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March 17, 2008

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INDEPENDENT REGULATORY
REVIEW COMMISSION

via e-mail and First Class Mail

James Buckheit, Executive Director
State Board of Education
333 Market Street
Harrisburg, PA 17126-0333

Re: Delegation of Powers Delegated by the General Assembly

Dear Jim:

The purpose of this letter is to raise legal concerns about a subsection of Chapter 16 and one of the subsections in the proposed amendment. During the review of the amendments to Chapter 16, concerns were expressed about whether the State Board of Education has the power or authority to delegate any portion of the powers granted to it by the General Assembly to another body.

Under Article III, Section 14 of the Pennsylvania Constitution, the General Assembly is directed to provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth, which it has done through the Public School Code of 1949, as amended. Under Article II of the Public School Code, the General Assembly stated the powers granted to individual school districts. Under Article XXVI-B of the Public School Code, the General Assembly established the powers and duties of the State Board of Education.

The General Assembly has clearly stated with specific regard to Children with Exceptionalities that the "State Board of Education shall adopt and prescribe standards and regulations for the proper education and training of all exceptional children" as stated in 13-1372(1).

While the powers granted to the State Board of Education are certainly broad, the powers granted as agent for the General Assembly in carrying out its Constitutional obligations are not without limit.

It is well settled that powers delegated to administrative bodies may be expressly stated or necessarily implied in the legislative grant, see Pennsylvania Human Relations Commission v. St. Joe Minerals Corp., 476 Pa. 302, 310, 382 A.2d 731, 736 (1978). It has also been held that

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"[I]n determining the outermost limits of [a] Board's delegated authority . . . we must primarily consider the express language of its enabling statute, and, where the statute neither affirms nor negates the authority exercised by the agency, the manifest purpose of the legislation" *McKinley v. State Bd. of Funeral Dir.*, 11 Pa.Cmwlth. 241, 246, 313 A.2d 180, 183 (1973). (Emphasis added).

In reviewing the Public School Code, no explicit authority can be found by which the General Assembly permits the State Board of Education to delegate any of the powers granted to it.

As to whether the State Board's broad powers include at its outermost limits the delegation of such powers, the State Board with the advice of legal counsel will need to make that determination; however, I do not believe the courts will accept that the purpose of the legislation is advanced by such further delegation. When taking into consideration the de minimus compliance performed by the Department of Education since 2000 and the "flexibility" addressed in the RAF submitted with the proposed regulations last year, a court may likely reject any assertion that these delegations are within the necessarily implied limits.

In reading the statute, the General Assembly likely did not expect the delegation of rule-making with regard to compliance for gifted education to be further delegated to the Secretary of Education. Quite to the contrary, the General Assembly, in the same section in which the State Board is directed to promulgate regulations, directed the Department to enforce the provisions of the statute.

The Pennsylvania Supreme Court has stated that "(i)t is axiomatic that the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority. Gilligan v. Pennsylvania Horse Racing Commission, 492 Pa. 92, 95, 422 A.2d 487 (1980), citing State Board of Chiropractic Examiners v. Life Fellowship of Pennsylvania, 441 Pa. 293, 293, 297, 272 A.2d 478, 480 (1971); Archbishop O'Hara's Appeal, 389 Pa. 35, 131 A.2d 587 (1957). Presumably, the State Board of Education as agent for the General Assembly likewise is prohibited from delegating its power to the Executive branch.

With regards to the interaction between the State Board of Education and the Department of Education, the General Assembly clearly stated in 26-2606-B that "(s)tatements of policy, standards, rules and regulations promulgated by the board shall be binding upon the Department of Education." Further, "(t)he department shall submit to the board for approval, modification or rejection, all rules and regulations proposed by the department in the areas under the control of the board", which would include gifted education.

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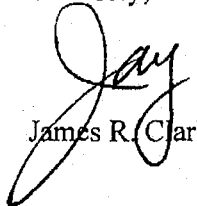
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Under the Chapter 16 amendment, the State Board attempts in Section 16.6(d) to delegate its rule-making authority with regard to compliance to the Secretary of Education, which as discussed above is prohibited.

Under current Section 16.21(d), the State Board's delegation of its rule-making authority with regard to identification of gifted students to the 501 individual school districts is not permitted. The specific language of concern is as follows: "Each school district shall establish procedures to determine whether a student is mentally gifted." The delegation of the process and thereby the determination of whether a student is mentally gifted rather than having a set of standards established by the State Board as required in the statute is inappropriate and also not a permitted delegation.

Thank you for your consideration of these legal concerns. Please forward this letter to the State Board members. Perhaps it would be prudent to share these legal concerns and to obtain legal counsel's opinion prior to the Board's final consideration of the amendment.

Sincerely,



James R. Clark



Rationale for Chapter 16 Review proposed language:

PEGS, Inc. fully supports the cooperative efforts of Parents and School Districts to identify and provide appropriate gifted education for gifted students. Of significant importance within the Chapter 16 review process is the realization that such cooperative efforts often fall short because the lack of specificity in certain areas of the chapter as well as the omission of strong Department supervisory and sanction language within the current regulations.

PEGS, Inc. believes that addressing these key issues will assist Parents and School Districts in reducing the need for third party interventions in meeting the learning needs of gifted students. Please reference the attached proposed regulatory language.

GENERAL PROVISIONS

§ 16.1. Definitions.

PEGS, Inc. seeks clarification of certain terms within Chapter 16 and the addition of other terms. For example, the definition of instructional setting must contain the requirement of participation by a certificated employee as defined within §16.5. With a plain language goal, the defined terms assist with sectional brevity. Appendix "A" to the suggested regulatory language has been offered for general consideration, with the following terms being of particular importance: PLEP, educational needs, screening process, meaningful benefit.

§ 16.2. Purpose.

Express language referencing the reporting, monitoring and enforcement authority of the Department must be included within the purpose section. PEGS, Inc. seeks inclusion of new separate sections relating to monitoring and enforcement (See § 16.66 and 16.67). PEGS, Inc. also supports the addition of language that could better ensure that Chapter 16 is administered without bias, prejudice, or racial or cultural discrimination.

PEGS, Inc. also recommends that reference to an individual gifted student's native language or other mode of communication be added in an effort to bring full and meaningful parental participation within the identification of gifted students and the delivery of gifted education.

§ 16.3. Experimental programs.

PEGS, Inc. supports experimental programs that permit meaningful parental input and maintain student's entitlements and protections under Chapter 16. Informed written permission from Parents is suggested prior to participation by a gifted student in any experimental program.



§ 16.4. Strategic plans.

PEGS, Inc. suggests guidance from §§4.13 and 14.104 for language related to School District Strategic Plans. 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. Parents seek collection and analysis of gifted data within the strategic plan with special emphasis on program planning as well as training of school personnel. The goal of the strategic plan must be to provide a framework for innovation, analysis, and improvement through review and corrective actions. PEGS, Inc. also seeks to add meaningful parental participation in the creation of the strategic plan as related specifically to gifted education.

§ 16.5. Personnel.

PEGS, Inc. suggests that gifted education should be provided by highly qualified and properly certificated teachers and professional employees to align with requirements of the No Child Left Behind (NCLB) regulations. PEGS, Inc. suggests clarification of qualifications and training requirements for those responsible for identifying, providing and monitoring gifted education and support services, including teachers, administrators, school psychologists, school counselors, education specialists, and qualified paraprofessionals. PEGS, Inc. seeks the designation of personnel responsible for reporting to Department on compliance with Chapter 16 requirements. PEGS, Inc. further recommends that the caseload limits in 16.41(c) be moved to this section relative to personnel. PEGS, Inc. suggests clarification that the caseload limitations reflect a full-time caseload without additional teaching or special assignments.

§ 16.6. General supervision.

PEGS, Inc. seeks clarification on 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; provision of resources and technical assistance to school districts and school boards of directors; identification and analysis of effective programs and practices; collection and dissemination of information about programs; preparation and submission of an annual report to the education committees of the Senate and House; timely compliance monitoring (all School Districts to be monitored every five years); hearing and investigation of complaints related to procedural violations and substantive violations; imposition of corrective action plans derived from monitoring and complaint process; and enforcement including the imposition of sanctions for noncompliance with the protections of Chapter 16.

PEGS, Inc. suggests separate detailed sections concerning monitoring and enforcement of Chapter 16 (See 16.66 and 16.67).



§ 16.7. Special education.

PEGS, Inc. seeks a changed title for section 16.7 to **Dually exceptional students** to more accurately describe the purpose of this section. It is suggested that this section also include a reference to Chapter 15 (protected handicapped students) to better ensure an understanding of the interplay between chapters 14, 15 and 16 protections. PEGS, Inc. recognizes the appropriateness of a single GIEP and IEP for dually exceptional students and seeks clarification that the services for the mentally gifted be considered at the same time as the services for the disabilities and not be limited to the disability services. PEGS, Inc. encourages an exception to this general rule for a single primary GIEP for gifted students with an IEP element for speech. PEGS, Inc. seeks clarification that gifted services, including Short Term Learning Objectives (STLO's), must be included in IEP for dually exceptional students. PEGS, Inc. strongly encourages that identification processes consider the "masking effect" mental giftedness and disabilities may impact on one another.

SCREENING AND EVALUATION

§ 16.21. General.

PEGS, Inc. seeks a clarification of the distinction of Child Find, screening and evaluation. We advise that each be addressed in a separate section.

PEGS, Inc. suggests additional guidance on child find requirements be placed within this section. Child Find should be similar to existing Section 14.121. Additional guidance concerning screening requirements should ensure the earliest possible identification of a gifted student; that the screening process should be established to avoid screening out possible gifted students; that screening tools be scientifically based and administered by employees trained by certified school psychologists. If tools are created locally, PEGS, Inc. suggests they be designed and delivered under the supervision of certificated school psychologists.

Screening procedures should be weighted fairly and not designed as checklists intended for exclusion rather than inclusion.

PEGS, Inc. seeks additional guidance on evaluation requirements including specifically a prohibition of a group evaluation method. Once a parent requests an evaluation, a screening of such child is neither necessary nor appropriate. Requests for evaluation of children not yet of school age but exhibiting signs of being mentally gifted must be honored upon written request. PEGS, Inc. recommends that an evaluation shall occur upon a parent's request of a child who, if determined to be mentally gifted, could begin school as early as age four. PEGS, Inc. does not support a multiple criteria shift from "one year or more" to some higher increment of achievement.

PEGS, Inc. suggests that 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.

§16.21(d) should be changed to state that a student is identified as gifted if their IQ score is at least 130 **or** through multiple assessment criteria, rather than the "and" which incorrectly suggests both are required. PEGS supports inclusion of language wherever possible within the chapter that will ensure that children with IQs of 130 are not required to also demonstrate multiple criteria that may be exclusionary.

PEGS, Inc. recommends reference to nondiscrimination making it clear that the application of all evaluations be free of cultural, racial, or ethnical bias.

PEGS, Inc. suggests that the screening and evaluation process include language concerning the masking of mental giftedness due to Other Health Impairments (OHI under IDEA) or social/emotional issue.

PEGS, Inc. recommends the routine use of non-verbal IQ tests and non-verbal index scores for students to qualify as gifted, particularly where age and OHI indicate appropriateness. PEGS, Inc. strongly suggests the use of the GAI when evaluating for mental giftedness.

PEGS, Inc. is concerned that the IQ number of 130 may be misleading and that a reference to two standard deviations above the norm on IQ tests and within the standard of error be a better measure. PEGS, Inc. supports the use of cognitive assessment tools such as IQ but strongly supports the use of multiple criteria for the identification of mental giftedness, particularly with the very young. PEGS, Inc. encourages the use of scientifically based research and peer reviewed identification measures.

Finally, PEGS, Inc. seeks clarification that 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.

§ 16.22. Gifted multidisciplinary evaluation.

PEGS, Inc. seeks general clarification of the steps necessary to complete the multidisciplinary evaluation. Parents should be given written notice of procedural safeguards. The reference to "informed consent" makes clear that the School District must takes precautions to ensure that a parental consent is a meaningful consent, much like that required by physicians to their patients. This additional protection would require School Districts to provide Parents with a listing of the possible assessment instruments anticipated to be administered including a short description of each. Parents may request additional testing instruments to ensure evaluation of possible dual exceptionalities.

PEGS, Inc. supports a calendar day standard as opposed to school day standard. Clarification is needed to indicate that a parental request for a gifted evaluation is not a screening



request. PEGS, Inc. further recommends that the regulations 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.

PEGS, Inc. seeks clarification that GMDT is a team – not an individual psychological or school employee, and that inclusion of all independent evaluation data within the multidisciplinary report is required to ensure a full consideration of the available data. As such, the team should be required to have a meeting as opposed to a joint report.

PEGS, Inc. seeks clarification that, if the GMDT disregards the findings of an independent evaluation or parental input, reasons shall be documented in the GWR for the basis of that weighting. Educational needs must be expressly identified by the GMDT and documented in the Gifted Written Report (GWR).

PEGS, Inc. seeks added language to ensure the GWR includes 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 detailing any disagreement with GMDT report must be attached to the GWR in an addendum.

Finally, PEGS, Inc. recommends the inclusion of the “**therefore**” in the “report shall make recommendations as to whether the student is gifted and *therefore* in need of specially designed instruction” tracks the definition of “Gifted Student” and seeks to clarify that the primary function of the GMDT is the determination of whether a student is mentally gifted with the question of the amount of Specially Designed Instruction (SDI) left to the GIEP team.

§ 16.23. Gifted multidisciplinary reevaluation.

PEGS, Inc. seeks clarification that Present Levels of Educational performance (PLEPS) are not reevaluations. Re-evaluations related to declassification are not routine and are the exception.

PEGS, Inc. seeks the substitution of “educational placement” with “before a change in the determination that the student is mentally gifted” to make clear that the purpose of a re-evaluation is to establish or re-establish a determination of mental giftedness from which placement follows.

§ 16.24. Independent evaluation at public expense.

PEGS, Inc. supports the creation of 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.



