

# 2635  
Gelnett, Wanda B.

From: Schalles, Scott R.  
Sent: Wednesday, October 10, 2007 8:40 AM  
To: Gelnett, Wanda B.  
Subject: FW: Comments regarding 22 Pa. Code Ch. 16

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INDEPENDENT REGULATORY  
REVIEW COMMISSION



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

From: Jennifer Hahn [mailto:drjenniferhahn@comcast.net]  
Sent: Tuesday, October 09, 2007 10:51 PM  
To: j buckheit@state.pa.us  
Cc: Schalles, Scott R.  
Subject: Comments regarding 22 Pa. Code Ch. 16

Mr. Buckheit:

Attached, and reproduced below, are my comments regarding the proposed rulemaking (22 Pa. Code Ch. 16) published in the Pa. Bulletin on 9/8/07.

Jennifer Hahn, Ph.D.

Comments Regarding Proposed Rulemaking

22 Pa. Code Ch. 16

Submitted October 9, 2007

by Jennifer Hahn, Ph.D.  
2525 Condor Drive  
Audubon, PA 19403  
484-467-4723

My specific comments regarding the identification of gifted students fall under two major headings. The first has to do with the regulation's lack of consistency with the statute under which it was promulgated. The second has to do with ambiguity/lack of clarity in the definition of a mentally gifted student.

Statutory Intent

The wording of the regulations is not consistent with the statutory intent of the statute under which they are promulgated. Section 1371 of the School Code (24 P.S. § 13-1371) defines children with exceptionalities as "children of school age who have a disability or who are gifted and who, by reason thereof, need specially designed instruction" (emphasis added).

Because a student is gifted, they need specially designed instruction. Students should not have to show a need for specially designed instruction in order to be identified as gifted. Although it is theoretically possible that once a gifted child's needs are met through specially designed instruction they may not need additional specially designed instruction, it doesn't mean that the student is no longer gifted and no longer requires a GIEP. Consider a gifted child who is appropriately accelerated one whole grade in school. This placement meets the child needs, at least for a while. Does this mean the child is no

longer gifted because they no longer show a need for specially designed instruction?

When Chapter 16 was first published in December 2000, the Board of Education acknowledged <sup>3</sup>students who are gifted and therefore need specially designed instruction are considered to be children with exceptionalities under section 1371 of the School Code<sup>2</sup> (emphasis added). But, the language of the regulations does not clearly reflect this intent. The regulations have been misinterpreted and misapplied by school districts, due process hearing officers, and special education appeals panels to mean that gifted identification is a <sup>3</sup>two-prong<sup>2</sup> question. Students who meet the Chapter 16 criteria for mentally gifted are repeatedly being denied access to gifted education solely on the basis of <sup>3</sup>failing to show a need for specially designed instruction.<sup>2</sup>

Therefore, the following regulations should be reworted:

§ 16.1 Definition of Gifted Student: Should read <sup>3</sup>A student who is exceptional under section 1371 of the School Code (24 P. S. § 13-1371) because the student meets the definition of mentally gifted in this section, thereby needing specially designed instruction<sup>2</sup>

§ 16.21 (a): Should read <sup>3</sup>Each school district shall adopt and use a system to locate and identify all students within that district who are thought to be gifted.<sup>2</sup> (DELETE <sup>3</sup>and in need of specially designed instruction.<sup>2</sup>)

#### Ambiguity/Lack of Clarity

The definition of mentally gifted in § 16.1 is confusing since it refers to creative ability, but creative ability is not a required criterion for being identified as mentally gifted under § 16. 21(d).

Therefore, the following regulations should be reworted:

§16.1 Definition of Mentally Gifted: Should read <sup>3</sup>Outstanding intellectual or creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program.<sup>2</sup>

The regulations specify that IQ alone should not be used to determine gifted ability. However, the regulations currently state that students with IQs less than 130 <sup>3</sup>may<sup>2</sup> be admitted to gifted programs. There are two different standards for school districts based solely on IQ. In the case of a student who has an IQ of 130 and meets other criteria indicating gifted ability, school districts are required to develop a GIEP. In the case of a student who has an IQ less than 130 (which could mean 129), the use of the word <sup>3</sup>may<sup>2</sup> implies that it is at the school district's discretion whether to provide gifted education, even when there are strong indicators of gifted ability. The regulations are internally inconsistent and make the decision regarding gifted identification ultimately one of IQ. That is, no one with an IQ under 130 must be provided gifted education under the current wording of the regulations.

Therefore, the following regulations should be reworted:

§ 16.21(d): Should read <sup>3</sup>This term [mentally gifted] refers to [DELETE <sup>3</sup>includes] a person who has an IQ of 130 or higher and when multiple criteria . . . indicate gifted ability. . . . A person with an IQ lower than 130 shall [DELETE <sup>3</sup>may<sup>2</sup>] be provided gifted education when the multiple criteria as set forth in this chapter and in Department Guidelines strongly indicate gifted ability.<sup>2</sup>

## Comments Regarding Proposed Rulemaking

### 22 Pa. Code Ch. 16

Submitted October 9, 2007

by Jennifer Hahn, Ph.D.  
2525 Condor Drive  
Audubon, PA 19403  
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#### **Statutory Intent**

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Therefore, the following regulations should be reworded:

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