



**THE NATIONAL
RESEARCH CENTER
ON THE GIFTED
AND TALENTED**

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The Law on Gifted Education

(Revised Edition)

Perry A. Zirkel
Lehigh University
Bethlehem, Pennsylvania

September 2005
RM05178R

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The Law on Gifted Education

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ABSTRACT

This monograph provides a comprehensive, concise, and current overview of the law — specifically, legislation, regulations, and published court/administrative decisions — relating to gifted education for K-12 students. For students whose legal rights are based solely on their gifted status, the law largely boils down to (a) varying state statutes and/or regulations, and (b) for states with relatively "strong" (e.g., mandated individualized programming and impartial dispute-resolution mechanism) legislation/regulations, with Pennsylvania being the prime example to date, published hearing/review officer and court decisions that have enforced, but not expanded, the requirements for individualized programming. For gifted students who are also covered by other special status, such as those who have a disability or who are racial minorities, the legal issues are more complex and largely based on federal civil rights laws. For these "gifted-plus" students, the principal legal forums have been the U.S. Office for Civil Rights and the administrative/judicial process of the Individuals with Disabilities Education Act. The leading issues in the gifted-plus cases to date have been eligibility, including underrepresentation, and free appropriate public education. The narrative portion of the monograph provides an impartial and a systematic summary of the law for the lay reader, whereas the appendices and endnotes provide rather thorough and cited support for legal specialists.

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EXECUTIVE SUMMARY

Introduction

A review of the available literature reveals various limited looks at the law on gifted education. The limitations have been understandable. While some sources have examined limited sectors, such as state eligibility definitions or federal enforcement by the Office for Civil Rights (OCR), others have been limited by date, i.e., written when the body of relevant law was still in its infancy. Many of the sources have not adhered strictly to the law, focusing on policies and practices that do not have binding legal force. Several also have taken an advocacy position. The time is now ripe for a careful, comprehensive, coherent, and relatively impartial synthesis of the law—legislation, regulations, published administrative rulings and court decisions—specific to gifted education. Not previously distinct in the pertinent literature, the two separate categories are (a) students who are "gifted alone," i.e., whose asserted legal rights are based solely on their gifted status, and (b) students who are "gifted plus," i.e., whose asserted legal rights additionally or alternatively derive from their special status in terms of having a disability under federal or state legislation/regulations or being a racial/ethnic minority subject to constitutional and/or statutory protection.

"Gifted Alone"

The federal Constitution does not provide a right to an education, much less a right to a gifted education. Its only relevance is for students who are not only gifted, but also members of constitutionally protected groups, such as racial minorities. Further, federal legislation does not provide an entitlement to gifted education.

Likewise, state constitutions, although varying in the specificity and strength of their education provisions, are generally not a fruitful basis for judicial claims on behalf of gifted students. Similarly, state common law is not a likely basis for establishing a right to specialized education for gifted students.

Instead, the primary source of rights for students who are, or claim to be, gifted, is state law. Specifically, the components are state statutes and regulations along with related court decisions and, at a lower level, published hearing/review officer decisions.

The state gifted-education statutes and regulations vary widely, with relatively few states having the individualized program mandate and the impartial adjudicatory dispute resolution feature of the Individuals with Disabilities Education Act (IDEA).

Case law relating to these statutes and regulations fits into three successive categories. First, cases concerning early admission to kindergarten have arisen under statutes not specific to gifted education, and the decisions generally have been deferential to school districts. A second category of case law has arisen in states before and after the passage of "weak" statutes specific to gifted education (e.g., lacking detailed, mandatory requirements), and these decisions similarly tend to favor district discretion. Third, published case law from the relatively few states—primarily Pennsylvania—with "strong" (e.g., mandated individualized programs and IDEA-type dispute resolution mechanisms) gifted education legislation or regulations fills in the gaps to reveal the interpretive trends among hearing/review officers and the courts. The principal foci have been individualized programs and remedial limits, and these decisions have also tended to be relatively restrictive. Individualization has served as a gross net, catching districts that provide a blatant one-size-fits-all program. However, floor-based rather than ceiling-breaking, standards for appropriateness have not provided the strong strands of substantive quality. Similarly, the courts have been less than expansive with regard to the remedies available to prevailing parents, leaving such matters to legislative policy making.

