

# CHAPTER 16. SPECIAL EDUCATION FOR GIFTED STUDENTS

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### Authority

The provisions of this Chapter 16 issued under sections 1371, 2601-B and 2602-B of the Public School Code of 1949 (24 P.S. § § 13-1371, 26-2601-B and 26-2602-B), unless otherwise noted.

### Source

The provisions of this Chapter 16 adopted December 8, 2000, effective December 9, 2000, 30 Pa.B. 6330, unless otherwise noted.

## GENERAL PROVISIONS

### § 16.1. Definitions.

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

*Agency*—An intermediate unit, school district, area vocational technical school, State-operated program or facility, or other public or private organization providing educational services to gifted students or students thought to be gifted.

*Chapter 4*—The State Board of Education regulations as adopted under statutory authority in the School Code.

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

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*GIEP*—Gifted Individualized Education Plan.

*GMDT*—Gifted Multidisciplinary Team.

*Gifted education*—Specially designed instruction to meet the needs of a gifted student that is:

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

*Gifted Multidisciplinary Evaluation*—A systematic process of testing, assessment, and other evaluative processes used by a team to develop a recommendation about whether or not a student is

gifted or needs gifted education.

*Gifted student*—

(i) A student who is exceptional under section 1371 of the School Code (24 P. S. § 13-1371) because the student meets the definition of “mentally gifted” in this section, and needs specially designed instruction beyond that required in Chapter 4 (relating to academic standards and assessment).

(ii) The term applies only to students who are of “school age” as defined under § 11.12 (relating to school age).

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

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

*Parents*—A natural or adoptive parent or parents, a guardian or guardians, one or more persons acting as the parent or parents of a student.

*Party*—Parent or school district.

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

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

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

*School day*—A day in which school is in session.

*Screening and evaluation process*—The systematic determination of whether or not a student is gifted or needs gifted education.

*Specially designed instruction*—Adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials or a specialized curriculum for students who are gifted.

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

- (i) Psychological services.
- (ii) Parent counseling and education.
- (iii) Counseling services.

(iv) Transportation to and from gifted programs to classrooms in buildings operated by the school district.

**Authority**

The provisions of this § 16.1 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

#### Source

The provisions of this § 16.1 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial pages (271492) to (271493).

#### Cross References

This section cited in 22 Pa. Code § 16.22 (relating to gifted multidisciplinary evaluation).

### § 16.2. Purpose.

(a) This chapter specifies how the Commonwealth will meet its obligations to suspected and identified gifted students who require gifted education to reach their potential. It is the intent of the Board that gifted students be provided with quality gifted education services and programs.

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

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

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

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

(2) Gifted education for each gifted student which is based on the unique needs of the student, not solely on the student's classification.

(3) Gifted education for gifted students which enables them to participate in acceleration or enrichment programs, or both, as appropriate, and to receive services according to their intellectual and academic abilities and needs.

### § 16.3. Experimental programs.

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

(1) Include provision for the involvement of parents, administrators and professionals in the design and ongoing review of performance.

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

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

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

(ii) Data to support the existence of the need.

(iii) A description of the program, including the nature of the program, specific goals and objectives to be reached, role and function of personnel involved, and timelines for development, implementation and evaluation.

(b) When an experimental program has been approved for 3-consecutive years and has resulted in improved student achievement under subsection (a), annual application is not needed for the program to continue to operate.

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

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

#### **§ 16.4. Gifted education plans.**

(a) In accordance with § 4.13(e) (relating to strategic plans), each school district shall develop and implement a gifted education plan every 6 years. A school district shall make its gifted education plan available for public inspection and comment for a minimum of 28 days prior to approval of the plan by the school district's board of directors.

(b) Each school district shall address the following in its gifted education plan:

(1) The process for identifying children who are gifted and in need of specially designed instruction.

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(2) The gifted special education programs offered.

(c) Each school district shall provide, as the Department may require, reports of students, personnel and program elements, including the costs of the elements, which are relevant to the delivery of gifted education.

#### **Authority**

The provisions of this § 16.4 amended under sections 1372, 2603-B and 2604-B of the Public School Code of 1949 (24 P.S. § § 13-1372, 26-2603-B and 26-2604-B).

#### **Source**

The provisions of this § 16.4 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953; amended July 15, 2016, effective July 16, 2016, 46 Pa.B. 3815. Immediately preceding text appears at serial page (371255).

