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INDEPENDENT REGULATORY
REVIEW COMMISSION

Proposed Amendments to 22 Pa. Code Ch. 16
Comments, Suggestions and Objections

Prepared by
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Proposed Amendments to Chapter 16 Regulations

The following are comments, suggestions and objections to the proposed amendments to the regulations for the special education of "children with exceptionalities" who are gifted as required under 24 P.S. §13-1372(1).

1. Replacement of "shall" with "must" throughout proposed amendments.
 - a. Occurs in §16.4(a), §16.21(d), §16.22(c), and §16.22(h).
 - b. The reason for the change is unclear. No rationale provided by the State Board.

I would ask the IRRC to comment on the appropriateness of the word choice.

I request the State Board to provide its rationale for the changes.

2. §16.4 Strategic Plans
 - a. §16.4(a) - New Term - "Gifted Education Plans"
 - i. No definition of the term in 16.1. Perhaps none is needed if greater clarity such as that given in §14.104 is included.
 - ii. Is this the plan for education of exceptional children as provided for in 13-1372(2) which requires each school district to submit to the Secretary of Education, for his approval or disapproval, plans for the education of exceptional children in accordance with the standards and regulations adopted by the State Board of Education? I believe that it is.

I would ask for clarification if 13-1372(2) is the basis for Gifted Education Plans.

I suggest that the State Board reword §16.4 to be consistent with §14.104, Educational Plans, and the intent of the General Assembly. Nothing in the statute indicates that the General Assembly intended a different format of an education plan or a different process for the approval or disapproval of such plan by the Secretary for the two groups of Children with Exceptionalities.

- b. New §16.4(b), when listing what is required in the "gifted education plan", refers to the "process of identifying children who are gifted". Is this referring to the evaluation process? If so, clarify by referring to the evaluation process. §16.1 includes a defined term "screening and evaluation process"; however, it is actually referring to two processes, the screening process and the evaluation process.

I object to the vagueness of the language "process of identifying children who are gifted".

I object to the vagueness of the term "screening and evaluation process" as the processes are distinct and distinguishable. Using the term "screening and evaluation process" is vague.

I suggest that the State Board of Education review the language of Chapter 16 to incorporate the distinctions in the different stages of identification of a gifted student, as noted in Chapter 14 in §14.121 (Child Find), §14.122 (Screening Process), and §14.123 (Evaluation Process).

- c. New §16.4(b), when listing what is required in the gifted education plan, refers to “children who are gifted and in need of specially designed instruction”. This language is also in §16.1 (definition of “Gifted Student” and “Mentally Gifted”), §16.21(a) (Child Find), and §16.22(h) (gifted multidisciplinary evaluation). Language similar to, but distinct from, this can be found in §13-1371(1) which defines the term “children with exceptionalities” to mean children “who have a disability or who are gifted and who, by reason thereof, need specially designed instruction.”

*****See comments below on §13-1371 definition of “children with exceptionalities”**

3. §16.6(d) Compliance Monitoring

- a. The proposed §16.6(d) fails the requirement of the Regulatory Review Act to conform to the intention of the General Assembly in the enactment of special education statute. The proposed new §16.6(d) which reads as follows:

(d) Monitoring - The Department will conduct on-site monitoring of school entities to ensure school entity implementation of this chapter. The Secretary shall outline the process and schedule for this monitoring in a Basis Education Circular (BEC).

- b. In response to Question (22) of the RAF, the State Board states that “[t]he Secretary has authority under §1372 of the Public School Code to supervise the provision of special education, which includes gifted education (emphasis added). However, I believe the response inaccurately states the law on this point. Pursuant to §13-1372(3), “[t]he Secretary of Education shall superintend the organization of such special classes and such other arrangements for special education and shall enforce the provisions of this act relating thereto(emphasis added).” As already stated previously, under §13-1372(1), it is the State Board of Education that is required to adopt regulations and the Secretary of Education that is to enforce the statute and the regulations pursuant thereto. Under the proposed §16.6(d), the State Board of Education is attempting to inappropriately assign its duty to the Secretary of Education.
- c. The proposed regulation does not conform to the intention of the General Assembly, as demonstrated by comments made by members of the General Assembly at the time of the development of the regulations.
- d. In 1998 as Chapter 16 was being created from the rib of Chapter 14, the IRRC in its response to the proposed Chapter 16 regulations noted the following comments

made by the General Assembly:

“[w]ithout identifiable monitoring provisions on the part of the Department, it will be difficult to determine whether districts are complying with the provisions of Chapter 16.”

“[t]he Board’s proposal does not include any references to monitoring practices, nor does it indicate how it will enforce compliance with this proposal.”

“We recommend the Board add a section to its final-form regulation which outlines monitoring methods and frequency. The new section should also clearly identify how parents can submit complaints and how complaints will be processed and addressed.”

Dec. 3, 1998 IRRC Comments

- e. In response to these comments, the State Board provided this statement:

“[t]he 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)).' To meet this responsibility, the Secretary will continue to include students who are gifted in Departmental tracking systems, monitor the actions of school districts for compliance with the requirements of this regulation, and hear and investigate complaints.”

30 Pa.B.6330 (Dec. 8, 2000)

- f. In reality, the Department failed to meet its responsibility to monitor the actions of school districts for compliance by performing minimal monitoring of school districts and few sections of the regulations. Here is the history of gifted education compliance:

**PDE Gifted Compliance
2001 to Present**

<u>School Year</u>	<u># of Audits</u>
01-02	0
02-03	0
03-04	0
04-05	0
05-06	3
06-07	7

- a. In comparison, during the 2006-2007, PDE performed 116 compliance monitoring audits for schools and institutions providing special education services to students with disabilities.
- b. If that is not an indication of the Secretary's failure to enforce the provisions of the special education statute, then I reference you to the RAF Question 20 which shows the proposed compliance for the next five fiscal years which is as follows:

Compliance Monitoring for Gifted Education

<u>School Year</u>	<u># of Audits</u>
08-09	10
09-10	10
10-11	10
11-12	10
12-13	10

- a. As a basis for the dismissal of regulations providing the level of detail requested by the General Assembly in 1998, the State Board offers the following "reason":

"The Board believes the proposed regulation provides an appropriate balance to assure that the compliance monitoring policy of the Department is described in a publicly available BEC while providing the Department the flexibility to conduct monitoring consistent with annual staff availability, financial resources and workload priorities."