"Gifted Plus"

Neither the IDEA nor the overlapping pair of disability-based civil rights acts—Section 504 of the Rehabilitation Act (Sec. 504) and the Americans with Disabilities Act (ADA)—applies if the student is gifted only. Conversely, however, the IDEA requirements, including the individualized free appropriate public education (FAPE) obligation, apply if the gifted child is eligible under one or more of the specified classifications of "disability." Thus far, the majority of the published hearing/review officer and court decisions have failed to recognize the child's "dual exceptionality," often because the child's giftedness has masked or compensated for the child's disability. Where the child's dual exceptionality is recognized, the hearing/review officers and courts tend to focus on the child's disability, not giving significant weight to giftedness in terms of interpreting and applying the FAPE and least restrictive environment requirements.

Similarly, the requirements of Sec. 504 and the ADA apply if the gifted child is eligible in terms of their three definitional elements of "disability"—(a) physical or mental impairment that (b) limits a major life activity (c) to a substantial extent. The courts have rejected many such suits due to the parents' failure to exhaust the IDEA dispute-resolution mechanism. Where parents have complied with the exhaustion requirement, the published hearing/review officer and court decisions have been limited in terms of both frequency and clarity. The alternative route of OCR enforcement, via the agency's complaint

resolution process, has also yielded only limited published guidance, with the trend seeming to favor school districts.

Finally, a minority-group child who is or may be gifted is protected by civil rights laws that prohibit discrimination based on race or national origin. In such instances, the principal issue has been underrepresentation of minority children in gifted programs, and both the published OCR rulings and court decisions have yielded only limited results to remedy this problem.

Conclusion

The primary scene of legal activity concerning gifted education has been and will continue to be at state legislatures, which establish pertinent policy and administrative authority for regulations that provide more specific standards. Hearing/review officers and courts are not likely to be expansive unless the state opts, via legislation and/or regulations, for not only the adjudicative mechanism and the individualized program requirement of the IDEA, but also standards customized to the special needs of gifted students. Finally, both the advocates and the neutral decision makers in administrative and judicial enforcement proceedings will have to be more thoughtful in resolving legal issues for gifted-plus students.

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The Law on Gifted Education

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Introduction

This monograph provides a carefully comprehensive and current overview of the law—legislation/regulations and published court/administrative¹ decisions—relating to gifted education for K-12 students. It does not include unpublished court² or administrative³ decisions because they are not generally available and, thus, do not have persuasive, much less precedential, value.⁴ Moreover, it does not include separable and ancillary legal issues, such as teacher certification and employment,⁵ domestic relations,⁶ school accidents,⁷ and other cases where a child's eligibility for or entitlement of gifted education was not a significant factor.⁸ Finally, it does not include coverage of informal alternative dispute resolution, such as negotiation and mediation.

The law relating to gifted education is reasonably understood first in terms of two separate groups of students: (a) "gifted alone," referring to those who are, or at least argued to be, legally eligible as gifted without other special legal protection; and (b) "gifted plus," referring to those who are, or at least claim to be, not only legally eligible as gifted, but also having other special legal protection. The second group consists of two major subgroups: (i) "dual exceptionality," referring to those students whose other legal protection stems from one or more of the laws applying to individuals with a disability; and (ii) "gifted minority," referring to those students whose other legal protection is based on race or national origin. The law applying to students with a disability consists of the Individuals with Disabilities Education Act ("IDEA"), Section 504 of the Rehabilitation Act ("Sec. 504") and the Americans with Disabilities Act ("ADA"),⁹ and corresponding state special education and civil rights statutes or regulations. The IDEA requires school districts to provide special education and related services on an individualized basis to each child with a disability, and it provides enforcement mechanisms that include an impartial due process hearing. Sec. 504 and the ADA provide overlapping, civil rights coverage for students under a broader definition of disability. For protected racial and national-origin minority students, the principal legal sources are the Fourteenth Amendment's equal protection clause in the U.S. Constitution and Title VI of the U.S. Civil Rights Act. Title VI parallels the nondiscrimination features of Sec. 504 and the ADA, but its focus is race and national origin, rather than disability. The U.S. Department of Education's Office for Civil Rights (OCR) administers the various civil rights acts in terms of enforcement in the schools.