GIEP

§ 16.31. General.

PEGS, Inc. supports the clarification 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, simply put, the strengths and weaknesses) 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.

§ 16.32. GIEP.

PEGS, Inc. suggests the inclusion of definitions of Present Levels of Performance (PLEPS), Annual goals, and Short Term Learning Objectives (STLO) into this section or added to the definition section in the same way that Specially Designed Instruction (SDI) is defined.

PEGS, Inc. also suggests an inclusion within this section of the description of how the gifted student's progress toward meeting annual goals will be measured, when periodic reports on the gifted student's progress toward annual goals shall be issued, and a statement of the specially designed instruction, related services, supplementary aids and services.

PEGS, Inc. suggests a statement of the program modification or supports for school employees that will be provided to enable the gifted student to advance appropriately toward annual goals.

PEGS, Inc. suggests that a NOREP shall be issued along with the proposed GIEP document upon which the parent may designate approval, disapproval or partial approval.

PEGS, Inc. seeks clarification of the specificity necessary for inclusion in the individual plan. PEGS, Inc. recommends the GIEP 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 graduation plans within a results-oriented process for periods within the School District Kindergarten-12 continuum.

The GIEP should include the anticipated frequency, location, and duration of all services, accommodations, and modifications. PEGS, Inc. suggests the inclusion of language that makes clear that a GIEP must be in effect at the beginning of each school year for every identified gifted student and must be tailored to the needs of the gifted student for that school year.



PEGS, Inc. recognizes that the gifted student's pace of learning requires the inclusion of graduation exit plans and transition planning be included within the GIEP beginning no later than transition into high school and earlier when appropriate. Transition plan and graduation plans should consider graduation credit for high school curriculum courses completed prior to high school, testing for credit, and other strategies that will permit the appropriately paced progress through the core curricula and appropriate education of the gifted student.

PEGS, Inc. requests that a School District 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 responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

PEGS, Inc. does not support the departure from the formality of full team meetings because of the risk of such consent for omission being less than informed consent.

§ 16.33. Support services.

PEGS, Inc. seeks clarification that support services could include, but are not limited to, career guidance, counseling, transportation, assistive technology, translators for English as Second Language (ESL), and interpreters if appropriate. Also added should be express reference to tools necessary for communication coordination to better ensure exchange of information and progress monitoring.

PEGS, Inc. seeks clarification that the use of communication technology tools via teleconferencing and video technology, synchronously (at the same time), from one to many delivery points be considered within the regulatory language.

PEGS, Inc. further suggests that a reference to GIEP facilitators be used in instances where there may be irreconcilable communication breakdowns between Parents and School Districts.

EDUCATIONAL PLACEMENT

§ 16.41. General.

PEGS, Inc. seeks clarification that educational placement and instructional strategies and techniques go far beyond just "acceleration *or* enrichment or both," and clarification of terminology related to specially designed instruction and educational placement, should be embedded into this section. PEGS, Inc. encourages the inclusion 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 within the School District as a few of the many options.



PEGS, Inc. seeks to move 16.41(c) caseload and class size details to §16.6 General relating to personnel.

§ 16.42. Parental placement in private schools.

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

§ 16.43. Facilities.

PEGS, Inc. proposes 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.

PROCEDURAL SAFEGUARDS

§ 16.61. Notice.

PEGS, Inc. seeks clarification that procedural safeguards are procedural due process rights and that the regulations themselves safeguard the entitlements and rights of gifted students.

PEGS, Inc. supports clarification of procedures necessary to promote open communication between disputing parties. PEGS, Inc. supports the modification of the plain language notice requirements so that communication is appropriate for an individual parent as opposed to 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). This also supports the goals of meaningful parental involvement within the education process.

PEGS, Inc. supports the creation and availability of a form for parents to use when initiating either a Due Process or Departmental Complaint.

PEGS, Inc. also encourages the use of E-mail notices under limited circumstances. Wherever a School District has Internet Web sites or E-mail communication with Parents, procedural safeguard notice disseminated should be encouraged to supplement individual notices.



§ 16.62. Informed consent.

PEGS, Inc seeks the addition of “informed” to the concept of consent. Procedural Safeguard notice should be given to parents so that they are aware that they may proceed to Due Process on disputed issues without delaying implementation of agreed upon parts of the plan.

PEGS, Inc. seeks clarity 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.

PEGS, Inc. recommends that the role of the Notice of Agreement, (NORA) and Notice of Recommended Educational Placement (NOREP) be clarified with guidance concerning those portions of a plan that are or are not consented to by parent and the resulting triggering events and conduct necessary for initiation of due process.

§ 16.63. Impartial due process hearing.

PEGS, Inc. suggests that parents shall be able to dispute any act that violates the protections of this Chapter using the protection of impartial due process.

PEGS, Inc. suggests that 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. PEGS, Inc. suggests that once parents have presented their claims, the burden of persuading the appropriateness of the individual plan must shift to the School District.

PEGS, Inc. seeks clarification of distinctions and Department duties related to subsequent Due Process proceedings and Departmental Complaints. Further clarification of Office of Dispute Resolution duties and responsibilities would assist Parents in understanding their options when disputing an individual education plan.

PEGS, Inc. also seeks clarification of records access and evidence collection for Due Process proceedings and appeal procedures. Parents occasionally encounter difficulty in obtaining information about School District programming on grounds of confidentiality restriction. Clarity concerning the ability of a School District to disclose gifted data as long as personally identifiable data is redacted would be helpful to parents in establishing the appropriateness of an individual plan.

PEGS, Inc. requests the inclusion of the rationale by the Hearing Officer for determination of compensatory education and other remedies ordered.



PEGS, Inc. seeks inclusion of language that clarifies the authority for a Hearing Officer and Appeals panels to impose actual remedies including, but not be limited to, reimbursement for 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. The wisdom of separation of authority between local control and State imposition of remedies is questionable when substantial evidence has shown that a School District has not met its responsibilities as determined by a disinterested third party with judicial or departmental authority.

PEGS, Inc. proposes that the Subcommittee and the Board of Education contact the office of Dispute Resolution for input on the use of these remedies.

PEGS, Inc. seeks a clear statement that a Due Process Order and Compliance Complaint Order shall be enforceable by the Department and that noncompliance with Orders shall result in additional sanctions.

§ 16.64. Mediation.

PEGS, Inc. seeks clarification of procedural steps for parents to follow when attempting to have a disinterested third party intervention in the form of mediation to aid in creation or implementation of a GIEP. Clarification of effect and enforceability of binding agreements would also be appropriate. Reference to coordination of ensuing due process if necessary would assist in swift disposition of disputes.

§ 16.65. Confidentiality.

PEGS, Inc. seeks clarification of the confidentiality of records requirements. PEGS, Inc. seeks further clarification concerning records acquisition.

§ 16.66. Compliance Monitoring.

PEGS, Inc. recommends the addition of a new section to Chapter 16 addressing compliance duties and procedures. This section would require that 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 public by School Districts. Chapter 16 compliance monitoring of the School Districts by the Department should be referenced to make clear the requirement that Complaints be heard and investigated by the Department. PEGS, Inc. seeks School District internal monitoring of Chapter 16 compliance beyond cyclical or individual review by the Department.



Additionally, PEGS, Inc. suggests the expansion of 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. The rationale is that the depersonalization of a dispute best ensures accountability without placing upon a single family or child the financial and emotional burden of challenging policies that could be addressed through compliance monitoring and the Departmental Complaint process. Many issues that result in due process challenges could be avoided by a comprehensive review of School District programs and strategic plans.

PEGS, Inc. also suggests that there be an employee 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 or this Chapter.

§ 16.67. Enforcement remedies.

PEGS, Inc. recommends the addition of a new section to Chapter 16 addressing enforcement of Chapter 16 requirements. PEGS, Inc. seeks enforcement remedies available to Hearing Officers as part of a Due Process Order and to the Secretary as part of Compliance process.

PEGS, Inc. suggests inclusion of express language that makes clear the Secretary shall take such action as the Secretary determines appropriate to enforce this Chapter with clarification of remedies resulting from failure to provide free and appropriate gifted education to individual students.

GENERAL PROVISIONS

§ 16.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Agency--An intermediate unit, School District, joint school, area vocational technical school, State-operated program or facility, non-profit public charter school not included within a school district or other public or private organization providing educational services to gifted students or students thought to be mentally gifted.

Annual goal -- A statement that describes the academic progress that a gifted student can reasonably be expected to accomplish within a school year taking into consideration the rate at which the gifted student acquires and retains information. There is a direct relationship between the PLEP and the annual goals.

Assistive technology device -- Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of gifted students. *Equipment* is all items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, and other technological aids and devices; and books, periodicals, documents, and other related materials.

Chapter 4--The State Board of Education regulations as adopted under statutory authority in the School Code. (22 Pa. Code Chapter 4).

Chapter 14 -- The State Board of Education regulations as adopted under statutory authority in the School Code. (22 Pa. Code Chapter 14).

Concurrent course credit -- Under the authority of 16-1615-B a school district, charter school, area vocational-technical school, nonpublic school, private school or home education program shall award credit for concurrent courses for a successfully completed concurrent course, with success determined by the eligible postsecondary institution and set forth in the concurrent enrollment agreement under section 1613-B(b)(4).

Core Academic Subjects -- The term has the meaning given the term in Section 9101 of the No Child Left Behind (NCLB) Elementary and Secondary Education Act of 1965. Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

Courses of study pursuant to 15-1512 the Board of Directors in every School District, with the advice, assistance and approval of the proper Superintendent of schools, shall arrange a course or courses of study adapted to the age, development, and needs of the pupils.

Day; business day; calendar day; school day-- Day means calendar day unless otherwise indicated as business day, calendar day or school day. Business day means Monday through Friday, except for Federal and State holidays. School day means any day, including a partial day that children are in attendance at school for instructional purposes.

Department—The Department of Education of the Commonwealth.

Dually exceptional -- An exceptional student who is both gifted and disabled. Also referred to as “twice exceptional” or “2e” students. The gifted student is given the dual protections of both Chapter 14 and Chapter 16 as combined into a single individual education plan.

Educational placement--The overall educational environment in which gifted education is provided to a gifted student.

Education records--Means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

Evaluation Process - The systematic process of evaluation to determine identification of an individual student’s mental giftedness and gifted education placement and therefore appropriate education plan. A complete evaluation includes psychological and educational assessments that consider the multiple needs of the gifted student including cognitive ability, academic achievement and social and emotional and physical functionality.

GIEP--Gifted Individualized Education Plan is a written plan for each individual gifted student that is developed, reviewed and revised by a GIEP Team in accordance with the requirements of this Chapter.

GIEP Team-- The team of participants defined under §16.32(c) responsible for determining the gifted education for the individual gifted student.

GMDT--Gifted Multidisciplinary Team as defined under §16.22(d) who are responsible for determining the initial identification of whether a student is mentally gifted.

Gifted education-- Specially designed instruction and related services to meet the needs of a gifted student that is:

- (i) Conducted in an instructional setting under the supervision of educational personnel.
- (ii) Provided in an instructional or skill area.
- (iii) Provided at no cost to the parents.
- (iv) Provided under the authority of a school district, directly, by referral or by contract.
- (v) Provided by an agency.
- (vi) Individualized to meet the educational needs of the student.
- (vii) Reasonably calculated to yield meaningful educational benefit and student progress.
- (viii) Provided in conformity with a GIEP.

Gifted Multidisciplinary Evaluation— (also referred to as a **GMDE** or **Multidisciplinary Evaluation**) A systematic process of testing, assessment, and evaluative processes used by a

GIEP team to develop a recommendation about whether or not a student is gifted or and therefore needs gifted education.

Gifted student--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).

Graduation Plan—A results oriented process to improve academic achievement of the individual gifted student's needs, taking into account the individual gifted student's needs as required by sections 16.41 and 16.32 of this Chapter. The graduation plan is part of an overall exit plan also known as "transition plan" which shall be a part of the written GIEP even for young gifted students as appropriate because instructional strategies such as acceleration sets the stage for earning credits early or out of sequence for early graduation and for early admission to college.

GWR – Gifted Written Report-- The written report (GWR) developed by the GMDT which forms the basis for the needs developed within the GIEP.

Highly qualified—Highly qualified has the meaning given the term in Section 9101 of the Elementary and Secondary Education Act of 1965. The No Child Left Behind standards for teachers is embodied within this Chapter for core academic subjects.

Instructional setting--A classroom or other setting in which gifted students are receiving gifted education.

Limited English Proficient has the meaning given the term in §9101 of the Elementary and Secondary Education Act of 1965. English as Second Language (ESL) learners may possibly be considered Limited English Proficient.

Mentally gifted--Outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program.

Native Language -- When used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a gifted student, the language normally used by the parents of the gifted student. In all direct contact with a gifted student (including evaluation of the child), *native language* is the language normally used by the gifted student in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, *native language* is the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

Needs— Qualities of cognitive ability, academic achievement, social, physical and emotional functionality, which form the basis for a GIEP. The needs of the whole child must be considered including but not limited to the academic strengths and weaknesses along with preferences and interests of the individual gifted student. To better ensure meaningful educational benefit the needs of the whole child must be considered.

Parents--A biological or adoptive parent or parents, a guardian or guardians, one or more persons acting in the place of a biological or adoptive parent (including grandparent, step parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.

Party--Parent or School District.

Personally identifiable -- information that contains the name of the gifted student, the gifted student's parent, or other family member; the address of the gifted student; a personal identifier, such as the gifted student's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the gifted student with reasonable certainty.

PLEP--Present Levels of Educational Performance, shall be determined from objective assessments to establish a baseline of academic instructional levels in instructional skills and all academic subjects for the creation of the gifted individual education plan (GIEP). Assessments to establish PLEP shall be administered so as to determine the highest instructional levels for the gifted student. Additionally, the purpose of PLEP is to determine the needs of the gifted student, including but not limited to learning strengths and relative weaknesses. PLEP shall be stated in terms that are specific, measurable, and objective, describing current performance. PLEP shall be obtained from the following:

- (i) aptitude and achievement tests;
- (ii) research-based subject matter assessments;
- (iii) curriculum-based assessments, such as end-of year tests;
- (iv) rubric-based objective assessments by the classroom teacher;
- (v) evaluations and information provided by the parents of the gifted student.