RAF Question 23

- b. How are the interests of the public balanced when all we receive is a “description” of a policy to be later determined? Further, how is the Secretary of Education enforcing the special education statute when enforcement is left to his own discretionary whims?
- c. In response to RAF Question 22, the State Board offers the following insight into its current practices:

“The alternative [to the BEC] is to maintain current practice of permitting the Department to establish its policy and practice without public notice (emphasis added).”

Would the more appropriate alternative not be to follow the directive provided by the General Assembly in §13-1372(1) to the State Board to “adopt and prescribe standards and regulations for the proper education” of gifted students.

- d. PDE has previously issued a BEC on Special Education Monitoring, which is attached as Appendix A. In this BEC, PDE offers the following platitudes:

“The Department believes, however, that legal compliance is the base on which high quality programs are built.”

“Conflict between parents and districts over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorneys fees at the end of a long conflict divert resources from direct educational services.”

“In an attempt to avoid these diversions of resources, the Department promotes and ensures compliance with special education statutes and regulations through its coordinated program of plan review, complaint management, monitoring, technical assistance, and funding decisions.”

I object to the proposed §16.6(d) as it fails to meet the requirements of §13-1372(1) and the intentions of the General Assembly.

I request the Commission to consider the economic impact to the regulated community, both the school districts and to parents, of the costs of due process hearings and appeals therefrom, including, but not limited to, attorney costs, temporary teachers to replace teachers preparing for and testifying at such hearings, administrators time for such hearings, and lost wages and the economic impact of such to families of gifted children.

I also request the Commission to consider the impact of noncompliance on those

mentally gifted students whose parents do not have the ability to address these issues due to educational or economic constraints.

By its own admissions in the Regulatory Analysis Form, the annual cost per year of compliance of Chapter 16 of all 501 school districts in the Commonwealth through compliance monitoring is \$3 per gifted students. (\$21,000 for 10 school districts; 70,000 gifted students)

I request the Commission and the State Board to consider the economic impact of non-compliance and the lack of a strong compliance monitoring system that monitors all of the provisions of Chapter 16.

I recommend regulations that (1) ensures monitoring of all of the Commonwealth's school districts over a five year period starting in the 08-09 school year; (2) monitors each school district at all buildings in the district; and (3) provides immediate monitoring of districts and buildings from which complaints (through an improved complaint procedure process) are derived. Such audits should be done at a greater level of review since a potential problem has been identified.

I request the State Board to provide for a compliance monitoring system that monitors all of the provisions of Chapter 16, including, but not limited to, the following:

1. Child Find - §16.21
2. Screening - §16.21
3. Evaluation - §16.22
4. GIEP Preparation - §16.32(e)
5. GIEP Implementation - §16.32
6. Educational Placement - §16.41
7. Teacher Case Load - §16.41
8. Class Size - §16.41

Imposes Corrective Action Plans with reasonable but limited period to correct deficiencies.

Application of penalties, including, but not limited to, those identified in the Special Education Compliance BEC.

The House Education Committee had also raised the need for a state complaint-management system. I recommend the requirement in the regulations of the implementation of a such complaint-management system. Our children need a venue for the filing of complaints by teachers and parents when violations of Chapter 16 are occurring as well as protections from possible retaliation to the filing of such complaints.

2. §16.21(b) Child Find

- a. While I agree with the additional information being required by the proposed amendment, I am concerned that the language for an annual publication is not clear and that more is not required of the communication systems which are under the school district's control.

I suggest that the proposed amendment be changed to the following:

"Each school district shall annually provide public notification published in local newspaper and other media. Each school district shall prominently display information about the process and the requirements of screening and of evaluation, and of its gifted services in its student handbook and on the school district website."

3. §16.21(d) Determination of Mentally Gifted

- a. Deficits in memory or processing speed
 - i. The proposed amendment refers deficits in memory and processing speeds, but applies a rule that considers both in a rather backwards approach. Specifically, from a review of the material prepared by Harcourt Assessment, the publisher of the WISC-IV, and Thomson Nelso, the publisher of the "Stanford-Binet Intelligence Scales, the full-scale intelligent quotient (FSIQ) may not be an accurate tool to identify gifted students who have deficits in memory and processing speeds. In those cases, the publisher has suggested that the General Ability Index (GAI), which does not include the Working Memory or Processing Speed subtests, may be the better measure. I do not believe that the State Board in its attempt to draft the regulations have done so successfully.

I object to the language and approach taken in the proposed amendments to deficits in working memory and processing speed.

I recommend that the State Board seek technical assistance to appropriately address these issues.

b. Department Guidelines

- i. §16.21(d) refers to multiple criteria set forth in Department Guidelines. I suggest the delegation of the definition of a critical term to the Department is inappropriate.

I object to the delegation of the definition of criteria to the Department in guidelines which do not have the review of or comment by the public. I suggest that a delegation is impermissible.

c. IQ of 130

- i. If I understand correctly, the IQ score of 130 has been selected because it

is two standard deviations above the mean of 100. In this scenario, a standard deviation is 15 points. My concern is whether an absolute score of 130 is appropriate when the IQ tests utilized may not necessarily properly identify "gifted" students at a score of 130. §13-1371 identifies a student who is gifted as a child with exceptionalities. Hence, it is a requirement of the statute to apply a proper and statistically correct test to the identification of a gifted student.

I object to the regulations using an absolute score of 130 rather than a statistically more accurate score of two standard deviations on the test applied.

I recommend that the State Board adopt an amendment to the regulations that addresses such concern or provide rationale as to why such an amendment would be inappropriate.

- d. 130 IQ and/or when multiple criteria indicate gifted ability
 - i. §13-1371 defines a child with exceptionalities to include a child who is gifted. During the public hearings, many commentators spoke to the use of "and" rather than "or" in the language of §16.21(d) which reads as follows:

"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 and when multiple criteria..."
 - ii. I would suggest that the term "gifted" has several distinguishable definitions as determined by those in the field of psychology. I question whether the State Board in implementing this conjunctive standard has chosen a standard that is widely accepted. As several commentators argued during the public hearings, the "and" should more appropriately be "or". The inclusion of the conjunctive standard does not meet the intent of the statute to provide special education to gifted students.

