/www.penngifted.org/hickockltr012601.html>

Witnessing the current regulatory approval situation and the comments from the State Board of Education and the Pennsylvania Department of Education I'm reminded of noted advocate, Yogi Berra, and his comment: "It's déjà vu all over again."

In February, 2001 – only two months after Chapter 16 was passed and less than three months after the community stopped advocating – having received the full assurance from the PDE that the expressed concerns about compliance, complaints, and other issues were unfounded - PAGE had this announcement on their main web page:

Friends of the Gifted,

ONCE AGAIN WE NEED YOUR IMMEDIATE HELP AND SUPPORT.

Recent Chapter 16 PDE initiatives are alarming. Repeated efforts have been made to speak with Dr. Fran Warkowski, Special Education Director, to discuss our immediate concerns. Dr. Warkowski will not speak directly with us, but instead delegates all calls to her to a subordinate. She informed us that she will no longer deal personally with our phone calls. The second hand message we have received is that she believes PDE has done what PAGE requested.

Her belief is dead wrong for all the reasons stated in the attached letter of January 26, 2001, which was sent via overnight mail, to Dr. Eugene Hickok, Secretary of Education.

As of this writing, we have received no response. As you know, PAGE has been repeatedly assured by officials of both the State Board and the Department of Education in writing and orally that they were committed to the same basic model of special education for the gifted as for the disabled with some variations driven by federal law. Removing the monitoring function from special education was not a change that was ever proposed by PDE.

NOW is the time to Act! Call, mail, fax or email Dr. Hickok. Also contact the following individuals asking them to establish a meeting with Dr. Hickok and members of the PAGE Board to address our concerns. Convey to them the urgency of these matters. Because we are expecting a response from Dr. Hickok, please check our website for any updates so that you will be advised of any responses we may receive.

[emphasis in original]

Source: <http://web.archive.org/web/20010219153036/www.penngifted.org/>

Indeed. The decision in 2000 by the regulated community to “go along” with the approval process and believe what it was told by the Secretary of Education led to over seven years of inadequate regulations, no enforcement, promises made regarding revisions, and forgotten, a Basic Education Circular that was created, not enforced, and allowed to lapse, a PDE that fails on a consistent and predictable basis to allocate sufficient resources to address the needs of the gifted education community.

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The proposed regulation would require the PDE to increase its staffing in the Bureau of Special Education's for gifted education issues approximately twenty-seven fold. Is the Secretary of Education prepared to commit to that budget? Has the PDE thought through the implementation issues of the regulations it has spent two years revising? Given the history, this community is accustomed to hearing pleasant talk, but seeing no action.

In this case, both the PDE and the SBoE are claiming that they will simply withdraw the regulation, rather than make use of the regulatory processes available to it. That is their choice.

If that is the case, as a parent of two gifted children in public school – having spent the last seven years under the current regulations, and with the prospect of facing the next seven years under the proposed regulations before my younger child graduates – I know that the proposed regulations will not benefit the regulated community.

Should the IRRC disapprove the proposed regulations, the gifted educational community would not be negatively affected. In my view, and those of the many signatories to my letter, the current regulations are preferable to the proposed regulations.

We understand that, upon disapproval, the matter is referred back to the State Board of Education and the Pennsylvania Department of Education, the regulated community is fully prepared to have candid discussions with both agencies and ask that they reconsider their public statements, make minor revisions, and resubmit the revision to the IRRC.

Chapter 16 protects over 68,000 students. These students represent the largest uniquely protected group of “students with exceptionalities” in the Commonwealth. It's shocking to think that the two agencies tasked with establishing and protecting these students rights would seek support for their proposed regulations not on the merits of the proposed regulations themselves, but through, for want of a better word, fear.

In the building where the IRRC Commissioners meet, the PDE employs over 800 people, yet allocates only one-third of a full-time employee to address the needs of over 68,000 children. As of this date, they advertising for a position which may allocate up to one-half of its time to the issues covered by these proposed revisions. Today, the PDE is prepared to commit, at most, 0.83 of a Full Time Employee's time to these issues.

The regulations as-proposed do not – and will not – meet the needs of the regulated community. A decision to disapprove this proposal will not negatively affect the regulated community, who will continue to use the existing regulations.

As such, I recommend , in the interest of the regulated community that the IRRC Commissioners disapprove IRRC 2635

Sincerely,

Todd McIntyre