Reasonably calculated to yield meaningful educational benefit and student progress--

Reasonably calculated to yield meaningful educational benefit and student progress requires:

- (i) a complete assessment of PLEP;
- (ii) a complete identification of needs, including academic strengths and relative weaknesses;
- (iii) established measurable, objective annual goals and short term learning objectives addressing each need based upon the student's rate of acquisition and retention of information;
- (iv) planned services and assistive technology devices to support progress toward all annual goals and short term learning outcomes;
- (v) a placement such that the gifted student is able to benefit meaningfully from the rate, level and manner of instruction; and
- (vi) an ongoing review of the gifted student's progress during the school year and adjustment of the GIEP accordingly.

Regular classroom--A specific instructional grouping within the regular education environment.

Regular education environment--The regular classroom and other instructional settings in which students without a need for gifted education receive instructional programs and the full range of supportive services normally provided to these children.

School Age -- As defined under 22 Pa. Code §11 *et. seq.* (relating to school age), except in the case of children who are have been identified as mentally gifted, and those suspected of being gifted for purposes of the evaluation process, in which cases it shall mean the earliest statutory admission age of 4.0 years.

School Code--The Public School Code of 1949 (24 P. S. §§ 1-101--27-2702).

School day--A day in which school is in session including a partial day that children are in attendance at school for instructional purposes.

Scientifically based research-- Has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965. (No Child Left Behind, i.e., the Elementary and Secondary Education Act of 1965 as amended, 20 U.S.C. 6301 *et seq.* (ESEA).

Screening Process -- Screening is the assessment procedure aimed at selecting students who may be mentally gifted. Screening may be triggered through Child Find searches, mass screening or sweep screening from the preschool or school-age population and through individual identification of preschool or school-aged children as referred from mass screening or other sources, including but not limited to parent, teacher, and hearing officer or other court order. The term *screening* is not interchangeable with evaluation.

Secretary -- means the Secretary of the Pennsylvania Department of Education.

Specially designed instruction--Adaptations or modifications to the general curriculum, courses of study, instruction, instructional environments, methods, materials, delivery of instruction, or a specialized curriculum for students who are gifted.

Support services--Services as required under § 16.33 (relating to support services) to assist a gifted student to benefit from gifted education. Examples of the term include:

- (i) Psychological services.
- (ii) Parent counseling and education.
- (iii) Counseling services, including but not limited to college and transition counseling.
- (iv) Transportation to and from gifted programs to classrooms in buildings operated by the school district.
- (v) Scheduling of communication meetings, observations and use of communication technology tools via video technology, synchronously (at the same time), from one to many delivery point, and through use of recording devices with consent of all parties.

Supplementary aids and services -- Means aids, services, and other supports that are provided in regular education environment or other educational settings to enable gifted students to be appropriately educated.

Technology - - Any technical or scientific method of sending, receiving, storing, packaging or assimilating audio, video, graphics, data or any combination thereof by means of electromagnetic signal and any equipment, processes and facilities used for that purpose.

Transition services --Means a coordinated set of activities for a gifted student that is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the gifted student to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, and employment that is based on the individual gifted student's needs, taking into account the individual gifted student's strengths, preferences, and interests.

§ 16.2. Purpose.

(a) This Chapter specifies how the Commonwealth will meet its obligations to suspected and identified gifted students who require gifted education to reach their potential. It is the intent of the Board that individual gifted students be provided with high quality individualized gifted education services and programs and have available to them a free appropriate public education designed to meet their unique needs and to ensure that the entitlements of gifted students and their parents are protected.

(b) The Commonwealth, through the Department, will provide general supervision, including monitoring and enforcement, of services and programs provided under this Chapter.

(c) The Department will disseminate information about and promote the use of promising practices and innovative programs to meet the needs of individual gifted students.

(d) To provide services and programs efficiently, the Commonwealth will delegate operational responsibility to its school districts. Each school district shall, by direct service or through arrangement with other agencies, provide the following:

(1) Services and programs planned, developed and operated for the identification and evaluation of each individual gifted student.

(2) A free, appropriate plan of gifted education for each individual gifted student that is based on the unique needs of the student, not solely on the student's classification.

(3) Gifted education for individual gifted students which enables them to participate in specially designed instruction and the educational placement, including the need for gifted methods, materials and specialized curriculum and grouping including but not limited to acceleration or enrichment program or both other practices, as appropriate, and to receive services according to their individual intellectual and academic abilities and individual needs.

(4) Gifted education for all students including but not limited to students of limited English proficiency, limited socio-economic status, and for students of racial-, linguistic- or ethnic-minority background. Assessments are selected and administered so as:

(i) not to be discriminatory on a racial or cultural basis;

(ii) to provide communication in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.

16.3. Experimental programs.

(a) The Secretary may approve exceptions to this Chapter for the operation of experimental programs that are anticipated to improve student achievement and that meet certain unique programmatic needs of individual gifted students. School districts shall submit an annual application for approval of those programs. The application shall:

(1) Include provision for the meaningful involvement of parents, administrators and professionals in the design and ongoing review of performance by providing thirty days advance public notice as published in one (1) general circulation newspaper and one (1) School District publication of general circulation.

(2) Include provisions for annually evaluating the program as to whether it benefits student achievement.

(3) Demonstrate that it has met the following criteria:

(i) A definition of the need(s) that exists which necessitates an experimental program.

(ii) Data to support the existence of the need, especially objectively assessed data using nationally normed testing.

(iii) A description of the program, including the nature of the program, specific goals and objectives to be reached, how the program is intended to meet the needs of gifted students in the program for that year, role and function of personnel involved, and timelines for development, implementation and evaluation.

(iv) A description of how the program will provide full access to protected 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.

(b) The Secretary may terminate an experimental program for failing to meet the objectives established in the application or for noncompliance with State law or regulations not specifically waived in the Secretary's approval of the experimental program under subsection (a) upon 60 days notice.

(c) The Secretary will report annually to the Board regarding applications for experimental programs under this section and the disposition of the applications.

(d) Participation in an experimental program shall require written informed consent by the gifted student's parent.

(e) Refusal to participate in an experimental program shall not impact the remaining rights or entitlements of the gifted student protected under this Chapter.

§ 16.4. Strategic plans.

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

(b) The strategic plan shall include:

(1) a description of the goals and methods used to achieve a Kindergarten through 12 continuum of the programming, diversity of gifted program offerings, and training for all instructional and administrative personnel to deliver individualized gifted education; and

(2) the framework for gathering objective data and making decisions about gifted program effectiveness and allocation of resources.

(c) Design options for program evaluation include:

(1) On-site review;

(2) Self-assessment that accompanies the March 26, 2004 Basic Education for Gifted Students Circular;

(3) Internal program review and analysis; and

(4) Contract with State, Regional, or Local entity for assessment review.

(d) 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 individualized gifted education.

§ 16.5. Personnel.

(a) Gifted education shall be provided by professional employees who shall be certificated individuals responsible for identifying individual gifted students, providing individualized gifted education, and monitoring gifted education and support services in accordance with and this title. School Districts as directed by the Department, shall establish and maintain qualification standards necessary to ensure that professional employees who carry out this Chapter are appropriately and adequately prepared and trained, such that those professional employees have the content knowledge and skills to serve gifted students. Core academic subjects and other courses and programs including but not limited to music and computer technology shall be provided by teachers who are highly qualified and certificated within their subject areas.

- (1) Professional employee personnel who are responsible for identifying gifted students shall be certificated as teachers, supervisors, supervising principals, principals, assistant superintendents, directors of vocational education, visiting teachers, home and school visitors, school counselors, and certified school psychologists.
- (2) Professional employee personnel who are responsible for providing gifted education shall be certificated as teachers, supervisors, supervising principals, principals, directors of vocational education, visiting teachers, home and school visitors, school counselors, and school counselors.
- (3) Professional employee personnel who are responsible for monitoring gifted education and support services shall be certificated as teachers, supervisors, supervising principals, principals, assistant superintendents, directors of vocational education. This is not intended to relieve elected school board members from any duties or responsibilities toward individual gifted students.

(b) Certificated individuals consist of professional educators who hold a valid Pennsylvania teacher license, educational specialist, administrative certification, or letter of eligibility.

(c) Paraprofessional personnel consist of individuals who hold qualifications consistent with State-approved or state-recognized certification, licensing, registration, or other comparable requirements, and who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this Chapter to be used to assist in the provision of special education and related services to individual gifted students.

Paraprofessionals shall work under the direction of professional personnel as defined in this Chapter. The duties and training of the paraprofessional staff shall be determined by the employing agency with duties limited to non-instructional services unless under immediate and direct supervision of certificated professional employees.

(d) A school district and intermediate unit shall provide, under section 1205.1 of the School Code (24 P. S. § 12-1205.1), in-service training in the provision of this chapter and gifted education for gifted and regular teachers, principals, administrators and support staff persons responsible for gifted education .

(e) Each school district shall designate professional personnel who shall report to the Department on compliance on the following:

- (1) Progress monitoring of individual GIEPs to confirm proper implementation;
- (2) Child Find data; and
- (3) Other monitoring criteria as required by the Department.

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

- (1) Ensure the ability of assigned staff to provide the services required in each gifted student's GIEP.
- (2) Address all the educational placements for gifted students used by the district.
- (3) Limit the total number of gifted students which can be on an individual gifted teacher's caseload to a maximum of 75 students which shall be reduced proportionally for each regular classroom assignment of the gifted teacher.
- (4) Limit the total number of gifted students which can be on an individual gifted teacher's class roster to a maximum of 20 students.
- (5) Address the implementation of differentiation and cluster grouping within the regular education classroom to permit gifted student peer interaction with other identified gifted peers.

§ 16.6. General supervision.

(a) Educational programs for gifted students administered within this Commonwealth are considered to be under the general supervision of the Department and shall meet the provisions of this chapter under the authority of 24 P.S. §§13-1371 and 13-1372 *et seq.*

(b) The Department shall ensure that appropriate and responsible fiscal oversight and control is maintained over the development and provision of gifted education in accordance with this chapter providing for fiscal accountability and prudent management.

(c) The Secretary is required to "superintend the organization of special classes and other arrangements for special education and shall enforce the provisions of this act relating thereto (24 P. S. § 13-1372(3))." The Department shall monitor the implementation of this Chapter, and annually report on performance under this Chapter. To meet this responsibility, the Secretary shall include gifted students in Departmental tracking systems, monitor the actions of School Districts for Compliance with the requirements of this regulation including but not limited to on-site visitation, and hear and investigate complaints.

(d) The primary focus of the Department's monitoring activities shall be on:

(1) Improving educational results and functional outcomes of individual gifted students;

(2) Ensuring that School Districts and agencies meet the requirements of this Chapter as described herein; and

(3) Monitor School Districts and service-providing agencies using quantifiable indicators in the priority areas of provision of appropriate individualized education plans; general supervision including Child Find, monitoring, and use of Departmental Complaint investigations, and mediations;

(e) Each School District shall designate a single line of responsibility within the District for carrying out the general administration and supervision of programs and gifted individual education plans whether or not such programs or plans are receiving Department technical assistance to ensure compliance under the Chapter.

§ 16.7. Dually exceptional students.

(a) Nothing in this chapter is intended to reduce the protections afforded to students who are also eligible for special education as provided for under Chapters 14 and the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400 *et seq*) or service plans for protected handicapped students (§504 of the 1973 Rehabilitation Act 29 U.S.C.A. § 701 *et seq*) or the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C.A. § 12102). This chapter shall not reduce the rights and entitlements afforded all exceptional students.

(b) A single IEP shall be developed for the dually exceptional student to meet the needs of the whole child that arise from the student being mentally gifted, disabled, or both. This IEP shall include annual goals and short term learning objectives to address each of the dually exceptional student's needs. The sole exception when the gifted student's single dually exceptional characteristic is addressed through speech related programming.

(c) For the potentially dually exceptional student a thorough assessment with appropriate additional evaluation shall be conducted, as indicated, to determine the extent of the student's needs.

(d) When evaluating students who are suspected of having a disability as well as mental giftedness, evaluators shall apply scientifically based research practices to determine appropriate measurement instruments and indices to assess giftedness and disability, including a consideration of the use of general cognitive ability indices.

(1) Tests of general cognitive ability shall include verbal and non-verbal, individual levels of academic achievement and patterns of social and emotional development. Alternative scoring indices, such as the GAI for the WISC-IV and the Gifted Composite Indices for the SB-V, shall be used as indicated in the technical manuals and associated supplements or service bulletins.

(2) Tests of non-verbal intelligence should be considered when considering cognitive ability, particularly with younger students or when a relative impairment in communication skills, including pragmatic skills, is demonstrated.

(3) Tests and assessments that take into account deficits on fluency measures to address potential masking factors when making identification decisions under this Chapter.

SCREENING AND EVALUATION

§ 16.21. General.

(a) Each school district shall adopt and use a system to locate and identify all students, who are school age within that district and thought to be mentally gifted.

(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. School Districts shall provide and make public annual notification of these Child Find activities and an evaluation of the success of these activities. The annual public notification of child identification activities shall include the following:

- (1) A description of gifted services and programs available and the needs of children served by these services and programs;
- (2) The purpose, time, and location of screening activities;
- (3) A description of how to request that the district initiate screening and evaluation activities for a child;
- (4) An explanation of the confidentiality protections for information regarding a specific child; and
- (5) A statement that the student is entitled to a full evaluation under this Chapter despite the outcome of the screening activity.

(c) School district Child Find awareness activity notification to the public may include, but not be limited to the following:

- (1) School handbooks;
- (2) School District Internet WebPages;
- (3) Radio and television announcements;
- (4) Newspaper notices;
- (5) Calendars and newsletters; and
- (6) Displays in public places such as the public library or school lobby.