Within these operational categories, the law is divided into four successive sources of legal authority: (a) constitutions (federal and state); (b) legislation, or statutes; (c) regulations and related administrative policy interpretations¹⁰; and (d) court decisions and hearing/review officer decisions. The first three sources are in descending order of legal

authority, with each succeeding level having less legal weight, but more specific detail.¹¹ The hearing/review officer and court decisions identified as the fourth level interpret and apply the other three sources of law and also develop "common law," through an established hierarchy from the hearing officer level to the highest, usually but not always called "supreme," court level.¹² Moreover, each of the four levels has a federal and a state track, with the understanding that state law may add to, but not take away, individual rights under federal law. The case law here expansively consists of not only published hearing/review officer decisions but also published administrative interpretations or rulings—typically in the "gifted-plus" category from the U.S. Department of Education—pertinent to gifted students. This monograph synthesizes the pertinent federal and state law within each of these levels for each of the two major categories of "gifted alone" and "gifted plus." For a comprehensive listing of the pertinent court decisions and, separately, the published hearing/review officer decisions, see Appendix A.¹³

I. Gifted Alone

A. The federal Constitution does not provide a right to an education, much less a right to a gifted education. Its only relevance is for students who are not only gifted, but also members of protected groups, such as racial minorities.

In a decision concerning the unequal financing of public schools, the U.S. Supreme Court made clear that education, although of undisputed importance, is not explicitly or implicitly a right guaranteed under the U.S. Constitution.¹⁴ Thus, claims that the provision of gifted programs in some states and localities while not providing it in others or that the provision of special education programs in all states without a corresponding provision for gifted students constitutes discrimination under the Fourteenth Amendment equal protection clause would be judicially unavailing.¹⁵ The same conclusion applies to Fourteenth Amendment substantive or procedural due process.

One illustration, interestingly, comes from the other side of the line between gifted education and regular education. An attorney, whose daughter did not qualify for gifted education in Pennsylvania, for which the state regulations require an IQ of 130, filed suit against both the state and the school district, alleging a violation of Fourteenth Amendment due process and equal protection. For equal protection claims, precedents have established that courts will provide only relaxed scrutiny, which requires only a rational governmental justification, except in discrimination cases involving a fundamental (i.e., constitutional) right or a suspect classification. In this case, the court dismissed the parent's suit, concluding that her equal protection claim failed because (a) the rational relationship standard applies inasmuch as education is not a fundamental right and regular education students are not a suspect classification; and (b) the testing procedure is rationally related to the objective of identifying gifted students."¹⁶ Applying the same standard to her substantive due process claim and showing the broad latitude allowed for such state policy decisions, the court explained: "This method may not be perfect, indeed it may not be the best method available, but the Court is unable to conclude that it is a method that cannot reasonably be used."¹⁷ Later, the same parent-attorney filed a separate suit on behalf of her other, similarly situated daughter. The court rejected her equal protection and substantive due process claims, finding it rational "for Pennsylvania to provide special education to gifted children in order to develop the abilities of those students most likely to assume leadership roles in areas of endeavor which are intellectually demanding."¹⁸ Again implying that the matter is for the legislature, not the judiciary, the court added: "This is not to say that one may not question the wisdom of defendants' policies, particularly if . . . these policies have a deleterious effect upon students who are not deemed gifted."¹⁹ The court similarly disposed of her Fourteenth Amendment procedural due process argument,²⁰ concluding that she lacked both a property and a liberty interest for gifted education.²¹

In a more direct example, a federal court in New York summarily rejected the due process claim of a gifted student, concluding that he did not have a constitutional right to a gifted program or placement.²² Subsequently, a New York appellate court applied the relaxed rational-relationship test for equal protection, inasmuch as education is not a

fundamental right under the federal or New York constitution, and concluded that a lottery method for selection of qualified gifted students for the limited number of district slots for full-time gifted education met this test.²³

The equal protection and corresponding statutory discrimination claims of minority students, including underrepresentation in, and inadequacy of, gifted programs, is addressed below in Part II (Gifted Plus).