I object to the use of "and" in §16.21(c) and recommend its replacement with the word "or" to be consistent with the interpretation of the term "gifted".

- 4. §16.22(c)
 - a. If the form is readily available why does it take five school days to provide an evaluation request form?

I recommend that the five school day requirement be reduced to the next school day and, if the five school day requirement is retained, I would ask for the rationale for that length of time when the form is required to be readily available.

5. §16.22(i)
a. GMDT determines eligibility for gifted which is in direct conflict with current §16.32(d)(4), which pursuant to the proposed amendment would be changed to §16.32(c)(4).

I suggest that the conflict between current §16.32(d)(4) and proposed §16.22(i) be corrected through a revision of §16.32(d)(4).

6. §16.22(j)
a. Deletion of §16.22(j)(1), proposes the removal of the requirements for each school district to establish and implement procedures to complete a gifted multidisciplinary evaluation.

I object to the removal of these requirements and recommend that all such requirements be retained.

- b. The request to evaluate form is different from the approval to evaluate form.
There is no timeframe in the regulations to provide the approval to evaluate form.

I recommend that starting point for the delivery of the evaluation report be the date that the parent request or the court orders an evaluation.

- c. Additionally, there is no guidance as to the level of detail to be on the evaluation approval form so as to provide informed consent to the parent.

I recommend that the regulations include language that ensures informed consent from the parent.

7. New §16.31(c)
a. Under the proposed amendments(§16.31(c)(3)), the GIEP Team can determine that the student no longer needs gifted education; however, since it is the GMDT that determines the student to be mentally gifted, there should be a reevaluation by a school psychologist to determine that the student is no longer mentally gifted rather than the GIEP Team.

I object to the GIEP team being able to “declassify” a gifted student without going through the process of a reevaluation or the approval of the gifted student’s parents.

I recommend that a reevaluation requirement be added to the regulations before specially designed instruction be discontinued.

8. Proposed Deleted §16.32(a)
a. The proposed amendments would delete §16.3(a) which now requires each school district to establish and implement procedures to appoint a GIEP team to review the recommendations of the GMDT and to develop a GIEP for the student. Even

if the GMDT determines whether the student is mentally gifted, the regulations should still require these actions by each school district. Additionally, the second sentence of current §16.32(a) is important as to the development of the GIEP and should be retained.

I object to the removal of these requirements and recommend that all such requirements be retained.

I object to the removal of the second sentence of and recommend that such language be retained.

I recommend that language be added that specifically disapproves of “group GIEP Team meetings” and the “automatic” NORA out of gifted students in middle school and high school as these are inconsistent with the intent of the General Assembly.

9. Current §16.32(b) - Determination of PLEP

- a. While the GMDT determines whether the student is mentally gifted, the GIEP team is required to prepare the GIEP. The GMDT makes its determination from analysis of the assessments done during the evaluation process. The GIEP team's task is to determine the proper placement and gifted education of the gifted student. To accomplish this task, the GIEP team should base this determinations upon not only the evaluation report but also a determination of “present levels of educational performance”, or PLEP's. §16.32(e)(1) requires a statement of PLEP; however, the initial GIEP (or any later GIEP) is not required to be based upon PLEP. I have used the analogy that the evaluation report gives you the key to enter “gifted education”, but it does not necessarily advise as to what levels the educational placement should occur.

I recommend that current §16.32(b) be amended to require that the GIEP be based upon an annual determination of the gifted student's present level of educational performance.

- b. Current §16.32(b) - Annual review of PLEP and Educational Placement
 - i. Current §16.32(b) requires that revisions to the GIEP and changes to the educational placement be determined based upon a number of items. It does state, however, the frequency at which these revisions should occur. It does not state that the initial GIEP should be for the current school year and that a new GIEP should be developed prior to the beginning of the following school year. Since a student's educational placement generally changes with the graduation to the next grade, it is fundamental that the planning for a gifted student's gifted education should occur prior to the school year to both ensure a smooth transition for the student and for the school district and its personnel.

I recommend language be added to §16.32(b) that requires the GIEP team review

the GIEP annually.

I recommend that the initial GIEP be for the current school year and that each subsequent GIEP be in place prior to the following school year.

- c. New §16.32(b) - Present Education Levels
 - i. A new term, "present education levels" has been introduced by the proposed amendment. This term while similar to PLEP is not the same. A "present education level" may be just at which grade level the student is. A PLEP would be the level at which the student can perform or his instructional level which often is much higher than student's current classroom level.

I object to the use of the confusingly similar term and believe that it is likely a error in terminology.

I recommend that "present education level" be changed to "present level of educational performance"

I recommend that the term PLEP be defined in §16.1 to clarify the level of assessment needed for determination of PLEP. I suggest that this be done to the level of instruction based upon a review of the decisions in Due Process cases and of decisions from the appeals of such cases.

- 10. New §16.32(b)(6) - Adding teacher of the gifted to the GIEP Team
 - a. This is an excellent addition. Query, though, whether the teacher of the gifted should also be added to the GMDT.

I support the addition of the teacher of the gifted to the GIEP Team.

I question whether the teacher of the gifted should also be added to the gifted multidisciplinary team (GMDT).

- 11. §16.32(e) Basis for GIEP
 - a. The proposed amendment to this subsection would require the GIEP team to base the GIEP on the GMDT's written report (GWR) and not just treat the report as a recommendation. As already stated, this section does not recognize the additional assessment of PLEP needed for the development of an appropriate GIEP. The language provided is too limiting.

I object to the limited basis on which the GIEP is to developed.

I recommend that language be added that clarifies that the GIEP team shall base the GIEP upon the GWR, the PLEP assessments, and other educational needs identified by the GIEP team members.

12. New §16.32(f) - Notification to Teachers of GIEP Responsibilities
- a. The proposed language requires notification to the gifted student's teacher but does not require a copy of the GIEP be provided to the teacher.