(d) Each school district shall determine the student's needs through a screening process and separate evaluation process which meets the requirements of this Chapter. The Gifted Multidisciplinary Team (GMDT) determines and recommends whether a student is mentally

gifted.

(e) Screening process of a student by a Certified School Psychologist or supervised certificated personnel under §16.5 to determine mental giftedness is preliminary to a multidisciplinary evaluation and shall not be considered an evaluation for eligibility of gifted education and related services.

(1) The School District screening device shall not be so restrictive as to inappropriately limit access to gifted education or to delay providing gifted services. School districts shall not delay or prolong the screening and evaluation process to avoid having to establish a gifted program for kindergarten students or early elementary students. When no kindergarten program is provided, screening, identification, and gifted education shall begin no less than three (3) months prior to the district's earliest admission-age for beginners or on a reasonable prior timeframe that insure gifted education at the initiation of educational instruction for the mentally gifted if an evaluation is requested by the parents.

(2) Screening shall be based on existing information, observed performance within the academic setting as compared with the normal peer population, and through the use of valid screening tools. If screening tools are locally designed, their use must be consistent with this Chapter and the results carefully monitored for effectiveness in identifying gifted students and validated by comparisons to peer-reviewed and normed data as defined in 16.22(g)(3). Locally designed screening procedures shall be developed by a certified school psychologist trained in development of tests and scales to be used to assess giftedness, and who shall develop, oversee and monitor the screening process.

(3) 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 the parents along with notification of procedural safeguards.

(f) 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, within a standard error of measurement, a full scale performance or verbal IQ, or when multiple assessment criteria, as defined within this Chapter and set forth in Department Guidelines, indicate mental giftedness. Determination of gifted ability will not be based on IQ score alone. 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 include an assessment by a certified school psychologist. The needs of culturally diverse, disadvantaged, underachieving, female, English as Second Language (ESL) learners, and students with physical, social, emotional and learning disabilities who are mentally gifted shall require different assessment and attention to their multiple special needs.

(g) Multiple criteria indicating gifted ability include:

(1) A year or more above grade achievement level for the normal age group in one or more subtests as measured by Nationally normed and validated achievement tests able to

accurately reflect gifted performance. Subject results shall yield academic instruction levels in all academic subject areas.

(2) An observed or measured rate of acquisition and rate of retention of new academic content or skills that reflect gifted ability. Rate of acquisition and rate of retention of new materials, skills, and knowledge can be defined as how many repetitions the student needs before the student has mastered and can use the new information or skills appropriately any time thereafter. This data can be obtained by simple procedures such as Curriculum Based Assessment (CBA), direct observation using objectively assessed measures, and reporting from parents, teachers or education professionals.

(3) Demonstrated achievement, performance or expertise in one or more academic areas as evidenced by excellence of products, portfolio or research, documented in permanent products, demonstration of skills, awards, community involvements, or others as well as documented criterion-referenced team judgment showing a high-level of accomplishment indicating exceptional interest and motivation in specific areas.

(4) Early and measured use of high level thinking skills, academic creativity, leadership skills, intense academic interest areas, communications skills, foreign language aptitude or technology expertise.

(5) Documented, validated or assessed evidence that intervening factors such as English as a second language, learning disability, physical impairment, emotional disability, gender or race bias, or socio/cultural deprivation are masking gifted abilities.

a. Factors include ethnicity, socio-economic status or disability.

(i) an economically disadvantaged household where educational resources and opportunities are lacking;

(ii) a household in which English is not the first language; and

(iii) a household including parental problems such as alcoholism, divorce, spouse/child abuse or incarceration may have a masking effect on the student's identification as gifted.

b. School district shall be required to take into consideration whether a child has a discrepancy between academic achievement and cognitive ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning which could be masking gifted abilities.

(6) The assessment instruments should have high enough ceilings to accurately reflect academic performance in the gifted range.

(7) Assessment should yield performance and achievement data up to the gifted student's academic ceiling and be beyond basic skills, age and grade standards, and should be used

for appropriate instructional placement.

(8) The assessments should show not only what the student knows, but also where there is a need for instruction.

(9) 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.

§ 16.22. Gifted multidisciplinary evaluation.

(a) Prior to conducting an initial gifted multidisciplinary evaluation, the school district shall comply with the notice and informed consent requirements under §§ 16.61 and § 16.62 (relating to notice; and consent). For children who are thought to be gifted students, the School District shall perform the following steps:

- (1) Conduct the Gifted Multidisciplinary Evaluation;
- (2) Compile a Gifted Written Report (GWR);
- (3) Convene a GMDT meeting to discuss the GWR and determine giftedness; if giftedness is indicated, a GIEP team meeting is convened.
 - (i) If there is disagreement, either Parents or School District may seek additional assessments or proceed to dispute resolution process. Timelines shall not be extended for additional assessments.
 - (ii) The GMDT determines if additional assessment, such as out-of-level academic testing or psychological testing, is needed.
- (4) The GMDT may make recommendations regarding what specially designed instruction is appropriate for the gifted student, the GIEP team shall develop the GIEP.

(b) Referral for gifted multidisciplinary evaluation shall be made when the student is suspected by teachers or parents of being a gifted student and one or more of the following apply:

- (1) A request for evaluation has been made by the student's parents under subsection (c).
- (2) The student is thought to be gifted because the school district's screening of the student indicates high potential consistent with the definition of mentally gifted;
- (3) A teacher or other personnel defined in §16.5 of this Chapter observes or concludes there exists a performance level which exceeds that of other students in the regular classroom.
- (4) A hearing officer or judicial decision orders a gifted multidisciplinary evaluation.

(c) Parents who suspect that their child is a gifted student may request a gifted multidisciplinary evaluation of their child at any time, with a limit of one request per school term. The request shall 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 by the end of the following school day shall provide the parents with a form for that purpose which includes notification of the specific assessment instruments to be administered. When a parent's request for a Gifted Multidisciplinary Evaluation is received by the School District, regardless of the school's screening policy, the evaluation shall be completed within regulatory timelines. The timeline

begins from the date the School District receives the signed Permission to Evaluate from the parent.

(d) Multidisciplinary evaluations shall be conducted by GMDTs and shall consider all factors included in this section. The GMDT shall be formed on the basis of the student's needs and shall be comprised of the student's parents, a certified school psychologist, persons familiar with the student's educational experience and performance, one or more of the student's current teachers, persons trained in the appropriate evaluation techniques and, when possible, persons familiar with the student's cultural background. A single member of the GMDT may meet two or more of the qualifications specified in this subsection. Attendance by others who know the child and are able to offer insights concerning the individual child's learning needs are permitted including guidance counselor, Medical and Allied Health Professionals, Mentors, Vocational-technical coordinator(s), and interpreters as appropriate.

(e) Gifted multidisciplinary evaluations shall be sufficient in scope and depth to investigate information relevant to the student's suspected giftedness, including academic functioning, learning strengths and educational needs. Any independent evaluations provided by the Parents, including psychological and medical where appropriate, shall be considered by the GMDT and appended to the GWR.

(f) The multidisciplinary evaluation process shall include information from the parents or others who interact with the student on a regular basis, and may include information from the student if appropriate.

(g) The following protection-in-evaluation measures shall be considered when performing an evaluation of students suspected of being gifted:

(1) No one test or type of test may be used as the sole criterion for determining that a student is or is not gifted.

(2) Intelligence tests yielding an IQ score may not be used as the only measure of aptitude for students of limited English proficiency, or for students of racial-, linguistic- or ethnic-minority background. The gifted written report (GWR) shall include a statement of the effects of cultural factors, environmental or economic disadvantage, or limited English proficiency on the child's achievement level. Where appropriate with gifted students who are also determined to be disabled, a statement concerning the effects of visual, hearing, motor disability, or emotional disturbance shall also be included.

(3) Tests and similar evaluation materials used in the determination of giftedness shall be:

(i) Selected and administered in a manner that is free from racial and cultural bias and bias based on disability.

(ii) Selected and administered so that the test results accurately reflect the student's aptitude, achievement level or whatever other factor the test purports to measure.

(iii) Professionally validated for the specific purpose for which they are used.

(iv) Administered by certified school psychologists under instructions provided by the producer of the tests and sound professional practice.

(v) Selected and administered to assess specific areas of educational need and ability and not merely a single general IQ. Evaluators shall 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.

(h) The GMDT shall hold a meeting to discuss and shall prepare a written report, (GWR) which brings together the information and findings from the evaluation or reevaluation concerning the student's educational needs and strengths. The report shall make recommendations as to whether the student is gifted and therefore in need of specially designed instruction, shall indicate the bases for those recommendations, and shall indicate the names and positions and signatures of the members of the GMDT. The GWR shall include information relevant to the student's suspected giftedness including cognitive ability, academic achievement, social and emotional functionality, and educational needs.

(1) The evaluation report may include, but is not limited to, information from:

(i) Ability tests;

(ii) Nationally normed individualized standardized achievement assessments;

(iii) Class-work samples;

(iv) Curriculum based assessments that are designed and scored in a standardized and objective manner;

(v) Performance based skills as demonstrated in portfolios, products, competitions, or other demonstration of skills;

(vi) Teacher and related service provider observation. An observation of the student's academic performance in the regular classroom after referral for an evaluation and parental consent, consistent with §16.62, shall be obtained. In the case of a child of less than school age or out of school, a group member must observe the child in an educational environment appropriate for a child of that age;

(vii) Noteworthy achievements;

(viii) Parental input (should include student's abilities, interests, and needs as they relate to the instructional setting); and

(ix) Student interest areas may be measured using results of parent/child responses, interest inventories, peer-interventions, weighted checklists, thinking skills testing, creativity assessments, or parent/child reporting.

(2) When using normed and validated individualized standardized testing, a clear explanation of subtest results should be part of the Gifted Written Report. Such explanation shall include:

- (i) Mastery level;
- (ii) Functional/instructional level and frustration level ;
- (iii) Grade level equivalencies;
- (iv) School District performance criteria for competency;
- (v) Mastery and excellence of output;
- (vi) Comprehensive developmental levels in subtests; and
- (vii) Implications in the learning process of the student.

(3) Recommendation concerning whether a student is mentally gifted and therefore in need of specially designed instruction include:

- (i) Recommended appropriate integrated programming for a student if there is more than one area of exceptionality;
- (ii) Information about the student's adaptive and social behavior if significant;

(4) The Gifted Written Report shall provide a statement of the following:

- (i) gifted education;
- (ii) basis for gifted recommendation;
- (iii) related services and supplementary aids;
- (iv) services recommended;
- (v) a statement of the available curriculum;
- (vi) a statement of program modifications for the gifted student; and
- (vii) a statement of supports for school personnel.

(i) To recommend that a student who has been evaluated is a gifted student, the GMDT shall therefore 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). A clear learning needs section shall be included. Data indicating appropriate academic instructional levels, thinking skills and other learning skill levels, along with consideration of acquisition and retention for mastery of new content and skills, academic interests and strengths and, as appropriate, developmental levels (for young gifted students) recommendation shall be included. Specific data shall be included concerning the ability of gifted students who score below 130 within standard measures for the test along with recommendations for additional testing where intervening masking factors are manifested.

(j) The following timeline applies to the completion of gifted multidisciplinary evaluations:

(1) Each School district shall establish and implement procedures to complete a gifted multidisciplinary evaluation for a student referred for evaluation within 45 calendar 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 ten (10) calendar days after completion of the gifted multidisciplinary psychological and educational evaluation.

(3) A copy of the completed written evaluation report shall be delivered to the parents of the student by the close of the following calendar day after its completion, along with a notice of procedural safeguards and clarification of procedures necessary to challenge the evaluation report.

§ 16.23. Gifted multidisciplinary reevaluation.

(a) Gifted students shall be reevaluated before a change in the determination that the student is mentally gifted is recommended for the student and when the conditions under § 16.22(b)(1) or (3) (relating to gifted multidisciplinary evaluations) are met. In addition, gifted students may be reevaluated at any time under recommendation by the GIEP team. Present Levels of Performance for annual GIEP review does not require nor constitute a reevaluation. Reevaluations are required when:

- (1) Significant new information is needed to properly serve the student.
- (2) Consideration is being given to significantly altering Student's listed needs or services.
- (3) A parent requests a reevaluation
- (4) A hearing officer or judicial decision orders a reevaluation.

(b) Reevaluations shall be developed in accordance with all the requirements concerning evaluation in this Chapter.

(c) Reevaluations shall include a review of the student's GIEP by the full GIEP team, including a determination of which instructional activities have been successful, and recommendations for the revision of the GIEP, as determined by a meeting of the Gifted Multidisciplinary Team, including the parents, and the review shall be documented in the Gifted Written Report (GWR).

§16.24 Independent evaluation at public expense

(a) General.

- (1) The parents of a child suspected of being mentally gifted shall be able to obtain an independent educational evaluation of the student.
- (2) Each School District or public agency shall provide to Parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the School District or agency criteria applicable for independent educational evaluations.
- (3) For the purposes of this subsection of the Chapter —
 - (i) Independent educational evaluation is defined as a psychological evaluation conducted by a certified school psychologist who is not employed by the School District or public agency responsible for the education of the child who is suspected of mental giftedness; and
 - (ii) Public expense is defined as the School District or public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 16.22.

(b) Evaluation at public expense shall occur when:

- (1) The Parent disagrees with an evaluation obtained by the School District or public agency, subject to the conditions of this section.
- (2) A parent requests an independent educational evaluation at public expense. Upon written request, the School District or public agency shall, without unnecessary delay, either—
 - (i) File a due process Complaint to request a hearing to show that the initial public evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 16.63 that the evaluation obtained by the parent did not meet agency criteria.
- (c) If the School District or public agency files a due process Complaint and the final decision is that the evaluation of the School District or agency is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (d) If a parent requests an independent educational evaluation, the School District or public agency may ask for the reasons for parental objection to the initial public evaluation. However, the School District or public agency shall not require the parents to provide an explanation and

shall not unreasonably delay either provision of the independent educational evaluation at public expense or the filing of a Due Process Complaint to defend the initial public evaluation.