B. Further, federal legislation does not provide an entitlement to gifted education.

Although the federal government contributed at times to the development of gifted education, such as former Education Commissioner Marland's national report in 1971, Congress's resulting establishment of the U.S. Office of Gifted and Talented in 1972, and, more recently, the Jacob Javits Gifted and Talented Students Education Act of 1988, the level of commitment has never reached an extensive, much less mandatory, level.²⁴ The scholarly recommendations for a strong federal commitment for gifted education²⁵ and mandatory legislation modeled on the IDEA,²⁶ have, thus far, been mere academic exercises.

C. Likewise, state constitutions, although varying in the specificity and strength of their education provisions, are generally not a fruitful basis for judicial claims on behalf of gifted students.

The aforementioned²⁷ Pennsylvania attorney-parent provided an early, indirect example of a court's interpretation of its state constitution. When her two daughters failed to qualify for gifted education under Pennsylvania law, she initially filed suit in state court, premising her purported property interest, under Fourteenth Amendment due process, on the state constitution.²⁸ The court dismissed her suit, concluding the right to public education in Pennsylvania is statutory and reasonably related to the state constitution's provision for a "thorough and efficient" education. More specifically, the court reasoned that under Pennsylvania statutes, a child has an "entitlement to a public education, *not*, with the exception of exceptional children, a right of each student within the system to an individualized level or quality of education."²⁹

As a direct example, a New York appellate court summarily rejected the plaintiff-parent's argument that the state constitution's education requirement of "maintenance and support of a system of free common schools" establishes an individual right to gifted education.³⁰

More recently, in the major relevant case to date, Connecticut's highest court concluded that the state constitution's guarantee of "free public elementary and secondary schools" in combination with Connecticut statutes, which mandate programs for students with disabilities but leave programs for gifted students to the option of local school boards, does not create a fundamental right to special programming for gifted students.³¹ First, addressing the parents' argument that the statute recognizes gifted students as one category of "exceptional children" who need a program of special education to "progress effectively," the court found that "neither the legislature nor the framers of our

constitution have vested in gifted children any right to an individualized education program."³² Second, the court rejected the parents' alternative argument that the equal protection provisions of the state constitution, when combined with the constitutional right to elementary and secondary education, creates an equal entitlement to special education for students who are gifted and those with disabilities. More specifically, the court concluded that the disparate treatment provided by Connecticut's legislature is rationally based on the concededly significant differences between these two groups of students and, thus, that the state's statutory scheme is constitutional as it stands.³³

The only exception to date is notably limited and relatively indirect. Specifically, after Ohio's highest court declared that the public school financing system violated the state constitutional provision for "thorough and efficient" education and ordered a complete overhaul of the funding system, the trial court found that the state had failed to comply with said order.³⁴ One of the many findings supporting this court's conclusion—representing a few pages in a 175-page opinion—was that gifted students in Ohio "may well be under-identified" and that "levels of State funding to all school districts for gifted education is inadequate," with particular problems in small, poorer districts.³⁵ Thus, where the state constitutional claim is broad-based and results in an overhauling order,³⁶ it may lead to legislative strengthening of the rights of gifted students.³⁷

D. Similarly, state common law is not a likely basis for establishing a right to specialized education for gifted students.

The two primary sources of common law that gifted-education advocates have pointed to are a tort claim grounded in negligence, or educational malpractice, and a contract claim premised on implied contract or warranty; however, as one advocate-commentator has reluctantly concluded, none of these claims is at all likely to succeed.³⁸

E. Instead, the primary source of special educational rights for students who are gifted, or argued to be gifted, is state law, specifically state statutes and regulations along with the court decisions and, at a lower level, published hearing/review officer decisions.

