

BULLETIN

Chapter 16: Special Education for the Gifted What Schools and Parents Need to Know and Do

In Chapter 16, the Pennsylvania State Board of Education acknowledges students who are gifted as children with exceptionalities under Sections 1371 and 1372 of the School Code. The regulatory requirements of Chapter 16 require school districts to provide students identified as gifted with specially designed instruction, and the statutory protections of School Code and already litigated case law.

This PAGE Bulletin contains key information and suggestions to aid parents and educators implement Chapter 16 requirements and underlying principles.

Chapter 16 Key Requirements

- ◆ The gifted continue to be classified as “exceptional” under Section 1371 of the School Code and need specially designed instruction beyond what is required in Chapter 4.
- ◆ The gifted are protected under *established case law* creating no need to relitigate existing case law. (Preamble)
- ◆ Each GIEP team shall include one or both of the student’s *parents*, the student (if desired), a *district representative* who is knowledgeable about the availability of resources and who is authorized to commit those resources, one or more of the student’s *current teachers*, and others invited at the discretion of either the parents or the district. (16.32 c)
- ◆ Gifted students need *specially designed instruction* that is conducted in an instructional setting; provided in an instructional or skill area; provided at *no cost* to the parents; *individualized* to meet the educational needs of the student through *acceleration or enrichment* or both; reasonably calculated to yield *meaningful educational benefit* and student progress; and provided in conformity with a GIEP. (16.1, 16.2d and 16.41b)
- ◆ If parents disagree with an evaluation or GIEP, they may request *mediation* or initiate *due process*. (16.63 and 16.64)
- ◆ School district’s *strategic plans* shall include procedures for the education of all gifted students enrolled in the district. (16.4)
- ◆ A school district and/or intermediate unit shall provide *in-service training* for gifted and regular teachers, principals, administrators and support staff persons responsible for gifted education. (16.5c)
- ◆ Gifted students shall be *re-evaluated* before a change in educational placement is recommended. (16.23)
- ◆ An individual gifted teacher’s *caseload* is a maximum of *75 students* with a limit of 20 students on an individual teacher’s class roster. (16.41c)
- ◆ Chapter 16 is exempt from the *mandate waiver* program of EEA, exactly as Chapter 14 is exempt. (House Bill 335)

Public School Code

In 1995, Section 1371 of the School Code was amended to read, “the term ‘**children with exceptionalities**’ shall mean children of school age who have a disability or who are gifted and who, by reason thereof, need specially designed instruction. A duty is created under Section 1371 for district superintendents to identify and report every exceptional child within the district. Under Section 1372 of the School Code, the Secretary of Education is required to “superintend the organization of special classes and such other arrangements for special education and shall enforce the provisions of this act relating thereto (24 P.S. §13-1372).” Citing this duty, the Secretary, in the “Response to Comments” part of the Chapter 16 regulations, pledged to “continue to include students who are gifted in Departmental tracking systems, monitor the actions of school districts for compliance with the requirements of this regulation, and hear and investigate complaints.”

Strategic Plan Regulations

Each school district’s strategic plan shall include procedures for the education of all gifted students enrolled in the district (Section 16.4(a)).

A school district and intermediate unit shall provide,

under Section 1205.1 of the School Code (24 P.S. Section 12-1205.1), inservice training for gifted and regular education teachers, principals, administrators and support staff persons responsible for gifted.

Board Policy

School boards may adopt a policy related to Gifted Education that reflects the requirements of Chapter 16. The Pennsylvania School Boards Association (PSBA) published Policy No. 114 in February, 2001, as a model for school boards of what should be included in their Gifted Education policy. The key components of PSBA Policy No. 114 are:

- ❖ Definitions of Gifted Student, GIEP, GMDT
- ❖ Program Provisions, including identification and evaluation of each gifted student, and programming based on individual needs that includes acceleration and enrichment.
- ❖ Referral Procedures and Evaluation Process
- ❖ GIEP Development for each student annually
- ❖ Caseload and class size issues
- ❖ Notice of and consent for evaluation
- ❖ Confidentiality of student’s records
- ❖ Awareness activities

Request a copy of your school district’s policy on gifted education. Ask for Policy #114. In most districts Board Policy #906 provides a public complaint process to present systemic problems with school district’s policies or program to the school board. You may also ask for Policy #906.

Chapter 16 Due Process Rights *Case Law and Legal Precedents*

Chapter 16 assures special education due process rights for students and parents. Section 16.63 makes clear that “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.”

Case Law and Appeals Board Review Precedents



❖ **David S. v. Carlynton School District, 2002**

Issue: GIEP was not delivered in a comprehensive, timely and appropriate manner during David’s last six years of schooling.