(e) A parent is entitled to only one independent educational evaluation at public expense each time the School District or public agency conducts an evaluation with which the parent disagrees.

(f) If the Parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) Shall be considered by the School District or public agency, if it meets agency criteria, in any decision made with respect to the provision of a gifted education to the child; and

(2) May be presented by any party as evidence at a hearing on a due process Complaint under this Chapter.

(g) If a due process hearing officer requests an independent educational evaluation as part of a hearing on a due process Complaint, the cost of the evaluation shall be at public expense.

(h) School District or agency criteria shall consider the following:

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the School District or public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's entitlement to an independent educational evaluation.

(2) Except for the criteria described in paragraph (h)(1) of this section, a School District or public agency shall not impose conditions or timelines related to obtaining an independent educational evaluation at public expense other than those enumerated elsewhere within the Chapter.

GIEP

§ 16.31. General.

(a) A GIEP is a written plan developed and revised at least annually describing the gifted education to be provided to a gifted student. The initial GIEP shall be based on and be responsive to the results of the Gifted Multidisciplinary Evaluation and assessments to determine present levels of educational performance. Each GIEP shall be developed, implemented, and monitored in accordance with this Chapter.

(b) Each school district shall ensure the following:

(1) The gifted student's GIEP is provided to each regular education teacher, special education teacher, related services provider, administrator and any other education employee personnel who is responsible for its implementation or monitoring; and

(2) Each teacher and provider described in this section is informed of--

(i) His or her specific responsibilities related to implementing the gifted student's GIEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the gifted student in accordance with the GIEP.

(c) If a gifted student moves from one School District in this Commonwealth to another, the new district shall implement the existing GIEP to the extent possible or shall provide the services and programs specified in an interim GIEP agreed to by the parents until a new GIEP is developed and implemented in accordance with this section and §§ 16.32 and 16.33 (relating to GIEP; and support services) or until the completion of due process proceedings under §§ 16.61--16.65 (relating to procedural safeguards).

(d) 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.

(e) Every student receiving gifted education prior to December 9, 2000, shall continue to receive gifted education until the student one of the following conditions exists:

(1) graduates from high school.

(2) is no longer of school age.

(3) A GMDT determines, based upon a reevaluation completed under section 16.23 that the regular, unmodified curriculum provides the gifted student with an appropriate education and, accordingly, that the gifted student is no longer ~~needs gifted education~~ mentally gifted.

§ 16.32. GIEP.

(a) Each School District shall establish and implement written school district policy and procedures, which shall be developed with meaningful Parent input and shall be made public, to appoint a GIEP team in accordance with the requirements of this Chapter, to review the recommendations of the GMDT and to develop a GIEP for the student. The GIEP shall be developed at a GIEP meeting and based on current 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 and PLEP testing, develop an initial GIEP for the gifted student, and arrive at a determination of educational placement. Any revisions to GIEPs, changes in educational placement, or continuation of educational placement for the gifted student shall be made by the GIEP team based upon a review of the student's current PLEP, and related developmental needs of the gifted student, review of the existing GIEP and instructional activities then in place, as well as on information in the most recent evaluation. The GIEP shall:

(1) Draw upon information from a variety of sources, including ability and achievement tests, parent input, and teacher or other educational personnel recommendations, as well as information about the child's physical condition, social or cultural background, and where appropriate, adaptive behavior; and

(2) Ensure that information obtained from all of sources is documented and considered.

(c) Each GIEP team shall include persons who meet the following qualifications:

(1) One or both of the student's parents.

(2) The student if the parents choose to have the student participate.

(3) A representative of the School 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 School District to commit those resources. The Chairperson shall have knowledge and training in the requirements of this Chapter as well as the School District's general education curriculum and its modifications to accommodate the needs of the gifted student.

(4) One or more of the student's current teachers and specific teachers upon parent request.

(5) Other individuals at the discretion of either the parents or the School District. The School District shall give a minimum of ten (10) days advance notice if legal counsel is to be present.

(d) The School District shall establish and implement procedures designed to ensure that the parents of the gifted student are offered the opportunity to be present at each GIEP team meeting. These procedures shall be included in School District policies and be made public.

These procedures shall include any one or a combination of the following: documented phone calls, letters and certified letters with return receipts. Agencies shall maintain documentation of their efforts to encourage parents to attend. Invitations to GIEP meetings shall include the following to ensure that a reasonable effort has been made to obtain parental participation:

- (1) The purpose, time and location of the meeting;
- (2) The names of the persons and their purpose who are expected to attend.
- (3) The procedural rights available to protect the student and parent, in language which is clear and fully explains all rights;
- (4) Notification, in the case of the initial GIEP meeting, that a determination will be made at the meeting as to whether or not the student is mentally gifted;
- (5) Notification that if the student is determined to be mentally gifted, a GIEP shall be developed;
- (6) Notifying the parent and other persons who will be attending at least 10 calendar days in advance to ensure that the parent will have an opportunity to attend and to invite other participants to the team meeting; and
- (7) Notification of the availability of an interpreter for parents with deafness or whose native language is other than English.

(e) The GIEP of each gifted student shall contain the following:

- (1) A statement of the gifted student's present levels of educational performance, including but not limited to, academic achievement and functional performance.
- (2) A statement of measurable annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report and updated through analysis of PLEP data.
- (3) A statement of the specially designed instruction and support services to be provided to the gifted student. The specially designed instruction shall specify the performance levels to be achieved through the GIEP based on rate of acquisition and rate of retention, academic acceleration needs, and academic enrichment needs.
- (4) Projected dates for initiation and anticipated duration of gifted education. All GIEPs shall be in effect at the start of each school year, the School District shall have in effect, for each individual gifted student, a GIEP as defined within this Chapter. Plans for which creation was delayed past the first instructional day of the school year shall have a subsequent annual review that ensures an annual duration of each full school year.

(5) Appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning outcomes are being achieved, including:

(i) a description of a written timeline including how and when assessments of the gifted student's progress will be measured and when periodic reports on the progress the gifted student;

(ii) the level, standard, performance, and percent of mastery or completion expected of the gifted student;

(iii) the progress assessment procedures; and

(iv) a determination of whether the measurable annual goals that address the gifted student's present levels of academic achievement and functional performance are being met.

(6) The names and positions of GIEP team participants and signatures asserting agreement or disagreement with the GIEP and the date of the meeting on both the GIEP and NOREP.

(7) Special factors including but not limited to behavior which impedes the gifted student's learning and language needs as they relate to the implementation of the GIEP, including cognitive and academic and functional goals.

(8) A statement of student interests and preferences that shall be considered in the creation of the GIEP.

(9) A statement of the credits earned for graduation for high school courses taken prior to high school.

(10) A statement of transition services which consider exit plans for transitional periods within the unique School District Kindergarten through 12 (K-12) continuum as well as an "exit plan" for transition to post-school activities.

(a) Graduation planning shall be part of the GIEP process even for young gifted students because acceleration sets the stage for earning credits early or out of sequence, for early graduation and for early admission to college.

(b) the transition plan shall be outcome oriented within a results oriented process that is focused on the academic and functional achievement of the gifted student to facilitate the gifted student's movement from school to post-school and post-secondary education.

(c) The graduation transition planning shall begin no later than the point at which the gifted student transitions into high school or four years prior to anticipated graduation, whichever occurs first, or younger if determined appropriate by the

GIEP Team, and updated annually, thereafter, the GIEP must include the transition services (including courses of study and short term objectives and long term goals) needed to assist the student's transition.

(11) A statement of assistive technology devices to be used in the provision of gifted education.

(f) A copy of the GIEP shall be provided to the parents, along with a notice of parental rights under §§ 16.61--16.65 (relating to procedural safeguards) at no cost to the parent. A copy of the Notice of Recommended Educational Placement (NOREP) shall be provided to the parent along with the GIEP.

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

(1) A GIEP shall be developed within 30 calendar days after issuance of a GMDT's written report.

(2) The GIEP of each student shall be implemented no more than 10 school days after the NOREP and GIEP are signed or at the start of the following school year if completed less than 30 days before the last day of scheduled classes in accordance with § 16.62(5) (relating to consent).

(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) At the start of each school year each School District shall have in effect, for each identified gifted student within its jurisdiction, a GIEP, as defined in this Chapter. All GIEPs shall be implemented on the first school day of instruction during a new school year and shall be appropriate to the current needs of the gifted student.

(h) 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 specified 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.

§ 16.33. Support services.

(a) The GIEP team, during the development, review or revision of a GIEP, shall determine whether the gifted student needs one or more support services. Any service that is required for a gifted student to benefit from or gain access to gifted education shall be considered a support service if the GIEP team determines:

(1) The service is an integral part of an educational objective of the student's GIEP, without which the GIEP cannot be implemented.

(2) The service is needed to ensure the student benefits from or gains access to a gifted education program.

(b) Support services may include, but are not limited to, career guidance, counseling, transportation, technology education, communication systems for exchange of ideas and progress monitoring, translators for ESL students (under 16.61(c)), and interpreters as appropriate. Department services such as facilitators for the creation of individual education plans for gifted students upon irreconcilable communication breakdowns between a school district and parents shall be considered support services.

~~(b)~~ (c) The GIEP team shall conclude that transportation to and from school psychological services, parent counseling and education, or another service is a support service if the GIEP team determines the service shall be appropriate.

(d) The scheduling of communication meetings, observations and use of communication technology tools via video technology, synchronously, from one to many delivery points, and through use of recording devices, are support services.

EDUCATIONAL PLACEMENT

§ 16.41. General.

(a) The GIEP team shall base educational placement decisions on the gifted student's needs. The provision of services and specially designed instruction shall be determined with consideration of peer-reviewed research.

(b) Districts shall use administrative, educational placement and instructional strategies and techniques in the provision of gifted education for gifted students which require:

(1) The provision of appropriate specially designed instruction based on the student's need and ability with recognition of the rate of acquisition and rate of retention of material by the gifted student.

(2) That the individual gifted student is able to benefit meaningfully from the rate, level and manner of instruction. Including, as appropriate, but not limited to categorical grouping of students, grouping across grades, grouping according to academic talent or based upon other performance characteristics, compacting -both course and strand, subject or whole grade acceleration, and placement in more than one grade level. The placement may be beyond age or grade level in order to align gifted students with their ability and achievement. Options for gaining Concurrent course credit and credit for learning obtained outside the School District or advanced placement within the School District shall be considered. Credit by examination may be an option to determine appropriate educational assignment and credit for high school graduation requirements.

(i) The GIEP team shall take into account the ability of the student and rate of retention and rate of acquisition and not solely the amount of prior knowledge when determining the appropriateness of placement.

(ii) 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.

(iii) Credit for high school graduation through college coursework may be considered but shall not be mandated by a School District.

(3) Opportunities to participate in specially designed instruction and the educational placement, including the need for gifted methods, materials and specialized curriculum and grouping including but not limited to acceleration and enrichment programs, as appropriate, and to receive services according to their individual needs. These opportunities shall go beyond the program that the student would receive as part of a general education.

(4) Educational placements shall, if determined by the GIEP team, support the emotional and social challenges of the individual gifted student.

(c) Gifted educational placement may not be based on one or more of the following:

- (1) Lack of availability of placement alternatives.
- (2) Lack of availability or efforts to make educational or support services available.
- (3) Lack of staff qualified to provide the services set forth in the GIEP.
- (4) Lack of availability of space or of a specific facility.
- (5) Administrative convenience.

§ 16.42. Parental placement in private schools.

(a) This Chapter does not limit the right of parents to have their gifted children educated at private schools completely at private expense nor to seek private school placement at public expense when appropriate as compensatory education after a determination of inappropriate education of the gifted student.

(b) The home education program of a gifted child shall be governed by sections 1327 and 1327.1 of the School Code (24 P. S. §§ 13-1327 and 13-1327.1).

(c) The cyber school and charter school education programs shall be governed by sections 1701-A of the School Code (24 P.S. §§ 17-1701-A).

§16.43 Facilities.

(a) The comparability and availability of facilities for gifted students shall be consistent with the approved intermediate unit or school district plan, which shall provide, by description of policies and procedures, the following:

- (1) Gifted students shall be provided appropriate classroom space.
- (2) Moving of a class shall occur only when the result will be:
 - (i) To improve the delivery of gifted education services and programs without reducing the degree to which the gifted students are educated with general education students.
 - (ii) Supervised by professional personnel according to instructional ratios.
- (3) The instructional setting for gifted education shall be without isolation and shall be:
 - (i) maintained as close as appropriate to the ebb and flow of usual school activities;
 - (ii) located where noise will not interfere with instruction;
 - (iii) located only in space that is designed for purposes of instruction. Hallways, closets and the back of the classroom are not appropriate classroom facilities;
 - (iv) readily accessible.
- (4) Each gifted resource room shall be equipped with access to instructional resources appropriate for enrichment and GIEP facilitation.

PROCEDURAL SAFEGUARDS

§ 16.61. Notice : Procedural Safeguards.

(a) A school district shall document that written notice to the parents of a gifted student has been provided at least ten (10) school days prior to one or more of the following events:

(1) The school district proposes to conduct a gifted multidisciplinary evaluation or reevaluation of the student;

(2) The school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the gifted student, or proposes or refuses to make any changes in the GIEP which substantively impact the provision of a free appropriate public education to the gifted child; and

(3) The GIEP or GMDT meeting.

(b) The Department shall develop and make available a model form to assist parents in filing a Department Compliance Complaint, a Due Process Complaint, and a request for mediation or facilitation under §16.33(b).

(c) A change in the identification, evaluation, educational placement or GIEP of a gifted student may not be made during the pendency of an administrative or judicial proceeding unless agreed to by the parties to the proceeding. For a GIEP that has been accepted in part by the Parents, the School District shall implement such accepted provisions. The agreed upon provisions, when in conflict, supercede 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.

(d) The content of notices to the parents shall be written in plain language understandable to the individual parent. If necessary, the content of notices shall be communicated orally in the native language or directly so that the parents understand the content of the notices.

