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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 8, 2007

James Buckheit, Executive Director
State Board of Education
333 Market Street, 1st Floor
Harrisburg, PA 17126

Re: Regulation #6-307 (IRRC #2635)
State Board of Education
Special Education for Gifted Students

Dear Mr. Buckheit:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
Executive Director
wbg
Enclosure

cc: Honorable James J. Rhoades, Chairman, Senate Education Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Education Committee
Honorable James R. Roebuck, Jr., Majority Chairman, House Education Committee
Honorable Jess M. Stairs, Minority Chairman, House Education Committee

Comments of the Independent Regulatory Review Commission

on

State Board of Education Regulation #6-307 (IRRC #2635)

Special Education for Gifted Students

November 8, 2007

We submit for your consideration the following comments on the proposed rulemaking published in the September 8, 2007 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Education (Board) to respond to all comments received from us or any other source.

1. Section 16.6. General supervision. – Statutory authority; Legislative intent; Implementation procedures.

The Board is adding a new subsection that states the following:

The Department will conduct onsite monitoring of school entities to ensure school entity implementation of this chapter. The Secretary will outline the process and schedule for this monitoring in a Basic Education Circular (BEC).

We have two concerns. First, Section 1372(1) of the Public School Code (24 P.S. §13-1372(1)) requires the Board to promulgate standards and regulations for the proper training of all exceptional children. We question if the Secretary of Education has the authority to develop the process and schedule for monitoring gifted education programs.

Our second concern relates to the inclusion of monitoring requirements in a non-regulatory document. We are aware that placing the monitoring requirements in a non-regulatory document, such as a Basic Education Circular, provides the Department with more flexibility. However, commentators have noted that school districts have not complied with existing regulations and the Department has not provided appropriate monitoring of gifted education programs. One way to ensure that gifted education programs administered by school districts are in compliance is to include monitoring methods and frequencies in the regulations. Regulations have the full force and effect of law and are binding on both the regulated community and an agency.

Given the lack of oversight of gifted education programs provided by the Department since the original promulgation of these regulations in 2000, we recommend that monitoring and compliance provisions be added to the final-form regulation. This would also resolve our first concern noted above.

2. Section 16.32. GIEP. – Clarity.

Subsection (a) references “present education levels of educational performance.” This appears to be a typographical error. We recommend that the word “education” be deleted and the term “present levels of educational performance” be defined.

3. Section 16.41. General. – Economic or fiscal impact; Reasonableness.

Subsection (c) pertains to caseloads and class sizes for gifted students. Under Subsection (c)(3), an individual gifted teacher’s caseload is being reduced from a maximum of 75 to 60. Under Subsection (c)(4), an individual gifted teacher’s maximum class roster is being increased from 20 to 25. Commentators, including Representative Mundy, believe the increase in maximum class roster from 20 to 25 will have a detrimental effect on gifted students. Other commentators, including two school districts, believe these changes will increase costs and negatively effect the way their gifted education program is operated.

We have two questions. First, will a teacher with a class roster of 25 gifted students be able to provide the necessary instruction to all of those students? Second, if a school district is providing gifted students with an appropriate education, but does not meet the requirements of this subsection, can that school district receive an exemption from these requirements? If so, the criteria for granting an exemption should be included in the final-form regulation.

4. Section 16.63. Impartial due process hearing. – Implementation procedures; Clarity.

Subsection (r) requires a school entity to provide the Department with “assurances” of its implementation of an order to the Department. We recommend that the final-form regulation specify the types of assurances that will be acceptable. Also, will parents or others have access to these assurances?

5. Miscellaneous Clarity.

- Section 16.6(d) refers to the term “school entity.” The term is also used in Section 16.63(r). Other sections of the regulation use the term “school district.” We recommend that one term be used consistently throughout this Chapter.
- The phrase “but not be limited to” in Section 16.21(b) is not needed.
- Section 16.23(d) uses the term “evaluation.” To be consistent with the title of this section, “Gifted multidisciplinary reevaluation,” we recommend that the term “evaluation” be amended to “reevaluation.”

STATE BOARD OF EDUCATION #6-307 (IRRC #2635)
SPECIAL EDUCATION FOR GIFTED STUDENTS

JAMES BUCKHEIT, EXECUTIVE DIRECTOR

Barbara Baker

DATE: 11/08/07