I object to the school district only providing notification. I suggest that language be added to provide a copy of the gifted student's GIEP to the teacher in addition to the notification. I also suggest confirmation by the teacher of his/her ability to carry out his/her requirements.

- b. The proposed language is overly wordy and fails to use more appropriate defined terms.

I recommend that "student who has been identified as gifted and in need of specially designed instruction" be changed to "gifted student".

13. Current §16.32(g)(3) and new §16.32(g)(4)
- a. The proposed amendment removes the requirement for a GIEP team meeting following an evaluation or reevaluation. The State Board has not provided rationale for the removal of this requirement.

I object to the removal of the requirement for a GIEP meeting following an evaluation or reevaluation.

I recommend that such requirement be retained.

- b. New §16.32(g)(4) - Reconvening GIEP Team
 - i. The proposed amendment is silent on the required timeframe for a reconvened GIEP Team meeting to be held.

I recommend that a reconvened GIEP Team meeting be held within five school days of the request.

14. §16.41 Educational Placement
- a. §16.41(c)(3) Teacher Caseload

I agree with the reduction in the caseload limit to 60; however, the proposed regulations do not address a concern raised by many in public roundtables and by PAGE and PEGS in their position papers that when determining a teacher's caseload the teacher's other responsibilities should be part of the calculation of caseload.

- b. §16.41(c)(4) Teacher Class Roster

I object to the increase in the requirement for a teacher's maximum class roster. In its November 20, 1998 comments to the State Board, the House Education

Committee had expressed concern over the maximum class size. At a the October 4, 2007 hearing held by the House Education Committee, a member of the committee reiterated the concern about class size. I suggest that the proposed increase is not consistent with the intent of the General Assembly.

- c. §16.41(b) Acceleration and/or Enrichment
 - i. This subsection makes permissive (“may”) administrative and instructional strategies rather requiring such strategies. An appropriate educational placement--based on the student’s need and abilities, which ensures the student is able to benefit meaningfully--is the goal of the Exceptional Children chapter of the School Code. In my opinion this is the area where the State Board has suffered its greatest failure in meeting its obligation to “adopt and prescribe standards and regulations for the proper education” of gifted students.

I recommend that the State Board provide regulatory language to address the educational placement of gifted students, including, but not limited to, standards for the utilization of grade and subject acceleration, compacting, and other instructional devices to appropriately educate the gifted student based upon his/her individual needs and abilities.

- 15. §16.63(p) Application of 1 Pa. Code Part II
 - a. The proposed amendment would require due process hearings and appeal panel hearings to adhere to 1 Pa. Code Part II; however, the State Board in the Regulatory Analysis Form submitted with the proposed amendments has not taken into consideration the additional costs to the regulated community of the application of these administrative rules. The State Board has suggested that these rules be implemented to align Chapter 16 with Chapter 14; however, Chapter 14 currently require an adherence to these rules. The State Board has proposed amendments to Chapter 14 which would require such adherence. While alignment could be appropriate, the alignment proposed is selective alignment. The State Board is aware that under federal law parents are able to recover attorney fees and the costs of independent educational evaluations in certain circumstances and that those balancing provisions do not now exist for parents of gifted students. To add an additional burden onto parents creates an increasing imbalance in the system. The Office of Dispute Resolution has provided a handbook for due process hearings and appeal panel hearings that provides in plain language the process by which the hearings will be held. The General Assembly directed the State Board to adopt regulations and standards for the proper education of gifted students. Implicit in that directive is a system with a check and balance among the members of the regulated community. The proposed amendment ignores the need for that balance in favor of the simplicity of selective alignment.

I object to the imposition of 1 Pa. Code Part II to Chapter 16 as (1) an unnecessary

burden on parents and (2) a selective alignment with Chapter 14.

Since no purpose for this proposed amendment was offered in the submission of the proposed Chapter 14 regulations, I request that the State Board address the need for the this amendment as it applies to Chapter 14 and also how, considering the distinctions between the federal and state laws, this amendment is appropriate for Chapter 16.

16. Remedies

- a. PEGS, in its written comments to the State Board (Appendix) on the proposed regulations, suggested a new section on remedies. I support the comments and proposed language (new §16.67) on remedies. The purpose of such clarification would be to intended to provide clarity on appropriate remedies and to ensure voluntary compliance with all the requirements of Chapter 16. Further, this should reduce litigation between our school districts and parents so that everyone can collectively focus on the education of the Commonwealth's gifted students.

I recommend the adoption of regulations on appropriate remedies, such as those proposed by PEGS, Inc., by the State Board.

17. Consistency of Regulations with Statutory Authority

- a. In §13-1371(1), the term "children with exceptionalities" is defined to mean children of school age who have a disability or who are gifted and who, by reason thereof, need specially designed instruction. In trying to interpret §13-1371, I question whether it means that to be a "child with exceptionalities" a student needs to be:

- (1) gifted (however that is defined) and
- (2) in need of specially designed instruction

or

Only gifted and, because the child is gifted, needs specially designed instruction.

If it is a two-part test, then a student can be gifted in one school district, but not gifted in another. Presumably, this could be due to the quality of education in different districts.

If instead it is only required that the child be gifted, then he is gifted no matter which district he resides or the quality of education in that district.

What did the General Assembly intend?

What if we apply the same questions to a child with disabilities as such a child is also either covered or potentially covered by this statute? Applying the logic tests to this portion of children with disabilities would look like this.

- (1) disabled (however that is defined) and
- (2) in need of specially designed instruction

or

Only disabled and, because the child is disabled, needs specially designed instruction.

Is a disabled child only disabled in some school districts? I would suggest not.

I object to the State Board's two-part test for a gifted student being determined to be a child with exceptionalities.

I recommend that the State Board review the regulations to incorporate the proposed change in approach.

18. §13-1372(1) Standards

- a. §13-1372(1) requires the State Board to adopt and prescribe standards for the proper education of children with exceptionalities. The statute specifically refers to Chapter 341 and 342 of Title 22 of the PA Code. Both of these chapters were repealed by the State Board of Education without little, if any, review of the effect of the repeal on the State Board's statutory obligation to prescribe standards for the proper education of children with exceptionalities. I have attached the Gifted Education Standards as prepared by the National Association of Gifted Children (NAGC) (Appendix C). As I reviewed the NAGC Standards, I was reminded of the standards for regular education as provided in Chapter 4 of the education regulations.