#### **Cross References**

This section cited in 22 Pa. Code § 4.13 (relating to strategic plans).

#### **§ 16.5. Personnel.**

(a) Professional personnel shall consist of certified individuals responsible for identifying gifted students and providing gifted education in accordance with Article XI of the School Code (24 P.S. § § 11-1101—11-1192) and this title.

(b) Paraprofessional personnel consist of individuals who work under the direction of professional personnel as defined in this chapter. The duties and training of the paraprofessional staff shall be determined by the employing agency.

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

### **§ 16.6. General supervision.**

(a) Educational programs for gifted students administered within this Commonwealth are considered to be under the general supervision of the Department and must meet the provisions of this chapter.

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

(c) The Board will review this chapter at least every 4 years to ensure consistent interpretation and application of this chapter.

(d) The Department will conduct onsite monitoring of school districts on a cyclical basis, or more frequently when necessary, to ensure school district implementation of this chapter. The Department will outline the process and schedule for monitoring in a Basic Education Circular (BEC). The BEC will include:

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(1) A description of the elements to be reviewed and the criteria for determining compliance with each element.

(2) A process and procedure to present the monitoring findings to school districts.

(3) A process for school districts to respond to monitoring findings.

(4) A process for resolution of findings, which may include a requirement that school districts develop corrective action plans.

(e) The Department will establish a complaint process that includes:

(1) A process for parents or guardians to file complaints and for school districts to respond.

(2) An opportunity for the district and parent to reach amicable resolution of the issue or, if necessary, a process for the Department to determine the validity of complaints.

(3) Development of an individual corrective action plan, if necessary, to address and correct findings of a valid complaint against a school district.

(4) Enumeration of enforcement steps to be employed by the Department if the district does not implement the corrective action.

(f) The Department will report to the Board, by October 1 of each year, the number and disposition of complaints filed and the schedule and results of monitoring activities.

### **Authority**

The provisions of this § 16.6 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P.S. § § 13-1372 and 26-2603-B).

### **Source**

The provisions of this § 16.6 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial page (271495).

### **§ 16.7. Special education.**

(a) Nothing in this chapter is intended to reduce the protections afforded to students who are eligible for special education as provided under Chapter 14 (relating to special education services and programs) and sections 601—619 of the Individuals with Disabilities Education Act (20 U.S.C.A. § § 1400—1419).

(b) If a student is determined to be both gifted and eligible for special education, the procedures in Chapter 14 take precedence. For these students identified with dual exceptionalities, the needs established under gifted status in this chapter shall be fully addressed in the procedures required in Chapter 14.

(c) For students who are gifted and eligible for special education, it is not necessary for school districts to conduct separate screening and evaluations or use separate procedural safeguards processes to provide for a student's needs as both a gifted and an eligible student.

(d) A single IEP shall be developed and implemented, revised and modified in accordance with this chapter and Chapter 14, for students who are identified as eligible under this chapter and Chapter 14.

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### **Authority**

The provisions of this § 16.7 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

### **Source**

The provisions of this § 16.7 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial pages (271495) to (271496).

## **SCREENING AND EVALUATION PROCESS**

### **§ 16.21. General.**

(a) Each school district shall adopt and use a system to locate and identify all students within that district who are thought to be gifted and in need of specially designed instruction.

(b) Each school district shall conduct awareness activities to inform the public of gifted education services and programs and the manner by which to request these services and programs. These awareness activities shall be designed to reach parents of students enrolled in the public schools and the parents of school age children not enrolled in the public schools. Awareness activities shall be

conducted annually and include providing information in local newspapers, other media, student handbooks and on the school district web site.

(c) Each school district shall determine the student's needs through a screening and evaluation process which meets the requirements of this chapter.

(d) 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 or when multiple criteria as set forth in this chapter and in Department Guidelines indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. Deficits in memory or processing speed, as indicated by testing, cannot be the sole basis upon which a student is determined to be ineligible for gifted special education. A person with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of mentally gifted must include an assessment by a certified school psychologist.

(e) Multiple criteria indicating gifted ability include:

(1) A year or more above grade achievement level for the normal age group in one or more subjects as measured by Nationally normed and validated achievement tests able to accurately reflect gifted performance. Subject results shall yield academic instruction levels in all academic subject areas.