1. State Statutes and Regulations

The relevant literature to date provides various compilations of pertinent state policies and practices, but these sources typically are limited to specialized subtopics and/or extend beyond legislation and regulations. For example, focusing on identification policies and practices, researchers at the University of North Carolina analyzed the following sources of information along with, and without clear differentiation from, state statutes and regulations: the state gifted-education directors' descriptions of guidelines, identification procedures, philosophy/goals, and information on underrepresented groups, such as culturally different or economically disadvantaged students.³⁹ The biannual survey of the state directors is more comprehensive in focus, including the number of states with mandated funding, data-collection practices, identification procedures, district participation, and teacher certification or training requirements; however, it too has

mixed sources and the limitations of survey research, here including nonrespondents.⁴⁰ Similarly, Landrum, Katsiyannis and DeWaard surveyed the state directors, using a relatively short questionnaire and requesting supporting materials concerning three foci: legislation, funding sources, and current initiatives or trends; they obtained completed questionnaires from 40 states and supplemental documentation from only 31 states.⁴¹ Other sources provide broad-based policy information for the various states.⁴² The studies limited to definitions of gifted students serve as a final example, typically based on survey methodology and mixed sources.⁴³ Thus, the literature lacks a direct, current, and comprehensive canvassing of the pertinent state laws—i.e., legislation and regulations—with specific citations.

Filling this gap, the chart in Appendix B provides a comprehensive, updated overview of the legislation and regulations for gifted education in each state along with the District of Columbia and Puerto Rico.⁴⁴ The headings of the table are organized into the following approximate categories and subcategories:

State Responsibilities:

"Fund" = funding

"Stan" = standards

"TA" = technical assistance

School/District Responsibilities:

"ID" = identification

"Prog" = programming (on a group, not individualized, basis)

"TT" = teacher training or qualifications

"DC" = data collection

"PE" = program evaluation

Individual Rights

"IP" = individualized programming

"PS" = procedural safeguards (other than due process hearings)

"DPH" = due process hearings

"CP" = complaint procedures

Other (Miscellaneous)

The entry under each heading is either "○," representing a weak or partial provision, or "●," designating a more specific and strong provision. Finally, footnotes for each entry excerpt or summarize the language and provide the citation for the specific legislation or regulation represented by the entry.

As of August 2005, when this Table was updated, almost every state had some sort of provision for gifted education.⁴⁵ However, as the Table readily reveals, the states vary widely as to the strength and specificity of these provisions, with very few approaching the level represented by the primary federal legislation and regulations for students with disabilities—the IDEA.⁴⁶ The three overall categories of state responsibilities, district/school responsibilities, and individual rights provide the basis for successive summary observations. First, less than half of the states have specific provisions at the state level of responsibility, with the highest frequencies in descending order being in

terms of standards, funding, and technical assistance. Such state-level responsibilities are helpful but not sufficient, particularly where in light of the changing priorities and commitment of succeeding political administrations. Second, the state laws most frequently focus at the local level of responsibility on identifying and providing group programming for gifted students. Third, the IDEA mainstays of mandatory individualized programming (via individualized education programs, or "IEPs") and impartial dispute resolution (via due process hearings, or "DPHs") are the exception rather than the rule. These mainstays are critical for individual enforcement purposes; they, in effect, put teeth in laws that may only otherwise provide lip service. More specifically, only a handful of states—Alabama, Florida, Kansas, Louisiana, New Mexico, Pennsylvania, and Tennessee—have both the IEP and DPH requirements that fuel published hearing/review officer and court decisions.⁴⁷ Whether such requirements are based on simultaneous treatment with students with disabilities, as exemplified by Pennsylvania's regulations prior to June 9, 2001, or separate from those with disabilities, as exemplified by Pennsylvania's more recent regulations,⁴⁸ they serve as legal rights for gifted education, supplemented by the published case law, which clarifies the ambiguities and fills in the gaps. Among other notable features,⁴⁹ missing thus far is a customized substantive standard for individual gifted programming; Arizona's recent legislation comes the closest by requiring "an educational program that is commensurate with the academic abilities and potential of a gifted pupil."⁵⁰

According to recent research, gifted-education programs are on the decline, and a key factor—interacting with "economic health"—is whether state law is mandatory.⁵¹ For parties who seek, via lobbying and other forms of advocacy, more extensive and forceful legislation, the University of North Carolina specialists have delineated a model state statute for gifted education.⁵² Their proposal provides not only mandatory programming and funding but also specific language to increase the representation of traditionally underserved populations; however, the model falls far short of the individualized protections of the IDEA.