I object to neglect of the State Board to implement standards as required by the statute.

I recommend the State Board adopt and prescribe proposed standards to the Commission for review.

- 19. Finally, I support the comments of PAGE submitted to the State Board and the comments of PEGS to the State Board, which I attach and incorporate as my comments.

Pre K-12 Schools

Basic Education Circulars (Pennsylvania Code)

Special Education Compliance

22 Pa. Code §14.102.(a)(4)

DATE OF ISSUE: June 5, 2002

DATE OF EXPIRATION: June 30, 2007

REPLACES: Special Education Compliance, BEC 22 Pa. Code §14.8,
issued September 1, 1997

The Pennsylvania Department of Education is responsible for developing and maintaining a system that ensures that each student with a disability receives a free appropriate public education and that each family has access to a system of procedural safeguards. While school districts have the primary and direct responsibility for carrying this out, federal law places upon the Department a "general supervision" responsibility. Similarly, state and federal laws call upon the Secretary to oversee the system and enforce the special education requirements. To accomplish this oversight, the Department has created a comprehensive system that coordinates various planning, funding, and compliance elements.

We recognize that the creation of quality programming and successful outcomes for students with disabilities requires more than technical compliance with procedural rules. The Department believes, however, that legal compliance is the base on which high quality programs are built. Conflict between parents and districts over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorneys fees at the end of a long conflict divert resources from direct educational services. In an attempt to avoid these diversions of resources, the Department promotes and ensures compliance with special education statutes and regulations through its coordinated program of plan review, complaint management, monitoring, technical assistance, and funding decisions.

When compliance issues arise, they are almost always resolved amicably and without undue delay. Thus, the main task for the Department is to address compliance issues clearly and promptly, and to take action to ensure compliance when necessary.

In particular, the following will be treated as compliance problems that warrant a PDE response:

- failure to submit an acceptable local plan;
- failure to comply with the order of a hearing officer, review panel, or court (unless an appeal is pending);
- failure to implement the corrective action required through the complaint process of the Bureau of Special Education (BSE);
- failure to implement the corrective action required through BSE monitoring;
- failure to submit required reports, including the reports regarding a district's need for intensive interagency coordination.

In an effort to expedite compliance with the required regulations on those occasions where complaint, cyclical monitoring or court ordered corrective action has not been implemented in a timely manner, the Bureau of Special Education in collaboration with the Office of Chief Counsel has implemented the following procedures:

- Within ten days after the due date of uncompleted corrective action, the Special Education Adviser will contact the LEA/IU

to determine the status of the corrective action and forward a summary to the Division Chief.

- The Division Chief will contact the Superintendent, Chief Administrative Officer or Executive Director to determine the actions needed to implement the required corrective action.
- Continued noncompliance will result in a recommendation to the Bureau Director to schedule a meeting in Harrisburg which the Superintendent, Chief Administrative Officer or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance.
- Bureau personnel in attendance at this meeting will include the Bureau Director (or designee), Special Education Adviser, Division Chief, and, if requested, an attorney from the Office of Chief Counsel. At the discretion of the Bureau Director, other individuals may be required to attend.
- Within ten days of this meeting, the Department will issue a letter summarizing the results of the meeting (i.e. either confirming the LEA/IU's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the Department has decided is appropriate for the non-compliance).

The response of the Department will vary from case to case. This process is intended to ensure compliance rather than to be punitive. The main features of our efforts will be to explain the problem, call upon the school district to implement a remedy, and assist the school district with ideas as to what a remedy might involve.

If, however, the Department does not succeed in obtaining prompt compliance, the Department can take more rigorous steps to make sure that the compliance issue is resolved, including the following:

- a local special education plan may be disapproved.
- the disbursement of state and federal funds may be deferred pending resolution of the issue.
- the amount of funds may be reduced -- for example, by the amount of money it takes to provide an appropriate education to a particular child or children -- if a district is unwilling to provide appropriate services.
- the Department may take the district to court to obtain an order requiring the district to take specific actions.
- the Department may join with parents in legal action initiated by them.
- the Department may take action affecting the commission of the superintendent or other commissioned officer responsible for administering the district.

None of these steps is desirable, and none should be necessary if each school district is familiar with and attentive to the rules governing special education. We anticipate that consultation between the Department and districts will preclude the need to take any of the compliance and enforcement actions described above. It is the obligation and the policy of the Department, however, to use these compliance and enforcement measures

whenever they are necessary to ensure that the rights of Pennsylvania children are met.

REFERENCES:

Purdon's Statutes

24 P.S. Section §13-1357
24 P.S. Section §13-1372
24 P.S. Section §25-2552

State Board of Education Regulations

22 Pa. Code Chapter 14

Federal Statute

20 U.S.C. Section 1412(6)
20 U.S.C. Section 1414(d)
20 U.S.C. Section 1232d

Federal Regulation

34 CFR Part 300 (including Section 300.660 - Section 300.662)

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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.



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§ 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).



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§ 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. PECS, 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. PECS, Inc. encourages an exception to this general rule for a single primary GIEP for gifted students with an IEP element for speech. PECS, Inc. seeks clarification that gifted services, including Short Term Learning Objectives (STLO's), must be included in IEP for dually exceptional students. PECS, 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, PECS, 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



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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 take 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



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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.



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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. PECS, 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. PECS, 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.



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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. PEPS, 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.



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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.



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§ 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.



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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.



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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.

Introduction

In 1998, NAGC developed and released the *Pre-K—Grade 12 Gifted Program Standards* to assist school districts in examining the quality of their programming for gifted learners. Recognizing that the ongoing evaluation and re-tooling of a successful gifted program is an evolutionary process, the NAGC Standards detail a framework including both *minimum standards* (nominal requirements for satisfactory programs) and *exemplary standards* (characteristics of excellence in gifted education programming).

To help you focus on important aspects of gifted programming, the current *Standards* are divided into seven criterion areas: Program Design, Program Administration and Management, Student Identification, Curriculum and Instruction, Socio-Emotional Guidance and Counseling, Professional Development, and Program Evaluation.