(2) An observed or measured rate of acquisition/retention of new academic content or skills that reflect gifted ability.

(3) Demonstrated achievement, performance or expertise in one or more academic areas as evidenced by excellence of products, portfolio or research, as well as criterion-referenced team judgment.

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

(5) Documented, observed, validated or assessed evidence that intervening factors such as English as a second language, disabilities defined in 34 CFR 300.8 (relating to child with a disability), gender or race bias, or socio/cultural deprivation are masking gifted abilities.

#### **Authority**

The provisions of this § 16.21 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

#### **Source**

The provisions of this § 16.21 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial page (271496).

#### **Cross References**

This section cited in 22 Pa. Code § 16.22 (relating to gifted multidisciplinary evaluation).

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

(a) Prior to conducting an initial gifted multidisciplinary evaluation, the school district shall comply with the notice and consent requirements under § § 16.61 and 16.62 (relating to notice; and



consent).

(b) Referral for gifted multidisciplinary evaluation shall be made when the student is suspected by teachers or parents of being gifted and not receiving an appropriate education under Chapter 4 (relating to academic standards and assessment) and one or more of the following apply:

(1) A request for evaluation has been made by the student's parents under subsection (c).

(2) The student is thought to be gifted because the school district's screening of the student indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom.

(3) A hearing officer or judicial decision orders a gifted multidisciplinary evaluation.

(c) Parents who suspect that their child is gifted may request a gifted multidisciplinary evaluation of their child at any time, with a limit of one request per school term. The request must be in writing. The school district shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school district, that individual shall provide a copy of the permission to evaluate form to the parents within 10 calendar days of the oral request.

(d) Multidisciplinary evaluations shall be conducted by GMDTs. The GMDT shall be formed on the basis of the student's needs and shall be comprised of the student's parents, a certified school psychologist, persons familiar with the student's educational experience and performance, one or more of the student's current teachers, persons trained in the appropriate evaluation techniques and, when possible, persons familiar with the student's cultural background. A single member of the GMDT may meet two or more of the qualifications specified in this subsection.

(e) Gifted multidisciplinary evaluations must be sufficient in scope and depth to investigate information relevant to the student's suspected giftedness, including academic functioning, learning strengths and educational needs.

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

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

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

(2) Intelligence tests yielding an IQ score may not be used as the only measure of aptitude for students of limited English proficiency, or for students of racial-, linguistic- or ethnic-minority background.

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

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

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

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

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

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

(h) The GMDT shall prepare a written report that brings together the information and findings from the evaluation or reevaluation concerning the student's educational needs and strengths. The report must make recommendations as to whether the student is gifted and in need of specially designed instruction, indicate the basis for those recommendations, include recommendations for the student's programming and indicate the names and positions of the members of the GMDT.

(i) The GMDT shall determine eligibility as defined in §§ 16.1 and 16.21 (relating to definitions; and general).

(j) The initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the agency receives written parental consent for evaluation or receives an order of a court or hearing officer to conduct a multidisciplinary evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term may not be counted.

#### **Authority**

The provisions of this § 16.22 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. §§ 13-1372 and 26-2603-B).

#### **Source**

The provisions of this § 16.22 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial pages (271497) to (271498).

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### **§ 16.23. Gifted multidisciplinary reevaluation.**

(a) Gifted students shall be reevaluated before a change in educational placement is recommended for the student. In addition, gifted students may be reevaluated at any time under recommendation by the GIEP team.

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

(c) Reevaluations must include a review of the student's GIEP, a determination of which instructional activities have been successful, and recommendations for the revision of the GIEP.

(d) The reevaluation timeline for gifted students will be 60 calendar days, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term may not be counted.

#### **Authority**

The provisions of this § 16.23 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. §§ 13-1372 and 26-2603-B).

#### **Source**

The provisions of this § 16.23 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial pages (271498) to (271499).

## **GIEP**

### **§ 16.31. General.**

(a) A GIEP is a written plan describing the education to be provided to a gifted student. The initial GIEP must be based on and be responsive to the results of the evaluation and be developed and implemented in accordance with this chapter.

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

(c) Every student receiving gifted education prior to July 1, 2008, shall continue to receive gifted education until the student meets one of the following conditions:

- (1) The student graduates from high school.
- (2) The student is no longer of school age.
- (3) A GIEP team determines that the student no longer needs gifted education.

