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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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 this Chapter as well as the omission of strong Department supervisory and sanction language within the current regulations.

We believe 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 and the associated costs.

### GENERAL PROVISIONS

#### § 16.6. General supervision.

We seek 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 the monitoring and complaint process; and enforcement including the imposition of sanctions for noncompliance with the regulatory language of Chapter 16.

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

Concerning the addition of onsite monitoring requirements in proposed section 16.6(d), we stress the need to establish specific language that will ensure compliance of Chapter 16 and not leave the details to a future Basic Education Circular as currently proposed. The Chapter 16 Compliance Monitoring for Continuous Improvement System, as currently implemented, has not resulted in the correction of any compliance deficiencies. Beyond the fact that at the current rate of ten school districts per year, it will take fifty years to monitor all districts, the extent of the monitoring does not evaluate the substance of any gifted program or of any student's GIEP and as a result can not meet the guarantee of implementation as stated in the State Board of Education's proposed Chapter 16 regulations.

#### § 16.7. Special education.

We seek 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.

We recognize the appropriateness of a single GIEP and IEP for dually exceptional students and seek 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. However, we encourage an exception to this general rule for a single primary GIEP for gifted students with an IEP element for speech.

We seek clarification that gifted services, including Short Term Learning Objectives (STLO's), must be included in an IEP for dually exceptional students.

Identification processes must consider the "masking effect" mental giftedness and disabilities may impact on one another by requiring that, for students suspected of being dually exceptional, gifted strengths and disability-related weaknesses will be assessed within the same evaluation, rather than in separate evaluations.

## **SCREENING AND EVALUATION**

### **§ 16.21. General.**

Clarification of the distinction of Child Find, Screening and Evaluation is needed. We advise that each be addressed in a separate section.

Screening procedures should be weighted fairly and not designed as checklists intended for exclusion rather than inclusion. We recommend the incorporation of screening criteria that embody the process outlined in the Pennsylvania Department of Education Gifted Guidelines 2004.

We suggest that evaluation should include the assessment of rate of acquisition and rate of retention, which are two separate and distinct measures that must be clearly delineated.

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

We recommend that intelligence assessments of children who may be gifted and have a disability be chosen to yield information about their gifted strengths (e.g. a student with autism or a language impairment should be offered a nonverbal IQ test.)

### **§ 16.22. Gifted multidisciplinary evaluation.**

We seek 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.

We support a calendar day standard as opposed to a school day standard.

We seek 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.

We also recommend 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).

We seek 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). We agree that recommendations for the student's programming shall be included in the GWR. A statement of details concerning cultural, environmental, physical and language barriers must also be included. Parental statements detailing any disagreement with GMDT report must be attached to the GWR in an addendum.

We also recommend the inclusion of “**therefore**” in “report shall make recommendations as to whether the student is gifted and *therefore* in need of specially designed instruction” which 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.**

We seek clarification that Present Levels of Educational Performance (PLEP) determination is not a re-evaluation. Re-evaluations related to declassification are not routine and are the exception.

Further clarification is needed to delineate the specific changes in placement that require a re-evaluation. We suspect it is not the intention to necessitate a costly re-evaluation each time a student requires a change in placement such as acceleration.

We seek 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.**

We support the creation of a new section which would mirror the IDEA protection that disputed evaluations may be supplemented by second independent evaluations at public instead of private expense.

**GIEP**

**§ 16.31. General.**

We agree that the initial and all subsequent GIEPs shall be based upon and responsive to the results of the evaluation and Present Levels of Educational 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 re-evaluation.

**§ 16.32. GIEP.**

We suggest the inclusion of definitions of Present (Education) Levels of Performance (PLEP), Annual Goals, and Short Term Learning Objectives (STLO) in this section or added to the definition section in the same way that Specially Designed Instruction (SDI) is defined. We specifically request a definition of Present (Education) Levels of Educational Performance within Chapter 16 that can not be misconstrued to mean the educational placement befitting the child's age but instead to be clearly defined as the instructional grade or other instructional grouping level that ensures that educational content will be new, relevant, challenging and of an appropriate pacing and limited repetition in order to meet the child's needs. In short, any reference to a gifted student's educational levels needs to be clearly defined as the placement that aligns a gifted student with their ability and achievement.

We seek consistency when referring to these instructional levels and note that in proposed section 16.32(a) there is reference to "present education levels of educational performance," in proposed section 16.32(d).1 there is reference to "present levels of education performance" and these terms are both in reference to the term "academic instructional levels in all academic subject areas" in the screening and evaluation section, 16.21 (e).1. In order to provide much needed clarity, the term chosen to represent a gifted student's instructional levels should be included in the definitions section 16.1 and defined as above.



We also suggest within this section a 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.

The GIEP should include the anticipated frequency, location, and duration of all services, accommodations, and modifications. We suggest 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.

We recognize 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.

#### **§ 16.33. Support services.**

We seek 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.

### **EDUCATIONAL PLACEMENT**

#### **§ 16.41. General.**

We seek 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 in this section. We encourage 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.

We seek to move 16.41(c) caseload and class size details to §16.6 General relating to personnel.

#### **§ 16.43. Facilities.**

We propose 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.



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## PROCEDURAL SAFEGUARDS

### § 16.61. Notice.

We seek clarification that procedural safeguards are procedural due process rights and that the regulations themselves safeguard the entitlements and rights of gifted students.

We support clarification of procedures necessary to promote open communication between disputing parties.

We recommend the creation and availability of a form for parents to use when initiating either a due process or departmental complaint.

### § 16.62. Informed consent.

We seek 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. Procedural safeguards should spell out any court or regulatory determined statute of limitations that will limit the ability of parents or students to contest a GIEP after a delay.

We seek 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.

### § 16.63. Impartial due process hearing.

We suggest that parents shall be able to dispute any act that violates the protections of this Chapter using the protection of impartial due process.

The burden of proof should be that parents may in certain instances carry a burden of production, but shall never have the burden of persuasion because of the lack of access to evidence and the fundamental difficulty in proving a negative. We suggest that once parents have presented their claims, the burden of persuading the appropriateness of the individual plan must shift to the school district.

We seek 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.



We also seek 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.

We request the inclusion of the rationale by the Hearing Officer for determination of compensatory education and other remedies ordered.

We propose that the Office of Dispute Resolution should be governed by a neutral body and advisory board that includes stakeholders, including the parents of gifted children and former gifted students. The Office of Dispute Resolution should not be contracted through an Intermediate Unit, which is an arm of the Pennsylvania Department of Education.

We seek 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.

#### **§ 16.65. Confidentiality.**

We seek clarification of records requirements as provided by FERPA and this Chapter. Parents should be entitled to a single copy of their child's complete records at no cost. Parents cannot carry the burden of production or persuasion in due process hearings without being allowed copies of these records.

#### **§ 16.66. Compliance Monitoring.**

We recommend 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 of Education should be referenced to make clear the requirement that Complaints be heard and investigated by the Department. We believe compliance with the regulations will not occur until the Department assigns dedicated compliance officers who will fully investigate individual complaints regarding the evaluation, identification, or provision of FAPE for gifted students. We seek a complaint investigation process similar to the process used for Chapter 14, where complaints are investigated and a complaint investigation report is issued within 60 days of any individual filing a complaint.

Additionally, we suggest 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.