Several **organizing principles** guided the work of the task force, including:

- Standards should encourage but not dictate approaches of high quality.
- Standards represent both requisite program outcomes and standards for excellence.
- Standards establish the level of performance to which all educational school districts and agencies should aspire.
- Standards represent professional consensus on critical practice in gifted education that most everyone is likely to find acceptable.
- Standards are observable aspects of educational programming and are directly connected to the continuous growth and development of gifted learners.

For more information and guidance about using the *NAGC Pre-K—Grade 12 Gifted Program Standards*, visit www.nagc.org.

Definitions

Gifted learners are “Students, children, or youth who give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields, and who need services and activities not ordinarily provided by the school in order to fully develop those capabilities.” (*No Child Left Behind*, 2002).

Gifted education programming is a coordinated and comprehensive structure of informal and formal services provided on a continuing basis intended to effectively nurture gifted learners.

A standard is a criterion-based designated level of performance against which programming success is measured (Worthen, Sanders, & Fitzpatrick, 1997). The *Standards* here allow us to evaluate existing programs, compare services across schools and districts, and provide guidance for developing new programs for gifted learners. This document contains both **minimum standards**—requisite conditions for acceptable gifted education practice and **exemplary standards**—desirable and visionary conditions for excellence in gifted education practice.

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Pre-K—Grade 12 Gifted Program Standards



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Gifted Education Programming Criterion: Student Identification

Description: Gifted learners must be assessed to determine appropriate educational services.

Guiding Principles	Minimum Standards	Exemplary Standards
1. A comprehensive and cohesive process for student nomination must be coordinated in order to determine eligibility for gifted education services.	<p>1.0M Information regarding the characteristics of gifted students in areas served by the district must be annually disseminated to all appropriate staff members.</p> <p>1.1M All students must comprise the initial screening pool of potential recipients of gifted education services.</p> <p>1.2M Nominations for services must be accepted from any source (e.g., teachers, parents, community members, peers, etc.).</p> <p>1.3M Parents must be provided with information regarding an understanding of giftedness and student characteristics.</p>	<p>1.0E The school district should provide information annually, in a variety of languages, regarding the process for nominating students for gifted education programming services.</p> <p>1.1E The nomination process should be ongoing and screening of any student should occur at any time.</p> <p>1.2E Nomination procedures and forms should be available in a variety of languages.</p> <p>1.3E Parents should be provided with special workshops or seminars to gain a full meaning of giftedness.</p>
2. Instruments used for student assessment to determine eligibility for gifted education services must measure diverse abilities, talents, strengths, and needs in order to provide students an opportunity to demonstrate any strengths.	<p>2.0M Assessment instruments must measure the capabilities of students with provisions for the language in which the student is most fluent, when available.</p> <p>2.1M Assessments must be culturally fair.</p> <p>2.2M The purpose(s) of student assessments must be consistently articulated across all grade levels.</p> <p>2.3M Student assessments must be sensitive to the current stage of talent development.</p>	<p>2.0E Assessments should be provided in a language in which the student is most fluent, if available.</p> <p>2.1E Assessment should be responsive to students' economic conditions, gender, developmental differences, handicapping conditions, and other factors that mitigate against fair assessment practices.</p> <p>2.2E Students identified in all designated areas of giftedness within a school district should be assessed consistently across grade levels.</p> <p>2.3E Student assessments should be sensitive to all stages of talent development.</p>
3. A student assessment profile of individual strengths and needs must be developed to plan appropriate intervention.	<p>3.0M An assessment profile must be developed for each child to evaluate eligibility for gifted education programming services.</p> <p>3.1M An assessment profile must reflect the unique learning characteristics and potential and performance levels.</p>	<p>3.0E Individual assessment plans should be developed for all gifted learners who need gifted education.</p> <p>3.1E An assessment profile should reflect the gifted learner's interests, learning style, and educational needs.</p>
4. All student identification procedures and instruments must be based on current theory and research.	<p>4.0M No single assessment instrument or its results denies student eligibility for gifted programming services.</p> <p>4.1M All assessment instruments must provide evidence of reliability and validity for the intended purposes and target students.</p>	<p>4.0E Student assessment data should come from multiple sources and include multiple assessment methods.</p> <p>4.1E Student assessment data should represent an appropriate balance of reliable and valid quantitative and qualitative measures.</p>
5. Written procedures for student identification must include, at the very least, provisions for informed consent, student retention, student reassessment, student exiting, and appeals procedures.	<p>5.0M District gifted programming guidelines must contain specific procedures for student assessment at least once during the elementary, middle, and secondary levels.</p> <p>5.1M District guidelines must provide specific procedures for student retention and exiting, as well as guidelines for parent appeals.</p>	<p>5.0E Student placement data should be collected using an appropriate balance of quantitative and qualitative measures with adequate evidence of reliability and validity for the purposes of identification.</p> <p>5.1E District guidelines and procedures should be reviewed and revised when necessary.</p>

Gifted Education Programming Criterion: Professional Development

Description: Gifted learners are entitled to be served by professionals who have specialized preparation in gifted education, expertise in appropriate differentiated content and instructional methods, involvement in ongoing professional development, and who possess exemplary personal and professional traits.

Guiding Principles	Minimum Standards	Exemplary Standards
1. A comprehensive staff development program must be provided for all school staff involved in the education of gifted learners.	<p>1.0M All school staff must be made aware of the nature and needs of gifted students.</p> <p>1.1M Teachers of gifted students must attend at least one professional development activity a year designed specifically for teaching gifted learners.</p>	<p>1.0E All school staff should be provided ongoing staff development in the nature and needs of gifted learners, and appropriate instructional strategies.</p> <p>1.1E All teachers of gifted learners should continue to be actively engaged in the study of gifted education through staff development or graduate degree programs.</p>
2. Only qualified personnel should be involved in the education of gifted learners.	<p>2.0M All personnel working with gifted learners must be certified to teach in the areas to which they are assigned, and must be aware of the unique learning differences and needs of gifted learners at the grade level at which they are teaching.</p> <p>2.1M All specialist teachers in gifted education must hold or be actively working toward a certification (or the equivalent) in gifted education in the state in which they teach.</p> <p>2.2M Any teacher whose primary responsibility for teaching includes gifted learners, must have extensive expertise in gifted education.</p>	<p>2.0E All personnel working with gifted learners should participate in regular staff development programs.</p> <p>2.1E All specialist teachers in gifted education should possess a certification/specialization or degree in gifted education.</p> <p>2.2E Only teachers with advanced expertise in gifted education should have primary responsibility for the education of gifted learners.</p>
3. School personnel require support for their specific efforts related to the education of gifted learners.	3.0M School personnel must be released from their professional duties to participate in staff development efforts in gifted education.	3.0E Approved staff development activities in gifted education should be funded at least in part by school districts or educational agencies.
4. The educational staff must be provided with time and other support for the preparation and development of the differentiated education plans, materials, curriculum.	4.0M School personnel must be allotted planning time to prepare for the differentiated education of gifted learners.	4.0E Regularly scheduled planning time (e.g., release time, summer pay, etc.) should be allotted to teachers for the development of differentiated educational programs and related resources.

