

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subchapter A. MISCELLANEOUS PROVISIONS

CHAPTER 16. SPECIAL EDUCATION FOR GIFTED STUDENTS

GENERAL PROVISIONS

§ 16.1. Definitions.

GIEP – Gifted Individualized Education ~~Program~~ PLAN.

§ 16.4. Strategic plans.

(a) Each school district's strategic plan developed under Chapter 4 (relating to academic standards and assessments) [shall] **must** include procedures for the education of all gifted students enrolled in the district. The strategic plan shall be developed to ensure the [support of the] implementation of **gifted education** plans [developed under subsection (b)].

(b) 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.] **address the following in its gifted education plan:**

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

(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.

§ 16.6. General supervision.

(d) The Department will conduct onsite monitoring of school entities DISTRICTS ON A CYCLICAL BASIS, OR MORE FREQUENTLY WHEN NECESSARY, to ensure school entity DISTRICT implementation of this chapter. The Secretary DEPARTMENT will outline the process and schedule for this monitoring in a Basic Education Circular (BEC). THE BEC SHALL INCLUDE:

- (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 SHALL ESTABLISH A COMPLAINT PROCESS THAT SHALL INCLUDE:

- (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 SHALL REPORT TO THE STATE BOARD OF EDUCATION, BY OCTOBER 1 OF EACH YEAR, THE NUMBER AND DISPOSITION OF COMPLAINTS FILED AND THE SCHEDULE AND RESULTS OF MONITORING ACTIVITIES.

§ 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 for under [Chapters] Chapter 14 [and 342] (relating to special education services and programs) and sections 601--619 of the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400--[1485] 1419).

(b) If a student is determined to be both gifted and eligible for special education, the procedures in [Chapters] **Chapter 14 [and 342]** shall 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 [Chapters] **Chapter 14 [and 342]**.

(c) For students who are gifted and eligible for special education, it is not necessary for school districts to conduct separate screening and evaluations[, **develop separate IEPs,**] 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.

SCREENING AND EVALUATION PROCESS

§ 16.21. General.

(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, but not be limited to, providing information in local newspapers, other media, student handbooks and on the school district website.**

(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 **and 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 **[shall] must** include an assessment by a certified school psychologist.

(e) Multiple criteria indicating gifted ability include:

(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 **[judgement] judgment**.

(5) Documented, observed, validated or assessed evidence that intervening factors such as English as a second language, ~~learning disability, physical impairment, emotional disability~~ **DISABILITIES DEFINED AT 34 CFR 300.8**, gender or race bias, or socio/cultural deprivation are masking gifted abilities.

§ 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).

(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 **[shall] must** be in writing. **[If a parental request is made orally to school personnel, the personnel shall inform the parents that the request shall be made in writing and shall provide the parents with a form for that purpose.]** **The school district shall have readily available for this purpose an evaluation request form and if a request is made orally to any professional employee or administrator of the school district, that individual shall provide a copy of the evaluation request form to the parents within 5 school days of the oral request** **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.**

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

(i) [To recommend that a student who has been evaluated is a gifted student, the GMDT shall conclude that the student needs specially designed education and meets the criteria for eligibility as defined in §§ 16.1 and 16.21 (relating to definitions; and general).] The GMDT shall determine eligibility as defined in §§ 16.1 and 16.21 (relating to definitions; and general).

(j) [The following timeline applies to the completion of gifted multidisciplinary evaluations:

(1) Each district shall establish and implement procedures to complete a gifted multidisciplinary evaluation for a student referred for evaluation within 45 school days after receiving parental permission for an initial evaluation, after notifying the parents of a reevaluation or after receiving an order of a court or hearing officer to conduct a multidisciplinary evaluation.

(2) An evaluation report shall be completed within 10 school days after completion of the gifted multidisciplinary evaluation.

(3) Within 5 school days after its completion, a copy of the evaluation report shall be delivered to the parents of the student.]

The initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the school district receives written parental consent for evaluation or receives an order of a court or hearing officer to conduct a multidisciplinary evaluation 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 SHALL NOT BE COUNTED.

§ 16.23. Gifted multidisciplinary reevaluation.

(a) Gifted students shall be reevaluated before a change in educational placement is recommended for the student [and when the conditions under § 16.22 (b)(1) or (3) (relating to gifted multidisciplinary evaluation) are met]. In addition, gifted students may be reevaluated at any time under recommendation by the GIEP team.