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#### **Authority**

The provisions of this § 16.31 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

#### **Source**

The provisions of this § 16.31 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial page (271499).

### **§ 16.32. GIEP.**

(a) The GIEP team, in accordance with the requirements of this chapter shall, based upon the evaluation report, develop an initial GIEP and arrive at a determination of educational placement. Revisions to GIEPs, changes in educational placement, or continuation of educational placement for a student determined to be a gifted student shall be made by the GIEP team based upon a review of the student's GIEP and instructional activities, present levels of educational performance, as well as on information in the most recent evaluation.

(b) Each GIEP team must include persons who meet the following qualifications:

- (1) One or both of the student's parents.
- (2) The student if the parents choose to have the student participate.

(3) A representative of the district, who will serve as the chairperson of the GIEP team, who is knowledgeable about the availability of resources of the district, and who is authorized by the district to commit those resources.

(4) One or more of the student's current teachers.

(5) Other individuals at the discretion of either the parents or the district.

(6) A teacher of the gifted.

(c) The school district shall establish and implement procedures designed to ensure that the parents of the gifted student are offered the opportunity to be present at each GIEP team meeting. These procedures must include any one or a combination of the following: documented phone calls, letters and certified letters with return receipts. Agencies shall maintain documentation of their efforts to encourage parents to attend. By including them in the invitation, the following shall be considered reasonable efforts to ensure parent participation in the GIEP meeting:

(1) The purpose, time and location of the meeting.

(2) The names of the persons expected to attend.

(3) The procedural rights available to protect the student and parent, in language which is clear and fully explains all rights.

(4) That a determination will be made at the meeting as to whether or not the student is gifted.

(5) That if the student is determined to be gifted, a GIEP will be developed.

(6) Notifying the parent and other persons who will be attending at least 10 calendar days in advance to ensure that the parent will have an opportunity to attend.

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(d) The GIEP of each gifted student shall be based on the GMDT's written report and contain the following:

(1) A statement of the student's present levels of educational performance.

(2) A statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report.

(3) A statement of the specially designed instruction and support services to be provided to the student. For a student with disability identified as eligible under 34 CFR 300.8 (relating to child with a disability), this would include accommodations and modifications in accordance with 34 CFR 300.320(a)(4) (relating to definitions of individualized education program).

(4) Projected dates for initiation, anticipated frequency, location and anticipated duration of gifted education.

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

(6) The names and positions of GIEP team participants and the date of the meeting.

(e) A copy of the GIEP shall be provided to the parents, along with a notice of parental rights under § 16.61—16.65 (relating to procedural safeguards).

(f) The school district shall notify teachers who work with a student who has been identified as gifted and in need of specially designed instruction of their responsibilities under the student's GIEP.

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

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

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

(3) GIEP team meetings shall be convened at least annually, or more frequently if conditions warrant.

(4) A GIEP team meeting shall also be convened at the request of a GIEP team member, the parent, the student or the school district.

#### **Authority**

The provisions of this § 16.32 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. §§ 13-1372 and 26-2603-B).

#### **Source**

The provisions of this § 16.32 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial pages (271499) to (271501).

#### **Cross References**

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This section cited in 22 Pa. Code § 4.24 (relating to high school graduation requirements); 22 Pa. Code § 16.31 (relating to general); and 22 Pa. Code § 16.62 (relating to consent).

### **§ 16.33. Support services.**

(a) The GIEP team, during the development, review or revision of a GIEP, shall determine whether the gifted student needs one or more support services.

(b) The GIEP team shall conclude that transportation to and from school psychological services, parent counseling and education, or another service is a support service if the GIEP team determines that one of the following criteria has been met:

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

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

#### **Cross References**

This section cited in 22 Pa. Code § 16.1 (relating to definitions); and 22 Pa. Code § 16.31 (relating to general).

## **EDUCATIONAL PLACEMENT**

**§ 16.41. General.**

(a) The GIEP team shall base educational placement decisions on the gifted student's needs.

(b) Districts may use administrative and instructional strategies and techniques in the provision of gifted education for gifted students which do not require, but which may include, categorical grouping of students. The placement must:

(1) Enable the provision of appropriate specially designed instruction based on the student's need and ability.