Gifted Education Programming Criterion: Socio-Emotional Guidance and Counseling

Description: Gifted education programming must establish a plan to recognize and nurture the unique socio-emotional development of gifted learners.

Guiding Principles	Minimum Standards	Exemplary Standards
1. Gifted learners must be provided with differentiated guidance efforts to meet their unique socio-emotional development.	1.0M Gifted learners, because of their unique socio-emotional development, must be provided with guidance and counseling services by a counselor who is familiar with the characteristics and socio-emotional needs of gifted learners.	1.0E Counseling services should be provided by a counselor familiar with specific training in the characteristics and socio-emotional needs (i.e., underachievement, multipotentiality, etc.) of diverse gifted learners.
2. Gifted learners must be provided with career guidance services especially designed for their unique needs.	2.0M Gifted learners must be provided with career guidance consistent with their unique strengths.	2.0E Gifted learners should be provided with college and career guidance that is appropriately different and delivered earlier than typical programs.
3. Gifted at-risk students must be provided with guidance and counseling to help them reach their potential.	3.0M Gifted learners who are at risk must have special attention, counseling, and support to help them realize their full potential.	3.0E Gifted learners who do not demonstrate satisfactory performance in regular and/or gifted education classes should be provided with specialized intervention services.
4. Gifted learners must be provided with affective curriculum in addition to differentiated guidance and counseling services.	4.0M Gifted learners must be provided with affective curriculum as part of differentiated curriculum and instructional services.	4.0E A well-defined and implemented affective curriculum scope and sequence containing personal/social awareness and adjustment, academic planning, and vocational and career awareness should be provided to gifted learners.
5. Underachieving gifted learners must be served rather than omitted from differentiated services.	5.0M Gifted students who are underachieving must not be exited from gifted programs because of related problems.	5.0E Underachieving gifted learners should be provided with specific guidance and counseling services that address the issues and problems related to underachievement.

Gifted Education Programming Criterion: Program Evaluation

Description: Program evaluation is the systematic study of the value and impact of services provided.

Guiding Principles	Minimum Standards	Exemplary Standards
1. An evaluation must be purposeful.	1.0M Information collected must reflect the interests and needs of most of the constituency groups.	1.0E Information collected should address pertinent questions raised by all constituency groups, and should be responsive to the needs of all stakeholders.
2. An evaluation must be efficient and economic.	2.0M School districts must provide sufficient resources for program evaluation.	2.0E School districts should allocate adequate time, financial support, and personnel to conduct systematic program evaluation.
3. An evaluation must be conducted competently and ethically.	3.0M Persons conducting the evaluation must be competent trustworthy. 3.1M The program evaluation design must address whether or not services have reached intended goals. 3.2M Instruments and procedures used for data collection must be valid and reliable for their intended use. 3.3M Ongoing formative and summative evaluation strategies must be used for substantive program improvement and development. 3.4M Individual data must be held confidential.	3.0E Persons conducting the evaluation should possess an expertise in program evaluation in gifted education. 3.1E The evaluation design should report the strengths and weaknesses found in the program, as well as critical issues that might influence program services. 3.2E Care should be taken to ensure that instruments with sufficient evidence of reliability and validity are used, and that they are appropriate for varying age, developmental levels, gender, and diversity of the target population. 3.3E Formative evaluations should be conducted regularly with summative evaluations occurring minimally every five years or more often as specified by state or local district policies. 3.4E All individuals who are involved in the evaluation process should be given the opportunity to verify information and the resulting interpretation.
4. The evaluation results must be made available through a written report.	4.0M Evaluation reports must present the evaluation results in a clear and cohesive format.	4.0E Evaluation reports should be designed to present results and encourage follow-through by stakeholders.

Gifted Education Programming Criterion: Program Design

Description: The development of appropriate gifted education programming requires comprehensive services based on sound philosophical, theoretical, and empirical support.

Guiding Principles	Minimum Standards	Exemplary Standards
1. Rather than any single gifted program, a continuum of programming services must exist for gifted learners.	1.0M Gifted programming services must be accessible to all gifted learners.	1.0E Levels of services should be matched to the needs of gifted learners by providing a full continuum of options.
2. Gifted education must be adequately funded.	2.0M Gifted education funding should be equitable compared to the funding of other local programming.	2.0E Gifted education programming must receive funding consistent with the program goals and sufficient to adequately meet them.
3. Gifted education programming must evolve from a comprehensive and sound base.	3.0M Gifted education programming must be submitted for outside review on a regular basis. 3.1M Gifted programming must be guided by a clearly articulated philosophy statement and accompanying goals and objectives. 3.2M A continuum of services must be provided across grades pre-K-12.	3.0E Gifted education programming should be planned as a result of consultation with informed experts. 3.1E The school or school district should have a mission/philosophy statement that addresses the need for gifted education programming. 3.2E A comprehensive pre-K-12 program plan should include policies and procedures for identification, curriculum and instruction, service delivery, teacher preparation, formative and summative evaluation, support services, and parent involvement.
4. Gifted education programming services must be an integral part of the general education school day.	4.0M Gifted education programming should be articulated with the general education program. 4.1M Appropriate educational opportunities must be provided in the regular classroom, resource classroom, separate, or optional voluntary environments.	4.0E Gifted services must be designed to supplement and build on the basic academic skills and knowledge learned in regular classrooms at all grade levels to ensure continuity as students progress through the program. 4.1E Local school districts should offer multiple service delivery options as no single service should stand alone.
5. Flexible groupings of students must be developed in order to facilitate differentiated instruction and curriculum.	5.0M The use of flexible grouping of gifted learners must be an integral part of gifted education programming.	5.0E Gifted learners should be included in flexible grouping arrangements in all content areas and grade levels to ensure that gifted students learn with and from intellectual peers.
6. Policies specific to adapting and adding to the nature and operations of the general education program are necessary for gifted education.	6.0M Existing and future school policies must include provisions for the needs of gifted learners.	6.0E Gifted education policies should exist for at least the following areas: early entrance, grade skipping, ability grouping, and dual enrollment.