2. Related State Case Law

The case law, consisting of published hearing/review officer and court decisions, may be understood in relation to three general categories of statutory framework.

a. First, case law concerning early admission to public school has arisen under statutes not specific to gifted education, and the decisions generally have been deferential to school districts.

These cases make clear that school districts have wide discretion to grant or refuse early admission to gifted students under the typical generic enrollment-age statutes. For example, in a Wisconsin case, the state's highest court rejected the claims of the parents of a gifted child who sought early admission to kindergarten.⁵³ The court interpreted the state legislation as placing the matter within the discretion of the local districts and concluded that the defendant-district's policy requiring children to be five years old to enter kindergarten was not an abuse of discretion. Ironically, one of the reasons the

district relied on in denying an exception to the plaintiff-parents was that it had no special programs for gifted students.⁵⁴

Similarly, in a Texas case, the intermediate, appellate court rejected the argument of the parents of a gifted child that the enactment of the state's gifted education statute created an exception to the separate statute that established a six-year-old age minimum for first grade and that accorded school districts wide discretion in admission of children below or above that age.⁵⁵ Consequently, they failed in their attempt to have their gifted child admitted early in a district that had exercised its discretion to deny first-grade admission to any children under the age of six.

b. A second category of case law has arisen in states before and after the passage of "weak" statutes specific to gifted education (e.g., lacking detailed, mandatory requirements), and these decisions similarly tend to favor district discretion

New York provides an illustrative pre-post picture. In an early case decided within the framework of the formal policies of the New York City Board of Education, the state's trial court upheld the district's enforcement of its age requirement for entrance into its accelerated, rather than enrichment, program.⁵⁶ Illustrating the deference doctrine, under which courts have continued to give school officials the benefit of the doubt where the constitutional and codified framework is ambiguous or silent, the court deferred to the expertise and experience of the defendant-district's representatives, expressly abstaining from "substitut[ing] the judgment of a justly proud parent for that of experienced educators."⁵⁷ Concluding that age-based physical, emotional, and—particularly—social, considerations were legitimate and rational, rather than arbitrary and capricious, the court summarily dismissed the case. Although it speculated that the district policies might be reviewed and revised, the court declined to "attempt to invade that area; nor . . . seek to substitute its judgment . . . for [the defendant-educators'] expertise."⁵⁸

In another early case prior to enactment of New York's gifted-education legislation, a state trial court reluctantly rejected the asserted entitlement of a group of New York City parents to free transportation for their offspring to a then renowned private school for gifted students.⁵⁹ Citing the fiscal crisis then facing the city, the judge concluded that the district's refusal to grant an exception to its long-standing five-mile limit for such transportation was not arbitrary or capricious. Nevertheless, commenting in blunt dicta about the negligible federal funding for gifted education in comparison to the costs of the Viet Nam war, the court called for a legislative reassessment of priorities, lamenting: "The irony . . . is that the superannuated chairmen of the Congressional committees don't bat an eye lash while pouring untold billions . . . in the endless Indochina rathole."⁶⁰

Finally, after passage of a gifted-education statute that was not clearly mandatory, a New York appellate court interpreted the state legislation and guidelines as maintaining the traditional deference to school authorities' curricular discretion, thus rejecting the plaintiff-parents' alternative argument⁶¹ that said framework established an individual entitlement for gifted students to full-time programs.⁶²

c. Third, published case law in the relatively few states with "strong" (e.g., mandated individualized programs and impartial dispute resolution mechanism) legislation or regulations—predominantly, for whatever reason,⁶³ from Pennsylvania⁶⁴—fills in the gaps to reveal the interpretive trends among hearing/review officers and the courts, with the principal foci being eligibility determinations, individualized programs, and remedial limits.

i. Eligibility Determinations

Published case law on whether the particular child meets the state law definition is relatively limited in the gifted-alone context. In a 1994 Tennessee case, the hearing officer ruled that the defendant-district had used improper procedures in determining that a child was not eligible as gifted, ordering re-evaluation in accordance with state law.⁶⁵ Yet, a Pennsylvania appeals panel decision that same year upheld the district's determination that the child was not gifted.⁶⁶ The rest of the relevant case law has arisen in the gifted-plus context and has generally upheld district determinations of non-eligibility for gifted education under state law.⁶⁷

ii. Individualized Programs

For eligible students, a series of Pennsylvania court decisions provide boundaries for an adequate, or "appropriate," program in the context of a relatively strong state law for gifted education.