(2) Ensure that the student is able to benefit meaningfully from the rate, level and manner of instruction.

(3) Provide opportunities to participate in acceleration or enrichment, or both, as appropriate for the student's needs. These opportunities must go beyond the program that the student would receive as part of a general education.

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

(1) Ensure the ability of assigned staff to provide the services required in each gifted student's GIEP.

(2) Address all the educational placements for gifted students used by the district.

(3) Limit the total number of gifted students that can be on an individual gifted teacher's caseload to a maximum of 75 students. Beginning July 1, 2010, the total number of gifted students that can be on an individual gifted teacher's caseload is limited to a maximum of 65 students.

(4) Limit the total number of gifted students that can be on an individual gifted teacher's class roster to a maximum of 20 students.

(d) Caseload and class size maximums may be waived by the Secretary upon written request by the district for extenuating circumstances.

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

(1) Lack of availability of placement alternatives.

(2) Lack of availability or efforts to make educational or support services available.

(3) Lack of staff qualified to provide the services set forth in the GIEP.

(4) Lack of availability of space or of a specific facility.

(5) Administrative convenience.

**Authority**

The provisions of this § 16.41 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

**Source**

The provisions of this § 16.41 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial page (271502).

### **§ 16.42. Parental placement in private schools.**

(a) This chapter does not limit the right of parents to have their gifted children educated at private schools completely at private expense.

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

## **PROCEDURAL SAFEGUARDS**

### **§ 16.61. Notice.**

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

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

(2) The school district proposes or refuses to initiate or change the identification, evaluation or educational placement of the student, or proposes or refuses to make any significant changes in the GIEP.

(b) A change in the identification, evaluation, educational placement or GIEP of a gifted student ~~may not be made during the pendency of an administrative or judicial proceeding unless agreed to~~ by the parties to the proceeding.

(c) The content of notices to the parents shall be written in language understandable to the general public. If necessary, the content of notices shall be communicated orally in the native language or directly so that the parents understand the content of the notices.

(d) The notice shall include:

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

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

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

(4) A full explanation of the procedural safeguards, including the right to an impartial hearing available to the student or the parents under this chapter.

(e) The notice shall inform the parents of the following:

(1) The addresses and telephone numbers of various organizations which are available to assist in connection with the hearing.

(2) The timelines involved in conducting an evaluation, developing a GIEP, and initiating a hearing.

(3) An outside evaluation submitted by the parents shall be considered.

(4) The information in § 16.63 (relating to impartial due process hearing).

#### **Cross References**

This section cited in 22 Pa. Code § 16.22 (relating to gifted multidisciplinary evaluation); 22 Pa. Code § 16.31 (relating to general); 22 Pa. Code § 16.32 (relating to GIEP); and 22 Pa. Code § 16.62 (relating to consent).

#### **§ 16.62. Consent.**

The district shall document that written parental consent is obtained prior to:

(1) Conducting an initial multidisciplinary evaluation.

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

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

(4) When completed, the GIEP provided for in § 16.32 (relating to GIEP) shall be presented to the parents, along with a notice of recommended assignment signed by the school district superintendent provided for in § 16.61 (relating to notice) and a notice of parental right to an impartial due process hearing under § 16.63 (relating to impartial due process hearing). The notice shall be presented to the parents in person at the conclusion of the GIEP conference or by certified mail within 5-calendar days after the completion of the GIEP conference.

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

#### **Cross References**

This section cited in 22 Pa. Code § 16.22 (relating to gifted multidisciplinary evaluation); 22 Pa. Code § 16.31 (relating to general); and 22 Pa. Code § 16.32 (relating to GIEP).

#### **§ 16.63. Impartial due process hearing.**

(a) Parents may request in writing an impartial due process hearing concerning the identification, evaluation or educational placement of, or the provision of a gifted education to, a student who is gifted or who is thought to be gifted if the parents disagree with the school district's identification, evaluation or placement of, or the provision of a gifted education to the student. Unless the school district and the parent of the child agree otherwise, the child involved in the hearing shall remain in the child's current educational placement pending the outcome of the hearing.

(b) A school district may request a hearing to proceed with an initial evaluation or a reevaluation when a parent fails to respond to the district's proposed evaluation or reevaluation. When a parent rejects the district's proposed educational placement, other than the initial placement, the school



district may request an impartial due process hearing. If the parent fails to respond or refuses to consent to the initial provision of gifted services, neither due process nor mediation may be used to obtain agreement or a ruling that the services may be provided.