(e) The notice shall include:

(1) A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action and a description of options the district considered and the reasons why those options were rejected.

(2) A description of each evaluation procedure, type of test or assessments, record or report used as a basis for the action.

(3) A description of other factors relevant to the district's action.

- (4) A full explanation of the procedural safeguards, including the right to mediation, facilitation under §16.33(b), Compliance Complaints, and an impartial Due Process hearing available to the student or the Parents under this Chapter.

(f) The notice procedures required by this section shall provide the parents of a gifted student with information about their entitlements and protections under the law. Procedural safeguard notices may be placed on School District Internet Web site if a Web site exists in addition to individual written notification but shall not be a substitution for personal service where required. Notice shall be provided at least annually and in addition upon request for mediation, facilitation, a Compliance Complaint or Due Process hearing. The Procedural Safeguard notice shall inform and provide a full explanation to the parents of the following:

- (1) The addresses and telephone numbers of various organizations which are available to assist in connection with the identification, creation and implementation of GIEPs, and hearing or mediation;
- (2) The timelines provided under this Chapter;
- (3) Notice of the time period (statute of limitations) within which a Complaint will be considered;
- (4) Notice of the availability of reimbursements for private evaluations and unilateral placement by parents in interim alternative educational settings, private schools at public expense;
- (5) Access to educational records;
- (6) Gifted student's placement during pendency of complaint and due process proceedings, due process hearings;
- (7) State level appeals, civil actions and the time periods in which to file such actions;
- (8) An outside evaluation submitted by the parents shall be considered;
- (9) The information in § 16.63 (relating to impartial due process hearing); 16.64 (relating to mediation); 16.33(b) (relating to facilitation); and 16.66 (Compliance Complaints); and
- (10) A statement of the prohibition against penalizing or discriminating against any individual because he has initiated, testified, participated or assisted in any enforcement proceedings under this Chapter.

(g) A parent of a gifted child may elect to receive notices required by this Chapter by an electronic mail (E-mail) communication, if the public agency makes that option available. The permission to consider such communication as notice shall be documented in writing and maintained in the individual gifted student's educational records. Confirmation of receipt shall be required. The responsibility for notice to School District of changes in Parent E-mail addresses shall be on the Parent. Permission to provide notice by electronic mail communication may be revoked by the Parent at any time.

§ 16.62. Informed Consent.

(a) The district shall document that informed consent in writing from the parent as described in §16.1 is obtained prior to:

(1) Conducting an initial multidisciplinary evaluation.;

(2) Initially placing a gifted student in a gifted program.;

(3) Disclosing to unauthorized persons information personally identifiable to a gifted student;

(4) When completed, the GIEP provided for in § 16.32 (relating to GIEP) shall be presented to the parents, along with a notice of recommended assignment signed by the school district superintendent provided for in § 16.61 (relating to notice) and a notice of parental right to an impartial due process hearing under § 16.63 (relating to impartial due process hearing). The notice shall be presented to the parents in person at the conclusion of the GIEP conference or by certified mail within 5-calendar days after the completion of the GIEP conference. Notice shall also be given to parents that they may proceed to due process on disputed issues without delaying implementation of agreed upon parts of the plan.

(5) The parents shall have 10-calendar days to respond to a notice of recommended assignment sent by mail or 5 calendar days to respond to a notice presented in person at the conclusion of a GIEP conference. If the parents receive the notice in person and approve the recommended assignment within 5-calendar days, the school district may not implement the GIEP for at least 5-calendar days, to give the parents an opportunity to notify the district within the 5-day period of a decision to revoke the previous approval of the recommended assignment.

(b) 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.

(c) 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.

(d) Other informed consent requirements:

(1) Parental consent shall not be required before:

- (i) reviewing existing data as part of an evaluation or a reevaluation; or
- (ii) administering a test or other evaluation that is administered to all students unless, before administration of that test or other evaluation, consent is required of parents of all children; and
- (iii) scheduling a GIEP team meeting.

(2) 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.

§ 16.63. Impartial due process hearing.

(a) Parents may request in writing an impartial due process hearing concerning all aspects of the protections of this Chapter in order to resolve conflicts including 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. A Due Process Order shall be enforceable by the Department and failure to comply with such Orders shall result in additional sanctions as appropriate.

(b) The Complaint shall be served upon the Office of Dispute Resolution and the School District contemporaneously and shall include:

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;
- (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U. S. C. 11434a(2))), available contact information for the child, and the name of the school the child is attending;
- (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) 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.

(d) A party may amend its Due Process Complaint with permission of the hearing officer or if opposing party consents in writing to the amendment and is given the opportunity to resolve the due process complaint; the hearing officer may grant permission to amend at any time not later than five days before the due process hearing begins. If a party files an Amended Due Process Complaint, the timelines remain the same as the filing of the original Due Process Complaint unless continuances are granted by consent of both parties or the Hearing Officer. 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.

(e) 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. Parents, School Districts, and other parties may use the appropriate model form described in this section, or another form or other document, so long as the form or document that is used meets the content requirements for filing a Due Process Complaint.

(f) 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).

(g) The ultimate burden of persuasion as to the appropriateness of the GIEP plan or identification or proper implementation shall be with the School District. The Burden of going forward, or challenging the gifted education of the gifted child's identification, the GIEP or implementation, shall be placed upon the moving party. The presumption shall be that the School District plan is appropriate which shall be rebuttable by the parents followed by ultimate burden of persuasion on the School District to defend its challenged actions. Inaccessibility of records or evidence necessary for Parents to present their challenge shall result in the transfer of the Burden of Proof to the School District accompanied by a presumption of inappropriateness.

(h) 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 (10) days of receiving the Due Process Complaint, send to the parent a response that includes :

(1) An explanation of why the School District proposed or refused to take the action raised in the Due Process Complaint;

(2) A description of other options that the GIEP team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the School District used as the basis for the proposed or refused action, and

(4) A description of the other factors that are relevant to the School District's proposed or refused action.

(i) The hearing shall be conducted by an impartial hearing officer assigned by the Office of Dispute Resolution and held in the local school district at a place reasonably convenient to the parents. At the request of the parents, the hearing shall be held in the evening. These options shall be set forth in the form created by the Department and provided to the Parent by the School District or Department for requesting a hearing.

(1) A hearing officer conducting a hearing shall not be:

(i) an employee of the School District agency involved in the education or care of the child; or

(ii) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

(2) A hearing officer conducting a hearing shall possess knowledge of and the ability to:

(i) understand the provisions of this Chapter pertaining to this title, and legal interpretations of this Chapter in State courts;

(ii) conduct hearings in accordance with appropriate, standard legal practice; and

(iii) render and write decisions in accordance with appropriate standard legal practice.

(3) 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.

(j) The hearing shall be an oral, personal hearing and shall be open to the public unless the parents request a closed hearing five (5) days in advance of the hearing. If the hearing is open, the decision issued in the case, and only the decision and any appeals of the decision, shall be available to the public. If the hearing is closed, the decision shall be treated as a record of the student and may not be available to the public.

(k) 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—

(1) Impeded the child's right to an appropriate gifted education;

(2) Significantly impeded the parent's participate in the decision-making process regarding the provision of an appropriate gifted education to the gifted student; or

(3) Caused a deprivation of meaningful educational benefit to the individual gifted student.

(l) The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. The Order of the hearing officer shall impose remedies consistent with §16.67 as appropriate. Hearing officers shall have broad discretion in admitting evidence. Although technical rules of evidence will not be followed, a hearsay objection shall still serve to block inappropriate testimony. Unobjected-to hearsay corroborated by properly admitted evidence can be used to support a finding of fact by a hearing officer. The decision shall be based solely upon the substantial evidence presented during the course of the hearing. A hearing officer shall create a full record for appellate 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.

(m) The hearing officer shall have the authority to order that additional evidence be presented.

(n) A written transcript, or at the option of the parents, electronic verbatim record of the hearing shall, ~~upon request,~~ be made and provided to parents at no cost.

(o) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to students who are gifted. Parents may be assisted by interested parent organizations through the submission of amicus briefs related to the issues in dispute.

(p) A parent or a parent's representative shall be given immediate access without unnecessary delay to educational records, including any tests or reports upon which the proposed action is based. 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 (10) days after the request has been made.

(q) A party may prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least 5-calendar days before the hearing.

(r) A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony. 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.

(s) 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. The panel shall do the following:

- (1) Examine and provide an impartial review of the entire hearing record;
- (2) Limit the review to the issues resolved by the hearing officer unless the record supports and in the best interests of the gifted student requires additional evidence;
- (3) Ensure that the procedures at the hearing were consistent with the requirements of due process;
- (4) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the provisions under this Chapter shall apply;
- (5) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the appellate hearing officers;

- (6) Make an independent decision on completion of the review;
- (7) Provide a copy of the written including its rationale to the parties; and
- (8) Impose remedies consistent with §16.67 to include but not be limited to reimbursement for Independent Evaluations, outside parties to facilitate GIEP meeting, third party consultation on creation of GIEP and training, calculations of compensatory education, and other appropriate sanctions.

The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the parties of its decision, the panel shall indicate the courts to which an appeal may be taken.

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

- (1) The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, 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 shall comply with the qualifications under (i) of this section and shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties.

(u) The following timeline applies to due process hearings:

- (1) A hearing shall be held within 30-calendar days after a parent's or school district's initial request for a hearing.
- (2) The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing.
- (3) Expedited due process hearings, which must occur within fifteen (15) 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 hearing 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.

(4) Continuances granting specific extensions of time may be granted by a hearing officer upon request upon good cause shown or agreement of the parties.

(v) 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.

(w) 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.

(1) If a written Complaint under the Departmental Complaint Resolution Process is received that is also the subject of a Due Process hearing under this section, or contains multiple issues of which one or more are part of a Due Process hearing, the Department shall set aside any part of the Complaint that is being addressed in the Due Process hearing until the conclusion of the hearing.

(2) Any issue in the Departmental Complaint that is not part of the Due Process hearing shall be resolved using the time limit and procedures described elsewhere in the Department Complaint procedures.

(x) Penalizing or discriminating against any individual because they have initiated, testified, participated or assisted in any enforcement proceedings under this Chapter shall be prohibited.

§ 16.64. Mediation.

(a) Mediation is a process in which Parents and agencies involved in a special education for gifted students dispute may obtain the assistance of an impartial mediator in attempting to reach a mutually agreeable settlement. Each School District shall ensure that procedures are established and implemented to allow parties to disputes involving any matter under this Chapter, including matters arising prior to the filing of a Due Process Complaint, to resolve disputes through a mediation process.

(1) The procedures shall meet the following requirements and shall ensure that the mediation process—

(i) Is voluntary on the part of the parties;

(ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other entitlements afforded under this Chapter; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques and this Chapter.

(2) 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.

(3) The mediation process shall be free to the Parents and School Districts.

(4) 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.

(b) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Joint session--A stage of the mediation conference when the mediator meets with the parties and participants together and each party is given a reasonable uninterrupted opportunity to present the issues and concerns.

Mediation agreement--A written record of agreement reached by the parties.

Mediation conference--A structured, but informal meeting of the parties and participants with a mediator. The purpose of the conference is to develop a mutually acceptable, written agreement that is binding on the parties.

Mediator--An impartial, neutral person who helps parties involved in a conflict to develop their own solutions to the dispute. The term does not include a person who makes decisions about the conflict for the parties.

Participants--Other persons appearing at the mediation conference on behalf of either party, such as other family members and specialists.

Parties--The parents and designated agency personnel involved in the conflict.

Private session (caucus)--A private meeting between the mediator and only one of the parties to further clarify that party's position and to explore possible solutions to the conflict. The mediator may not share information from the private session without consent of the party.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part—

(i) May not be an employee of the Department or School District that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity. The mediator conducting a hearing shall possess knowledge of and the ability to understand the provisions of this Chapter, and the legal interpretations of this Chapter in appellate cases; and shall promptly inform the parties of a personal or professional relationship the mediator has or has had with any of the parties.

(2) A person who otherwise qualifies as a mediator is not an employee of the Department or School District solely because he or she is paid by the agency to serve as a mediator.

(d) If a dispute is resolved through mediation, a written agreement shall be prepared and placed in the child's education record. The agreement shall also be incorporated into the GIEP. The parties shall execute a legally binding agreement that sets forth that resolution and that—

(1) States 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; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(3) may be voided by the Parents within 3 business days of the agreement's execution.

(e) During a mediation conference, the mediator shall meet with the parties together in a joint session and individually in private sessions.

- (f) Discussions occurring during the mediation session shall be confidential, and no part of the mediation conference shall be recorded.
- (g) The mediator ~~may~~ shall not be called as a witness in future proceedings.
- (h) The designated agency involved in the dispute shall send a representative who has the authority to commit resources to the resolution agreed upon by the parties.
- (i) The written mediation agreement is not a confidential document and shall be incorporated into the student's GIEP and is binding on the parties.
- (j) The mediation agreement shall be ~~enforceable~~ enforced by the Department. A party to the mediation agreement may enforce in any State Court of competent jurisdiction.
- (k) A GIEP team shall be convened, within 10 school days following the mediation agreement, to incorporate the mediation agreement into the GIEP.
- (l) When the mediation conference results in a resolution of the dispute, each party shall receive an executed copy of the agreement at the conclusion of the mediation conference.
- (m) Mediation shall not be used to deny or delay a party's right to a Due Process hearing.

§ 16.65. Confidentiality.

(a) Each agency shall protect the confidentiality of personally identifiable information regarding a gifted student or a student thought to be gifted in accordance with section 13(a) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g), 34 CFR Part 99 (relating to family educational rights and privacy), Chapter 12 (relating to students) and other applicable law.

(b) Nothing in this Chapter shall authorize the Department, a School District, or agency to release or otherwise utilize student identifiable information or individual student test scores for purposes other than the administration of this Chapter.

(c) A parent or a parent's representative shall be given access to educational records, including any tests or reports upon which the proposed action is based.