Gifted Education Programming Criterion: Program Administration and Management

Description: Appropriate gifted education programming must include the establishment of a systematic means of developing, implementing, and managing services.

Guiding Principles	Minimum Standards	Exemplary Standards
1. Appropriately qualified personnel must direct services for the education of gifted learners.	1.0M The designated coordinator of gifted education programming must have completed coursework or staff development in gifted education and display leadership ability to be deemed appropriately qualified.	1.0E The designated gifted programming coordinator must have completed a certification program or advanced degree program in gifted education.
2. Gifted education programming must be integrated into the general education program.	2.0M The gifted education program must create linkages between general education and gifted education at all levels.	2.0E Responsibility for the education of gifted learners is a shared one requiring strong relationships between the gifted education program and general education school wide.
3. Gifted education programming must include positive working relationships with constituency and advocacy groups, as well as with compliance agencies.	<p>3.0M Gifted programming staff must establish ongoing parent communication.</p> <p>3.1M Gifted programs must establish and use an advisory committee that reflects the cultural and socio-economic diversity of the school or school district's total student population, and includes parents, community members, students, and school staff members.</p> <p>3.2M Gifted education programming staff must communicate with other on-site departments as well as other educational agencies vested in the education of gifted learners (e.g., other school districts, school board members, state departments of education, intermediate educational agencies, etc.).</p>	<p>3.0E The gifted education programming staff should facilitate the dissemination of information regarding major policies and practices in gifted education (e.g., student referral and screening, appeals, informed consent, student progress, etc.) to school personnel, parents, community members, etc.</p> <p>3.1E Parents of gifted learners should have regular opportunities to share input and make recommendations about program operations with the gifted programming coordinator.</p> <p>3.2E The gifted education program should consider current issues and concerns from other educational fields and agencies regarding gifted programming decision making on a regular basis.</p>
4. Requisite resources and materials must be provided to support the efforts of gifted education programming.	<p>4.0M Resources must be provided to support program operations.</p> <p>4.1M Technological support must be provided for gifted education programming services.</p> <p>4.2M The library selections must reflect a range of materials including those appropriate for gifted learners.</p>	<p>4.0E A diversity of resources (e.g., parent, community, vocational, etc.) should be available to support program operations.</p> <p>4.1E Gifted education programming should provide state-of-the-art technology to support appropriate services.</p> <p>4.2E The acquisition plan for purchasing new materials for the school should reflect the needs of gifted learners.</p>

Gifted Education Programming Criterion: Curriculum and Instruction

Description: Gifted education services must include curricular and instructional opportunities directed to the unique needs of the gifted learner.

Guiding Principles	Minimum Standards	Exemplary Standards
1. Differentiated curriculum for the gifted learner must span grades pre-K–12.	1.0M Differentiated curriculum (curricular and instructional adaptations that address the unique learning needs of gifted learners) for gifted learners must be integrated and articulated throughout the district.	1.0E A well-defined and implemented curriculum scope and sequence should be articulated for all grade levels and all subject areas.
2. Regular classroom curricula and instruction must be adapted, modified, or replaced to meet the unique needs of gifted learners.	2.0M Instruction, objectives, and strategies provided to gifted learners must be systematically differentiated from those in the regular classroom. 2.1M Teachers must differentiate, replace, supplement, or modify curricula to facilitate higher level learning goals. 2.2M Means for demonstrating proficiency in essential regular curriculum concepts and processes must be established to facilitate appropriate academic acceleration. 2.3M Gifted learners must be assessed for proficiency in basic skills and knowledge and provided with alternative challenging educational opportunities when proficiency is demonstrated	2.0E District curriculum plans should include objectives, content, and resources that challenge gifted learners in the regular classroom. 2.1E Teachers should be responsible for developing plans to differentiate the curriculum in every discipline for gifted learners. 2.2E Documentation of instruction for assessing level(s) of learning and accelerated rates of learning should demonstrate plans for gifted learners based on specific needs of individual learners. 2.3E Gifted learners should be assessed for proficiency in all standard courses of study and subsequently provided with more challenging educational opportunities.
3. Instructional pace must be flexible to allow for the accelerated learning of gifted learners as appropriate.	3.0M A program of instruction must consist of advanced content and appropriately differentiated teaching strategies to reflect the accelerative learning pace and advanced intellectual processes of gifted learners.	3.0E When warranted, continual opportunities for curricular acceleration should be provided in gifted learners' areas of strength and interest while allowing a sufficient ceiling for optimal learning.
4. Educational opportunities for subject and grade skipping must be provided to gifted learners.	4.0M Decisions to proceed or limit the acceleration of content and grade acceleration must only be considered after a thorough assessment.	4.0E Possibilities for partial or full acceleration of content and grade levels should be available to any student presenting such needs.
5. Learning opportunities for gifted learners must consist of a continuum of differentiated curricular options, instructional approaches, and resource materials.	5.0M Diverse and appropriate learning experiences must consist of a variety of curricular options, instructional strategies, and materials. 5.1M Flexible instructional arrangements (e.g., special classes, seminars, resource rooms, mentorships, independent study, and research projects) must be available.	5.0E Appropriate service options for each student to work at assessed level(s) and advanced rates of learning should be available. 5.1E Differentiated educational program curricula for students pre-K–12 should be modified to provide learning experiences matched to students' interests, readiness, and learning styles.