(c) The hearing shall be conducted by and held in the local school district at a place reasonably convenient to the parents. At the request of the parents, the hearing may be held in the evening. These options must be set forth in the form provided for requesting a hearing.

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

(e) The decision of the hearing officer must include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision must be based solely upon the substantial evidence presented during the course of the hearing.

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

(g) A written transcript of the hearing shall, upon request, be made and provided to parents at no cost.

(h) Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to students who are gifted.

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

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

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

(l) The decision of the impartial hearing officer may be appealed to a court of competent jurisdiction. In notifying the parties of the decision, the hearing officer shall indicate the courts to which an appeal may be taken.

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

(1) The Secretary may contract for coordination services for hearings related to a child who is gifted or thought to be gifted. The coordination services may include arrangements for stenographic services, arrangements for hearing officer services (including the compensation of hearing officers), scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings.

(2) A hearing officer may not be an employee or agent of a school district in which the parents or student resides, or of an agency which is responsible for the education or care of the student. A hearing officer shall promptly inform the parties of a personal or professional relationship the officer has or has had with any of the parties. The compensation of hearing officers does not cause them to become employees of the Department.

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

(1) A hearing shall be held within 30-calendar days after a parent's or school district's initial request for a hearing.

(2) The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing.

(o) Each school district shall keep a list of the persons who serve as hearing officers. The list must include the qualifications of each hearing officer. School districts shall provide parents with information as to the availability of the list and make copies of it available upon request.

(p) The Department will report to the Board by October 1 each year on the number of impartial due process hearings held during the previous school year. The report will also provide a Statewide summary of the results of the hearings in a manner that will not violate the confidentiality of children and families. The report will also address actions taken during the previous school year and future plans to strengthen the activities of due process hearings.

(q) Upon receipt of a final decision from a hearing officer or a court, the school district shall provide to the Department an assurance of its implementation of the order. The assurance shall be filed within 30 school days of the date of the final decision.

#### **Authority**

The provisions of this § 16.63 amended under sections 1372 and 2603-B of the Public School Code of 1949 (24 P. S. § § 13-1372 and 26-2603-B).

#### **Source**

The provisions of this § 16.63 amended October 31, 2008, effective November 1, 2008, 38 Pa. Code 5953. Immediately preceding text appears at serial pages (271504) to (271506).

#### **Cross References**

This section cited in 22 Pa. Code § 16.31 (relating to general); 22 Pa. Code § 16.32 (relating to GIEP); 22 Pa. Code § 16.61 (relating to notice); and 22 Pa. Code § 16.62 (relating to consent).

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### **§ 16.64. Mediation.**

(a) Mediation is a process in which parents and agencies involved in a special education for gifted students dispute may obtain the assistance of an impartial mediator in attempting to reach a mutually agreeable settlement.

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

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

*Mediation agreement*—A written record of agreement reached by the parties.

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

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

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

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

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

(c) If a dispute is resolved through mediation, a written agreement shall be prepared and placed in the child's education record. The agreement shall also be incorporated into the GIEP.

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

(e) Discussions occurring during the mediation session shall be confidential, and no part of the mediation conference shall be recorded.

(f) The mediator may not be called as a witness in future proceedings.

(g) The designated agency involved in the dispute shall send a representative who has the authority to commit resources to the resolution agreed upon by the parties.

(h) The written mediation agreement is not a confidential document and shall be incorporated into the student's GIEP and is binding on the parties.

(i) The mediation agreement shall be enforceable by the Department.

(j) A GIEP team shall be convened, within 10 school days following the mediation agreement, to incorporate the mediation agreement into the GIEP.

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(k) When the mediation conference results in a resolution of the dispute, each party shall receive an executed copy of the agreement at the conclusion of the mediation conference.

(l) Mediation may not be used to deny or delay a party's right to a due process hearing.

#### **Cross References**

This section cited in 22 Pa. Code § 16.31 (relating to general); and 22 Pa. Code § 16.32 (relating to GIEP).

#### **§ 16.65. Confidentiality.**

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

#### **Cross References**

This section cited in 22 Pa. Code § 16.31 (relating to general); and 22 Pa. Code § 16.32 (relating to GIEP).

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