(1) School District and agents including but not limited to evaluators and other providers shall permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the School District under this Chapter. School Districts and their agents must comply with a request without unnecessary delay and before any meeting regarding a GIEP, or any hearing or resolution session, and in no case more than fifteen (15) calendar days after the request has been made.

(2) The right to inspect and review education records under this section includes—

(i) The right to a response from the School District or agency to reasonable requests for explanations and interpretations of the education records;

(ii) The right to request that the agency provide copies of the education records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(iii) The first copy of each record shall be without cost to the parent. School Districts may charge a fee for subsequent copies of records if the fee does not effectively preclude the parents from exercising their right to inspect and review those records. School Districts shall not charge a fee to search for or to retrieve information under this Chapter.

(3) A School District or its agents may presume that the parent has authority to inspect and review the education records relating to his or her child unless the School District has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

(4) Each School District shall keep a record of parties obtaining access to education records collected and maintained, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

ENFORCEMENT

§16.66 Compliance Monitoring.

(a) The Secretary shall superintend gifted education as provided within this Chapter and §§ 13-1371 and 13-1372 of the School Code. The Secretary shall:

- (1) include gifted students in Departmental tracking systems, such that--
 - (i) collected data shall be disaggregated with gifted student information easily identifiable; and
 - (ii) data from School Districts shall be collected according to procedures and policies established by the Department and made public by School Districts;
- (2) enforce the compliance by School Districts of the requirements of this Chapter;
- (3) hear and investigate Complaints; and
- (4) investigate findings of procedural noncompliance determined and referred by due process hearing officers;
- (5) impose discipline, corrective action plans, and other sanctions as determined appropriate.

(b) Each School District shall designate a professional personnel as defined in §16.5 of this Chapter who shall report to the Department on Compliance on the following:

- (1) Identification and Child Find data, and screening and evaluation data;
- (2) Development of individual GIEPs;
- (3) Delivery of gifted education consistent with this Chapter;
- (4) Progress monitoring of individual GIEPs to confirm proper implementation;
- (5) Other monitoring criteria as required by the Department.

(c) The Secretary shall require reports as it determines appropriate and shall monitor all School Districts based on cyclical and Complaint-driven audits.

- (1) Results of Compliance audits shall be made public;
- (2) Results of individual School District monitoring shall be made public applying §16.65 confidentiality restrictions.

(d) The Department shall establish a system to receive and investigate Compliance Complaints against School Districts and Complaints concerning Mediators, Hearing Officers and Appellate Hearing panel Officers.

(1) An individual, education personnel, or an interested parent organization may file a written Complaint seeking Departmental Complaint Resolution concerning all procedural and substantive issues under this Chapter.

(2) The Compliance Complaint shall be filed and the Department shall investigate without disclosure of the identity of the requestor.

(3) Upon appropriate finding, the Department shall enforce disciplinary and corrective actions against School District and personnel as a result of the Complaints, and enforce disciplinary action, including removal, against Mediators, Hearing Officers and Appellate Hearing Panel Officers.

(e) The Secretary shall be responsible for enforcement of the following:

(1) Noncompliance determined through compliance monitoring;

(2) Noncompliance determined through the individual Compliance Complaint process;

(3) Mediation Agreements;

(4) Orders issued as part of Due Process cases.

(f) Noncompliance shall result in one or more of the following actions:

(1) The School District shall comply with a corrective action plan as determined by the Department; and

(2) The School District shall be required to enter into a Compliance Agreement when the Secretary has reason to believe that the School District cannot correct the problem within one year;

(3) Disciplinary action including decertification of School District superintendent and other certificated personnel.

(4) For each year of the determination, withholding of funding until the Secretary determines the School District is in compliance with this Chapter.

(g) Penalizing or discriminating against any individual because they have initiated, testified, participated or assisted in any enforcement proceedings under this Chapter shall be prohibited.

(h) Any Compliance Complaint issue may be submitted to the Due Process for a de novo review.

16.67 Sanction and remedies.

(a) When a School District has been determined to be non-compliant with this Chapter, Hearing Officers, Appeal Panels, and courts of proper jurisdiction shall have the authority to order remedies to enforce the provisions of this Chapter. Such remedies shall be at public expense and may include but not be limited to:

(1) Compensatory education awards;

(2) A complete evaluation with testing to be administered by evaluators of the parent's selection, and completed on an expedited schedule, or a reimbursement to the parent for any private evaluation;

(3) Addition to the GIEP team of a disinterested third-party mediator or facilitator with binding authority who shall guide the development of the individual GIEP plan;

(h) Mandatory training of School District professional personnel on this Chapter;

(i) Referral to sensitivity training or other human resource interventions for School District personnel in instances of discrimination relating to identification of gifted students or those who manifest dual exceptionalities;

(j) Other remedies which may be punitive in nature such as private school at public expense, attorney fees for litigation necessary in the enforcement of Compliance Complaint, mediation and Due Process Orders, removal of personnel from GIEP team, and other sanctions determined to be appropriate.

(b) Compensatory education awards shall occur upon the determination of a deprivation of an appropriate gifted education. The amount of compensatory education shall 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 would have occupied but for the school district's failure to provide an appropriate gifted education. Such award shall be stated in terms of a dollar amount calculated according a formula, which considers the cost of delivery of gifted education. Parents may utilize compensatory education awards for services provided outside of the School District as determined by Parents.

(c) Failure to timely implement sanctions and remedies may subject School Districts to additional compensatory awards as determined appropriate by the Department or through additional Due Process proceedings. Attorney fees and incidental costs shall be recoverable by Parents in proceedings to enforce Final Orders and Mediation Agreements.

(d) The Parent may enforce a Mediation Agreement or Hearing Officer's Order through either filing a separate Due Process Complaint or in another Court of competent jurisdiction.

Appendix "A"

Additional definitions. Terminology related to educational placement and instructional strategies in the provision of gifted education shall include but not be limited to the following definitions. The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

Ability Grouping - Arranging students by ability to meet various instructional purposes. These groups are specific to the educational goal to be achieved and can be flexibly formed and reformed as needed. Ability grouping is not synonymous with "tracking".

Above Level Testing - Also called out-of-level testing – Administering a test level that is designed for an older student. For example, a 5th grader might take chapter tests from the 6th or even 7th grade placement tests to demonstrate knowledge. Considerations for administering above level testing includes students who score at the top range on grade-level assessments, consistently make excellent grades without studying or apparent effort, high grades on regular testing but surprisingly low grades in the classroom, and the student seeks to know more about a subject than the course provides.

Acceleration - Access to higher level learning activities and skill development than typically provided in regular education to students of the same age. The pacing, complexity, and depth of planned coursework are modified as indicated by individual needs. Acceleration may include: planned course compacting/telescoping (both strand and course compacting) subject acceleration, whole grade acceleration, early entrance to kindergarten, early graduation, specially designed instruction, credit by examination or performance, interdisciplinary planned courses, distance learning courses, higher education level courses, independent or self-directed study.

Accountability—Holding students, teachers, administrators and other school personnel responsible for instructional outcomes.

Achievement—The threshold achievement level for the identification of a gifted student is usually one or more above grade achievement level for the normal age group in one or more subjects as measured by nationally normed and validated achievement tests able to accurately reflect gifted performance. Subject results shall yield academic instruction levels in all academic subject areas and form the basis for Present Level of Academic Achievement (PLEP) considerations when creating a GIEP.

Achievement Test - An objective, nationally normed and validated assessment that measures educationally relevant skills or knowledge about academic subjects. Measures the academic achievement of the gifted student and is an element of the needs consideration for individual GIEP plan creation.

Adaptations – The adjustment of the curriculum meet the needs of the gifted student.

Advanced Placement Courses - Planned courses of study in which secondary regular education students may gain college credit and/or advanced college placement. These courses are normally available only at the 11th and 12th grade level but may be available to gifted students based upon

need without consideration of general age and grade levels. Advanced Placement Courses alone do not substitute for a gifted education.

Appropriate Program - - An exceptional child is entitled to a free appropriate program of special education or training -- that is, an education plan which is designed to meet the child's individual educational needs. An appropriate plan is made up of "*pecially designed instruction*" (SDI) and the "*related services*" needed to help the gifted student benefit from that instruction. An appropriate plan is fitted to the child, not the child to a preconceived program.

Assessment - In psychology, *assessment* means comparing the tested measures of a student's mental characteristics (e.g., cognitive ability, personality, self-esteem) to a norm, or average.

Asynchrony—A term to describe disparate rates of intellectual, emotional and physical rates of growth or development often displayed by gifted children.

At risk student—A term used to describe a student whose academic, physical or emotional needs go unmet or serve as barriers to talent recognition or development placing them at risk of underachieving and dropping out of the educational system.

Authentic Assessment - A student evaluation technique using student products or performance instead of traditional standardized tests. It allows for greater focus on student individuality and creativity in the learning process.

Bloom's Taxonomy—A model for developing curriculum for gifted students developed by Benjamin S. Bloom. *High level thinking domains* (analysis, synthesis, evaluation) are emphasized for gifted students.

Ceiling Effect - The failure of a test to identify fully the performance of the most competent because of a limited number of difficult test items. The impact of the ceiling effect is relevant to the gifted student where age and grade based standards of assessment inadequately challenge of the individual gifted student. Appropriate evaluations must include assessments that measure the gifted student's learning as opposed to the limits of the tested material.

Cluster Grouping - Ability grouping of students within a heterogeneous regular classroom.

Compacting - Elimination of content that the student has already mastered allowing a faster paced learning progression based on the student's rate of acquisition/retention of new materials and skills. Strand compacting is flexible pacing of material within a course unit or subject as dictated by the individual student's mastery also known as continuous progress; course compacting is a fixed paced presentation of course material that compresses the material and moves at a faster pace than the regular classroom presentation without regard to the individual student's rate of acquisition or retention.

Concurrent or Dual Enrollment --Students at any grade level may take classes at the next school level. For example, elementary school students take classes at middle school, middle school students take high school classes and high school students take college or university or trade school courses.

Content - The specific information that is to be taught in the unit or course of instruction.

Continuous Progress - Students receive appropriate instruction regularly and move ahead as they master content and skills. Students receive appropriate instruction daily and move ahead as they master content and skills. The purest form of flexible pacing, continuous progress, breaks the age-in-grade lockstep.

Continuum of programming services – Chapter 16 requires Kindergarten through 12 continuums (K-12 continuum) of services for gifted education. Gifted programming and services for the individual gifted student must be coordinated through transitions from primary to secondary education and the LEA or School District representative with authority to commit resources must have a complete knowledge of all curricular offerings and resources available through the School District.

Convergent Thinking -- Convergent thinking or production is one of the elements found in Dr. J.P. Guilford's research model of the structure of intelligence. Divergent thinking focuses on many answers. *Convergent thinking* focuses on a single answer.

Cooperative Learning --A set of instructional methods in which students work in small, mixed ability groups. The students are responsible not only for learning the material, but also for helping their teammates learn.

Cooperative Learning Groups - Grouping students with varying ability levels often reflecting the full range of student achievement and aptitude to complete a common task and/or project. Misuse of the process occurs when some children are constantly assigned to help others learn rather than being allowed to advance at their own pace and/or the common task/project providing little or no challenge nor learning opportunity appropriate to each child's abilities.

Creativity—The experience of thinking, reacting, and working in an imaginative and idiosyncratic way that is characterized by a high degree of innovation and originality, divergent thinking, and risk taking. Some of the experts in the field include J.W. Getzels, P. Jackson, J.P. Guilford, E. Paul Torrance, and Frank Williams.

Credit – The unit of measurement a School District gives to a student when he/she fulfills course or subject requirement(s) as determined by the School District. Credit given gifted students who pace their course work through education strategies such as concurrent enrollment, grade or course acceleration, or dual enrollment with higher education institutions must have their credits necessary for graduation granted with those placements and delivery options considered. Credit by examination and graduation credit granted for elementary students who successfully complete coursework prior to entrance to high school will ensure that the gifted student is not academically penalized as an unintended consequence of their appropriate educational placements. Testing for placement as opposed to graduation credit would limit a student's ability to transition into an early college admission opportunity when appropriate.

Credit by Examination - Students receive credit for a course upon satisfactory completion of a comprehensive examination. Students enter an advanced level course or receive credit upon satisfactory completion of a comprehensive examination or upon certification of mastery.

Criterion referenced testing—An assessment that compares a gifted student's test performance to a body of knowledge or specific skill as opposed being measured against the performance of other students.

Cross Grade Grouping --The assignment of students to instructional groups based upon their achievement in a particular subject rather than their grade level placement.

Curriculum-based Assessment (CBA) - Assessment that is tied directly to the curriculum. Procedures for determining the instructional needs of the student based upon the student's on-going performance or curriculum standards and educational markers within existing course content.

Demonstrated Achievement --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 judgment. Performance-based skills or expertise that show a high-level of accomplishment, and indicate exceptional interest and motivation in specific areas.

Diagnostic Test - An in-depth evaluation process to determine the specific abilities or learning needs of individual students. All gifted assessments must be normed and peer reviewed whenever appropriate.

Differentiation - An organized, yet flexible way of proactively adjusting teaching content, process, product, or environment to meet students where they are and help them to achieve maximum growth as learners. A common strategy used for specially designed instruction of the gifted learner within the regular classroom environment.

Differentiated Curriculum: allows for acceleration, stimulation of high level thinking, divergent thinking, and convergent thinking.

Disproportionality-- The inappropriate under-identification or disproportionate representation by race and ethnicity of individual gifted students.

Distance Learning - Distance learning format provides for communication via video technology, synchronously (at the same time), from one to many delivery points. The best practice use of distance learning is interactive live broadcasting.

Divergent Thinking --Another element of J. P. Guilford's research model for the structure of intelligence. Thinking that moves away in diverging directions so as to involve a variety of aspects and which sometimes lead to novel ideas and solutions; associated with creativity.