(d) The initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the school district receives written parental consent for evaluation or receives an order of a court or

~~hearing officer to conduct a multidisciplinary evaluation.~~ 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 SHALL NOT BE COUNTED.

GIEP

§ 16.31. General.

(c) [Every student receiving gifted education provided for in an IEP developed prior to December 9, 2000, shall continue to receive the gifted education under that IEP until the student's GIEP is developed. For a student also eligible under Chapters 14 and 342 (relating to special education services and programs), the student will continue to receive gifted education under that IEP until revised.

(d) Every student receiving gifted education prior to [December 9, 2000,] _____ ~~(Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.)~~ JULY 1, 2008, shall continue to receive gifted education until the student meets one of the following conditions [exists]:

§ 16.32. GIEP.

(a) [Each school district shall establish and implement procedures to appoint a GIEP team to review the recommendations of the GMDT and, if the GIEP team determines a student is gifted, to develop a GIEP for the student. The GIEP shall be developed at a GIEP meeting and based on data and information presented at that meeting.

(b) The GIEP team, in accordance with the requirements of this chapter shall, based upon the evaluation report, develop an initial GIEP [for a student it determines to be a gifted student,] 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 education levels of educational performance, as well as on information in the most recent evaluation.

[(c)] (b) * * *

(6) A teacher of the gifted.

[(d)] (c) * * *

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

(3) A statement of the specially designed instruction and support services to be provided to the student. **FOR A STUDENT WITH A DISABILITY IDENTIFIED AS ELIGIBLE UNDER SECTION 34 CFR 300.8, THIS WOULD INCLUDE ACCOMMODATIONS AND MODIFICATIONS AS PER 34 CFR 300.320(A)(4).**

(4) Projected dates for initiation, **ANTICIPATED FREQUENCY, LOCATION** and anticipated duration of gifted education.

[(f)] (e) * * *

(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:

(3) GIEP team meetings shall be convened at least annually, or more frequently if conditions warrant[, as well as following an evaluation or reevaluation. A GIEP team meeting shall also be convened at the request of a GIEP team member, the parent, the student or the school district].

(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.

EDUCATIONAL PLACEMENT

§ 16.41. General.

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

(3) Limit the total number of gifted students which can be on an individual gifted teacher's caseload to a maximum of [75] ~~60~~ 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 which can be on an individual gifted teacher's class roster to a maximum of [20] ~~25~~ 20 students.

PROCEDURAL SAFEGUARDS

§ 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 STATE OR SCHOOL DISTRICT AND THE PARENT OF THE CHILD AGREE OTHERWISE, THE CHILD INVOLVED IN THE HEARING, MUST REMAIN IN HIS OR HER CURRENT EDUCATIONAL PLACEMENT PENDING THE OUTCOME OF THE HEARING**

~~(b) A school district may request in writing a hearing to proceed with an initial evaluation or an initial educational placement when the district has not been able to obtain consent from the parents or in regard to a matter under subsection (a).~~ **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.**

(l) The decision of the impartial hearing officer may be appealed to ~~a panel of three appellate hearing officers. The panel's decision may be appealed further to~~ a court of competent jurisdiction. In notifying the parties of ~~its~~ **THE** decision, the ~~panel~~ **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 ~~in support of FOR~~ hearings ~~conducted by local school districts~~ **RELATED TO A CHILD WHO IS GIFTED OR THOUGHT TO BE GIFTED**. The coordination services ~~shall be provided on behalf of school districts and~~ 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) If a school district chooses not to utilize the coordination services under paragraph (1), it may conduct hearings independent of the services if its procedures similarly provide for procedural consistency and ensure the rights of the parties. In the absence of its own procedures, a school district which receives a request for an impartial due process hearing shall forward the request to the agency providing coordination services under paragraph (1) without delay.~~

~~(3)~~ A hearing officer may not be an employe 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.**

~~(p) Impartial due process hearings, appeal panel proceedings and the hearing officers who conduct the hearings and proceedings shall be subject to 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).~~

~~(q) The Department will report to the Board by September 1 each year on the number of impartial due process hearings and appeal panel proceedings held during the previous school year. The report will also provide a Statewide summary of the results of the proceedings 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 and appeal panel proceedings.~~

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