Appeals Panel Decision: Compensatory education is awarded to David to rectify this wrong and, in light of his age and senior year status, must be delivered with expediency. The District must immediately convene the GIEP team, including the parents, and design a compensatory education plan to include weekend and/or summer programming in study skills and organizational skills. Sitting at the computer in front of an on-line course is not an option unless accepted by David and his parents. Contracting with a school, college, or learning center that provides intense courses and programming, or any other approach acceptable to David and his parents, are options. David’s award also includes a review course in basic algebra, again to be taken at a school, college, or learning center as acceptable to David.

Case Law and Appeals Board Review Precedents



❖ **Anna S. v. Charleroi School District, 2001**

Issue: District did not implement an individualized GIEP for Anna S. The GIEP failed to identify present education levels, match Anna's identified abilities with her goals, and repeated verbatim goals from the previous year's GIEP.

Appeals Panel Decision: District must provide 270 hours of compensatory educational services. In addition, the appeals panel upheld the hearing officer's decision that the district must provide immediate training in the understanding, development and writing of GIEP's for the gifted.

❖ **Stefan S. v. Charleroi School District, 2001**

Issue: Stefan's high degree of need for academic enrichment and/or acceleration was not being met through an 80 minute a week pull-out enrichment program.

Appeals Panel Decision: Stefan S. shall be awarded 16 hours of compensatory education, the nature of which is to be determined jointly by the parties. This compensatory education is limited to education available within the curriculum of the school district. This compensatory education must be in addition to Stefan's then-current GIEP and may not be used to supplant such services. These services may occur during school months, when convenient for the student and parents. This provision shall remain in effect until Stefan reaches the age of 21 years or graduation from high school, whichever occurs first.

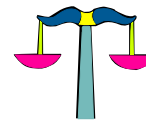
❖ **Mark S. v. Steel Valley, 2002**

Issue: GIEP did not include present levels of educational performance, expected levels of achievement, nor a schedule for and methods of evaluation. No attempt was made to address the student's behavioral and emotional needs in the proposed GIEP.

Appeals Panel Decision: District must provide individualized gifted education, based on present levels information that is sufficient in depth and scope for the development of a GIEP. The decision also requires, for an eligible student under IDEA, that the gifted issues and IDEA requirements must be addressed jointly. The student was awarded 840 hours compensatory education time.



Additional Court and Second-Tier Administrative Decision Key Cases and Summary Data



❖ **Central York School District v. Commonwealth, 1979**

Ruled that a school district's duty to provide a gifted program is not contingent upon state reimbursement for the program's costs.

❖ **Opinion Number 1090, 2001**

Ruled that gifted child's IEP was inappropriate on both procedural and substantive grounds, awarding 2.5 years of compensatory education in terms of "accelerated and enriching coursework" in math and science, an outside expert to provide continuing consultation for a new IEP, and a minimum of 10 hours of inservice training in gifted education.

❖ **Centennial School District v. Commonwealth, 1988**

Ruled that school districts must provide individualized programs for gifted students, rather than mere participation in their state-approved district-wide gifted program.

❖ **Brownsville Area School District, 1999**

Recognized that compensatory education is an appropriate remedy for gifted students, but also ruled that districts are not required to fund college-level instruction or other education beyond the regular curricular offerings of the district.



Where to Go for More Information



- ◆ **PA Department of Education** - www.pde.state.pa.us/gifted_ed
Chapter 16 Regulations, Parent Guide, GIEP and GWR forms and formats, resources and FAQ's available.

Gifted education is a shared responsibility of the Bureau of Special Education and the Bureau of Teaching and Learning Support Services, with the Bureau of Special Education taking the lead. Assistance can be provided by contacting their offices:

Bureau of Special Education, Linda O. Rhen, Ed.D., Director, lrhen@state.pa.us or 717.783.6913;
Barbara Thrush, Special Education Advisor, Gifted issues, bthrush@state.pa.us or 717.783.6881.
Assistance with interpreting regulations, completing forms and evaluations, and disputes.

Bureau of Teaching and Learning Support Services, Karen Hessel, Director, khessel@state.pa.us or 717.787.8913. Call for assistance with filing Chapter 16 compliance complaints, or file via email by sending a request for assistance and your telephone number to Karen Cobb, kcobb@state.pa.us. Within this Bureau, contact Dr. Marian Sutter at msutter@state.pa.us or 717.783.6590 for assistance with curriculum issues or Governor's schools.