Due Process -- Due Process includes the procedural safeguards of fairness that include both substantive and procedural protections for gifted students. In the narrow definition the term relates to the process of dispute resolution wherein a disputed issue is resolved through the

formal intervention of a disinterested third party process involving hearings by impartial hearing officers and appellate review.

Early Skill Development --Early and measured use of high level thinking skills, academic creativity, leadership skills, intense academic interest areas, communications skills, foreign language aptitude or technology expertise. Developmental milestones that are reached earlier than average students reach the milestone, or that a student has mastered skills beyond that child's age level.

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). For the purposes of this Chapter, Complete education records includes all records enumerated in 16.21(e) including cumulative records; enrollment records, attendance records, discipline records, and do including those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution. Educational records do not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; or records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.

Effectively maintaining instructional level at the 90% mastery level or above (see Curriculum Based Assessment).

Efficiently -- Minimal time and supervision required for effective instruction necessary for the student to achieve at the instructional level. Minimal time and supervision required for the mastery of new and challenging material for the gifted student.

Enrichment - In-depth learning experiences that provide interaction with new ideas, skills, and topics that enhance the curriculum. These experiences are based upon individual student strengths, interests, and needs.

Enrichment Programs --Learning activities that go beyond the regular curricular activities. The enrichment programs often: (1) encouraged the gifted student to search for new information; (2) the gifted student is provided with leadership opportunities; (3) is able to pursue personal interests; (4) is able to engage in creative assignments; (5) can develop his/her own initiative; and (6) is engaged in in-depth activities that are, in fact, broadening. Enrichment programs often take the form of special classes or special schools for the gifted. They might also involve itinerant teachers who provide regular classroom teachers with help for their gifted students. These special teachers might also "push in" and "pull out" the gifted students from the regular classroom in order to involve them in special activities.

FAPE--A free appropriate public education is special education and related services that are provided in conformity with the individualized gifted education plan required under this Chapter.

Flexible Grouping -- Arranging students by interest and/or need.

Flexible Pacing -- Provisions that place students at an appropriate instructional level and allows them to move forward in the curriculum as they achieve mastery of content and skills. *Flexible Pacing* is any educational strategy that places students at an appropriate instructional level, creating the best possible match between students' achievement and instruction, and allows them to move forward in the curriculum as they achieve mastery of content and skills. Flexible pacing may be achieved by a variety of methods.

Gifted educational environment – Includes the regular educational environment, and all educational sites and situations and settings in which gifted students receive instruction and the full range of supportive services.

Grade level standards-- Refers to State approved grade-level standards relative to age or intellectual development.

Group Investigation - Students working in small groups on multi-step projects such as: Future Problem Solving, History Day, and Odyssey of the Mind.

Grouping - Assigning students to a class or teacher within a school.

Heterogeneous Grouping - Grouping by chronological age level and without regard for the diverse needs of students, their learning styles, or their interests.

Higher Level Thinking--Emphasizes tasks and activities that involve (1) analysis, synthesis, and evaluation, (2) viewing situations from various perspectives, (3) finding several "layers of meaning" by using metaphors, analogies, paradoxes, and (4) generating different possible solutions by showing fluency, flexibility, originality, and elaboration of thought.

Higher Level Questioning Strategies - Questions and activities using analysis, synthesis, evaluation or other critical thinking skills.

Homeless children-- Homeless children has the meaning given the term homeless children and youths in section 725 (42 U. S. C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U. S. C. 11431 *et seq.* Homeless children and youth are individuals who lack a fixed, regular, and adequate nighttime residence which includes those who are sharing the housing of other persons due to loss of housing, economic hardship, or similar reasons including those who are living in hotels, motels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations. Those who are living in emergency or transitional shelters, are abandoned in hospitals, or who are awaiting foster care placement or those who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings such as cars, parks, public spaces abandoned buildings, substandard housing, bus or train stations, or similar settings, and qualifying migratory children are eligible for gifted education.

Homogeneous Grouping - Grouping by common criteria such as the student's interests, special needs or academic abilities. One ability or achievement level in a single class.

Honors Course - A secondary level planned course designed to be advanced in content, process and product and usually requiring regular education students to meet prerequisite criteria before course entry. Honors courses alone do not substitute for a gifted education.

Highly Qualified - - The teacher meets the certification or licensing requirements, if any, set forth in the Public School Code. HOUSSE (high objective uniform State standards of evaluation).

Independent Study -- A self-directed style of learning. Independent study is usually done with the help of a teacher; however, the role of the teacher is limited. The student completes various activities on his/her own time. *Independent study* allows students to follow individual or self-selected areas of interest by designing and implementing their own study plans. It is also called Guided Independent Study, Self Directed Study.

Individualized Instruction - Content and pacing of instruction geared toward the student's strengths, abilities, needs, and goals.

Instructional Level --Determined by diagnostic testing and full assessment of a child's rate of acquisition and rate of retention of skills. Diagnostic testing may include curriculum based assessment in reading and math and/or standardized normed tests such as the Key Math, Woodcock-Johnson.

Instructional Strategies- - Those teaching techniques and practices used by educational personnel to provide an appropriate education for the individual gifted student.

Intelligence Quotient (I.Q.) - A measure of intellectual aptitude at a given point in time based on comparison of children of the same chronological age. It is one of the many ways to measure a student's cognitive abilities and academic potential.

Interdisciplinary Units - Instruction tied together by a key concept or idea. Information and activities are integrated from a variety of disciplines or courses that study a broad topic or concept by gathering and relating information and ideas from multiple subject areas and disciplines

Interest Centers or Interest Groups - A means of providing students with meaningful study when basic assignments are completed.

Intermediate Unit (IU) - Those units established by the act of May 4, 1970 (P. L. 311, No. 102) (24 P. S. § § 9-951—9-971) which provide educational services to participating school districts as part of the public school system of this Commonwealth.

Internships --Opportunities for gifted students to work in a temporary position with an emphasis on education rather than employment. Internships are especially useful for transition plans related to areas of interest.

International Baccalaureate Program (IB)—A pre-university program which emphasizes divergent thinking and cultural awareness. Successful completion allows college credits and a certification is awarded which permits access to universities worldwide.

Intervening Factors Masking Giftedness-- Documented evidence that intervening factors such as English as a second language, learning disability, physical impairment, emotional disability, gender or race bias, or socio/cultural deprivation are masking gifted abilities. Some students may have their gifted abilities masked by such factors as ethnicity, socio-economic status or disability. Data specifically tied to the student's learning environment is used to make decisions on remedial/coping strategies and specially designed instruction. For example: An economically disadvantaged household where educational resources and opportunities are lacking, a household in which English is not the first language, or a household including parental problems such as alcoholism, divorce, spouse/child abuse or incarceration may have a masking effect on the student's identification as gifted.

Learning Styles --A term used to describe personality, psychological traits, social behaviors, developmental differences, communication styles, and environmental preferences (Ramsay, 1991). There are several learning style theories which attempt to correlate the traits of learners with teaching methods which will promote optimum learning situations. A student's preferred learning style is how he or she learns best.

Learning Contract -- Student and teacher jointly develop a plan for the accomplishment of learning goal(s), which both sign and follow.

Mastery Learning --A model of learning in which all but a very few students are expected to achieve over time the mastery of predetermined subject matter and skills.

Mentorships - Matching a student on a one-to-one basis with an adult member of the community who can provide expertise and or advice in a field of study or other community endeavor. Both mentor and student have predetermined goals and outcomes. This process is especially effective where portfolio/performance assessment is in place.

Modifications - Changing the objectives within the curriculum to meet the needs of the student

NORA-- Notice of Recommended Assignment documents the GIEP team decision of what specially designed educational instruction shall be part of the individual gifted student's individual education plan. NORA sets out the School District's recommendation for the placement of the gifted student. In addition, the NORA serves as the procedural safeguard "due process" notice in that it provides space for the parent to indicate approval or disapproval of the placement and program and explains the parents' rights if they disapprove. By indicating their disapproval, parents begin the due process procedures.

Norm-Referenced or Standardized Test - A test used to determine a student's status with respect to the performance of other students on that test. A "norm" group is the large number of examinees who have taken a particular test and whose scores form the basis of the norms. Such a test may be based on national, state or local norms. At every level of educational test usage, it is

necessary to match the scope of the test with the purpose that test is supposed to perform. Examples include the Iowa Test of Basic Skills and SAT or ACT.

NOREP-- Notice of Recommended Educational Placement documents the GMDT team recommendation of whether the child is mentally gifted and therefore in need of specially designed instruction.

On-line Learning - A form of distance learning that uses computer-networking technology to provide interaction of teacher to gifted student.

Outcome Based Education (OBE)-- A way of focusing and organizing all of the school's programs and instructional efforts around the clearly defined outcomes students must demonstrate when they leave school. The stated mission of OBE is to equip all students with the knowledge, competencies, and orientations needed for future success and to implement programs and conditions that maximize learning success for all students. In OBE, the philosophy is success for all students and staff. OBE includes clearly defined exit outcomes that directly reflect the knowledge, competencies and orientations needed by positive, contributing adults in an increasingly complex, changing world, and that all students successfully demonstrate before they leave school. It includes a system of instructional placement, grouping and eligibility that enables students to advance through the curriculum whenever they can successfully demonstrate essential performance prerequisites for new units or courses.

Pace - - The speed at which content is presented and instruction delivered. Pacing which matches the student's rate of learning is optimal.

Planned Course -- The common knowledge and skills in a subject area to be learned by all regular education students of a particular age/grade/level as determined and approved by a local school district within the state mandate.

Portfolio Assessment -- A collection of gifted student products used to measure progress and achievement. Such assessment allows for the demonstration of a wide variety of abilities and talents that do not lend themselves to traditional measures.

Pre-test -- A test given before instruction to determine current level of performance in a specific skill area. The results of the pre-test must be used to establish the content of the subject and process of subject matter acquisition.

Problem-Solving Method -- The thought processes involved in solving a problem. In gifted education it is the process of applying previously acquired knowledge to new and unfamiliar situations. The method may involve researching a specific problem, analyzing various situations, group discussions, simulation games, evaluation and follow up.

Progress monitoring - - system by which the gifted student's success within the annual plan is assessed.

Pull-out Program --Any program which takes one or more students from the regular classroom during the school day.

Push-in Program - Any program that places a gifted teacher or qualified personnel within the regular classroom environment to facilitate and instruct the gifted student with specially designed instruction or modifications and accommodations of the general education curriculum.

Psychological services—Includes administering psychological and educational tests, and other assessment procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and conditions relating to learning; consulting with other staff members in planning school programs to meet the special educational needs of gifted students as indicated by psychological tests, interviews, direct observation, and behavioral evaluations; and planning and managing a program of psychological services, including psychological counseling for gifted students and their parents; and assisting in developing positive behavioral intervention strategies when appropriate.

Rate of Acquisition— The rapidity or speed at which the student is able to acquire, understand, and demonstrate competency or mastery of new learning. An observed or measured rate of acquisition/retention of new academic content or skills that reflect gifted ability. Rate of acquisition is used to adjust the pace of learning for the gifted student. The Chuska Acquisition-Retention Rating Scale and Curriculum Based Assessments are tools that can be used to assess rate of acquisition.

Rate of Retention—The number of repetitions the student needs before the student masters new information/skills and can use the information/skills appropriately any time thereafter. The ability of student to retain and demonstrate newly acquired/learned information over a period of time.

Regional charter school - - An independent public school established and operated under a charter from more than one local board of school directors and in which students are enrolled or attend.

School District—An educational agency. Unless the context clearly indicates differently, an agency or service provider delegated by the School District shall be considered included within the definition of "School District" as the term is used within this Chapter.

Scientifically based research-- has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965. (No Child Left Behind, i.e., the Elementary and Secondary Education Act of 1965 as amended, 20 U.S.C. 6301 *et seq.* (ESEA). Scientifically based research means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge about the needs of the gifted student. SBR includes research that employs systematic, empirical methods that draw on observation or experiment and involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn. It relies on measurements or observational methods that provide valid data across evaluators and wherever possible has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

Skills Inventory – An instrument used to describe the gifted student's aptitudes in areas including but not limited to leadership, creativity, and communication.

Social-emotional needs—Gifted students have affective needs which may include heightened or unusual sensitivities to self-awareness, emotions and expectations of themselves or others, and a sense of justice, moral judgment or altruism. Depression, perfectionism, underachievement are areas related to social and emotion needs of gifted students.

Standardized Test - A form of measurement that has been normed against a specific population.

Telescope --To cover the same amount of materials or activities in less time and therefore allowing more time for enrichment activities and projects better suited to individual interest and needs.

Tiered Instruction (also called *scaffolding*) – A differentiated instructional strategy where all students within the regular education setting work toward the same goal and activities are geared toward each student's individual level of understanding. Use of varied level of activities to ensure that students explore ideas at a level that builds on their prior knowledge and prompts continued growth within the same unit, lesson, or theme of instruction.

Tracking - Fixed groups that are rigidly maintained over time, often kindergarten through 12th grade. This term is not a synonym for grouping that is flexible and changeable, task-to-task. Within class regrouping Students are grouped together within a class for one or more subject areas (usually math and language arts) based on achievement or mastery of the content.

Transition Services -- A coordinated set of activities for a gifted student that are designed within an outcome-oriented process and focused on improving the academic and functioning achievement of the gifted child to facilitate the movement from school to post-school activities, including post-secondary education, vocational education, or community participation which are based on the gifted child's individual needs taking into account the child's strengths, preferences, and interests.

Underachieving gifted students-- A discrepancy between a gifted student's academic performance and assessed potential. As a behavior it can be modified over time. It is content and situation-specific in a way that a child whose work in the school may not compare to the success or achievements within a sport or work setting. Underachieving students may require more frequent GIEP Team meetings.

"Whole-Grade" Acceleration: The practice of assigning a student to a higher grade level than is typical given the student's age on a full-time basis for the purpose of providing access to appropriately challenging learning opportunities.

Special thanks to the NAGC for gifted definitions, PAGE glossary, Applied Gifted and the Pennsylvania Gifted Guidelines.