Pennsylvania's intermediate, appellate court first set the stage in 1979.⁶⁸ After a school district lost what began as an eligibility case at the first tier (i.e., due process hearing officer) and the second tier (i.e., at the time, the head of the state education agency⁶⁹), which resulted in an order to provide the student with an appropriate program, the district filed for judicial review. The district's argument was that its duty to provide such a program was contingent upon the state's obligation to provide reimbursement for special education. Rejecting this argument in light of the statutory framework and related case law, the court concluded that the district's duty to identify and provide programs for gifted and other exceptional students was a condition to its right of reimbursement rather than vice versa. Moreover, the court observed, the remedy regarding reimbursement is separate from that regarding programming.

Next, in 1986, the same court upheld the district's proposed IEP, which did not include a math course, for the plaintiff-student, who was a gifted eleventh grader with particular aptitude in mathematics.⁷⁰ The district had previously accelerated him through its mathematics program to his successful completion of its most advanced math course during his sophomore year. The due process hearing officer sided with the parents, but the head of the state education agency reversed in favor of the district. Affirming the second tier, the appeals court found the following evidence sufficient to support its ruling in favor of the district: (a) testimony that the plaintiff-student's previous math acceleration had been to the detriment of his total needs; (b) the less-than-stellar grades (B and C) in his last two math courses; (c) his reported lack of interest and motivation in

his math courses; and (d) the opportunity for math applications in his IEP-proposed honors courses in science and computers.⁷¹

In 1988, Pennsylvania's highest court issued *Centennial School District v. Pennsylvania Department of Education*,⁷² perhaps the most significant decision interpreting state legislation and regulations for gifted education.⁷³ After obtaining state funding approval for an enrichment model of gifted education, the district refused to include, additionally, in this gifted child's IEP accelerated instruction in reading and math. After the parents exhausted Pennsylvania's two-tiered system of pre-judicial dispute resolution and also succeeded at the intermediate appellate level, the district sought and secured review by the state's highest court. Citing the then applicable regulations,⁷⁴ the Pennsylvania Supreme Court rejected the district's position, concluding that the state board of education had exercised its legislatively delegated authority to "require *individualized*, as well as group planning and education of exceptional children."⁷⁵ At the same time, in at least partial recognition of the district's cost-based concerns, the court commented that the substantive standard is not maximization, extrapolating and endorsing the following rule from the prior⁷⁶ case:

[A] school district may not be required to become a Harvard or a Princeton to all who have IQ's over 130. . . . We do not . . . construe the legislation as authorizing individual tutors or exclusive individual programs outside or beyond the district's existing, regular and special education curricular offerings.⁷⁷

Next, in 1994, Pennsylvania's intermediate, appellate court affirmed the lower two tiers' conclusions that the IEP of the plaintiff-student, a gifted second grader, met the standard for appropriateness, as set forth in *Centennial*.⁷⁸ Alternatively, the court concluded, even if the district had not provided a procedurally or substantively appropriate program, the state gifted-education law does not entitle covered students to private school or out-of-state placements.⁷⁹ Thus, even where state legislation or regulations mandate individualized programs, the entitlement may be limited in comparison to that accorded to students covered by the IDEA.

Then, in 1997, the same court reversed an appeals panel order that had been to reimburse the parents of a gifted high school student who had an IEP containing an objective that he would "complete . . . courses at Geneva College."⁸⁰ Expressly expanding its ruling in the prior case, the court held that "gifted students are not eligible for college courses unless specifically agreed to by the public school district which the student attends."⁸¹ Here, the court interpreted the IEP as merely permitting the student to be excused during school hours for specified college courses, not to pay for the tuition and transportation.