- ◆ **Pennsylvania Association for Gifted Education (PAGE)** - www.penngifted.org or Helpline 888-736-6443.
Assistance with identification, GIEPs, compliance issues and advocacy. PAGE maintains a list of volunteer advocates who can assist with various issues.
- ◆ **Office for Dispute Resolution** - www.pattan.k12.pa.us/odr - 800.992.4334
Information and procedures on mediation and due process in PA; *Parent Guide to Special Education for the Gifted*.
- ◆ **Special Education Consult Line** - 800.879.2301 (TTY/TDD)
Assistance with Chapter 16 Regulations, and GIEP and GWR forms and formats.
- ◆ **Wrights Law Site** - www.wrightslaw.com/advoc/ltrs/masterplan.htm
Comprehensive Web site with information on special education.
- ◆ **Guidelines for Operating Programs for the Mentally Gifted** - www.pde.state.pa.us/gifted_ed. Click on link.
- ◆ **Online Course on Gifted Education** - www.pa.professionaleducation.org. Click on the "Diverse Learners Series." Developed by the PDE. There is no charge for Pennsylvania teachers.
- ◆ **Parent Education Network** - www.parentednet.org. - 717.600.0100 V/TTY or 800.522.5827 V/TTY.
Non-profit organization providing information to parents regarding special education laws and regulations, including the gifted.



🌿 **Contributors: Ray Budd, Joyce Clark, Judith Cunningham, Betsy Keefer, and Linda Mackey.** 🌿

James LoGiudice • PAGE Bulletin Editor

Revised February, 2005

PAGE, INC.
1111 Delpls Road
Danielstown, PA 18038



Complying with Chapter 16

A Checklist for Parents and Educators



1. Gifted Program Plan and Professional Development

- Does the school district's strategic plan include procedures for the education of all gifted students enrolled in the district?
- Is inservice training about education for the gifted provided for gifted and regular education teachers, principals, administrators and support staff?
- Are all teachers knowledgeable about the needs of the gifted?
- Does the school district have in place board policies relating to caseloads, class sizes, and assurances to provide services required in each gifted student's GIEP?

2. Student Screening and Identification

- Is there a system in the district for identifying all students who are thought to be gifted?
- Is a system in place for making parents aware of the district's gifted student services, and how to recommend students for screening?
- Does the school psychologist administer tests and evaluation materials to determine giftedness?
- Is criteria for eligibility not based on IQ score alone?
- Does the criteria include multiple factors such as:
 - Achievement test scores
 - Acquisition and Retention rates
 - Demonstrated achievement, performance or expertise in one or more academic areas
 - High level thinking skills, academic creativity, leadership skills, academic interest areas, communication skills, foreign language aptitude or technology expertise
 - Evidence that intervening factors are masking gifted abilities
- Is the decision about eligibility a team decision?



3. Gifted Individualized Education Program (GIEP)

- Were the appropriate members of the GIEP team involved in the development of the GIEP? (parents, student if parents choose, district representative, one or more of student's current teachers, others at discretion of parent or school district)
- Does the GIEP address all required areas in Present Levels? Was comprehensive assessment data used to profile the student's present levels of performance, including the student's rate of learning and retention?
- Is the school program or specially designed instruction based directly on the individual student's abilities as stated in the GIEP present levels section?
- Does the GIEP include programs or services across a variety of content and skill areas in **both** regular and special education?



4. **Due Process and Complaint Filing Procedures**

- Does the school district provide information about due process and complaint filing procedures to both parents and teachers?
- Are parents made aware that they could be represented by legal counsel, and/or accompanied and advised by individuals with special knowledge or training with respect to students who are gifted, at GIEP conferences and due process hearings?
- Is a hearing held within 30 calendar days of the request?
- Is the Notice of Recommended Assignment (NORA) given to the parents with each new GIEP?
- Is the Notice of Parental Rights for Gifted Children given to parents in a timely and consistent manner?
- Is there a list of resources, including telephone numbers and addresses, that are available to help parents understand their rights?

5. **Program and Service Delivery**

- Does the program, curricula, or specially designed instruction address individual needs of students?
- Does the school district make adaptations for gifted students that provide for both acceleration and enrichment, as the GIEP requires?
- Does the school district offer a range of participation options to each gifted student?
- Are materials, resources, and instruction differentiated?
- Are specially designed instruction and learning modification available and made across all grade levels, K-12?
- Are specially designed instruction and program opportunities not limited by or based on administrative convenience?

**To become more knowledgeable about gifted education
in Pennsylvania, contact:**



Web site: www.penngifted.org

Helpline: 888-736-PENNGIFTED (6443)