Finally, in 2005, the same court upheld the appeals panel's ruling that the defendant district failed to provide a sufficiently individualized program for second of two years that the parents' had put in dispute.⁸² Agreeing with the panel that the district had not tailored the program to meet the fourth-grade gifted student's individual needs, the court affirmed the panel's award of 180 hours of compensatory education for the one-year denial of FAPE. Moreover, the court also affirmed the panel's order for the district to

reinstate the grade-skipping provision in the student's gifted IEP because the student had excelled following the adoption of the provision and yet the district had removed it without explanation.

Interlineated among, but largely subsequent to, this series of court decisions, published hearing or review officer decisions illustrate the varying outcomes of the individualized mandate in the states with strong gifted education laws. In a Florida case, the hearing officer first cited various court decisions, including *Centennial*, to clarify that state law, not the IDEA, governs the education of gifted-alone students. Applying Florida's law, the hearing officer then upheld the district's individualized program for a gifted ninth grader despite his mother's assertion that his assigned classes were not sufficiently challenging.⁸³ Also adverse to the plaintiff-parents, the Pennsylvania appeals panel decided that gifted IEPs need not include behavior management plans,⁸⁴ parental observation schedules,⁸⁵ or class rank and scholarship information.⁸⁶ Additionally, the appeals panel recently rejected a parent's claim that the student's successive gifted IEPs represented a "cookie cutter" approach that did not provide measurable present educational levels and objectives, concluding instead that, when viewed "as a whole," in along with the child's regular education program, the gifted IEPs resulted in the requisite educational benefit.⁸⁷ In one of the few published decisions outside Pennsylvania, a Louisiana hearing officer similarly exhibited a relatively relaxed substantive standard for gifted education in the absence of a rigorous specification in state law, concluding in rather cryptic and circular fashion that the proposed IEP "addresses and actually carries out the goals and objectives for [the student's] Gifted and Talented academic achievement level."⁸⁸ Moreover, he reasoned that "[i]n areas where a teacher certified for Gifted and Talented is not available, such as Math, Science, and Social Studies, programs have been proposed to address the more advanced academic needs and desires of [the student]."⁸⁹ In another case beyond Pennsylvania, a hearing officer in Kansas, which includes gifted and disabled students under the same IDEA-type regulations, rejected the parents' claim for tuition reimbursement for their unilateral placement of their gifted-alone child—in the wake of a cheating incident by the child and a compensatory education award from the state complaint resolution process due to failure to implement the child's IEP—at a local private, college-preparatory school.⁹⁰ While incidentally observing that the student engaged "like so many others . . . [in] double dipping" by taking advantage of both gifted education and International Baccalaureate (IB) services, the hearing officer rather easily concluded that the IEP met the relatively relaxed IDEA substantive standard for FAPE—reasonably calculated to yield educational benefit.⁹¹ More noteworthy was his equities-type analysis, which reflects the escalating "adversariness"⁹² that interacts with legalization of education. For example, he concluded that the high school administration "behaved in a deplorable, highhanded and aloof manner toward the Parent(s)."⁹³ He found the principal's testimony to be so lacking in credibility that it "implied that she considers the mandates of IDEA and the Kansas Legislature so insignificant as to be unworthy of remembering."⁹⁴ Conversely, in response to the parents' FAPE-based claim, he concluded that "if there was any hostility toward [the student] from school mates, it was of his own doing." Similarly not mincing words toward the parents, he expressed his suspicion that they "were hostile toward [the high school administration] because [the student] was caught cheating."⁹⁵

On the parents' side of the ledger, in various other cases, the Pennsylvania appeals panel rejected the proposed IEPs as being significantly flawed in relation to applicable requirements.⁹⁶ One of these decisions illustrates the fuzzy boundaries within and between gifted-alone and gifted-plus legal protections. More specifically, although noting that the student's IQ score appeared to be below the general standard in the state regulations, the appeals panel concluded that the district failed to provide him with FAPE during the relevant period—which was after the district had exited him from speech impairment services and before the district had exited him from the gifted program—due to multiple and severe flaws in the gifted IEP process.⁹⁷ Perhaps the most interesting of these identified flaws was that although its team had determined that he was a student with social maladjustment, which does not in itself qualify for IDEA eligibility, the district's gifted IEP was "not individually tailored to [the student's] needs, in particular social and emotional adjustment."⁹⁸ As a result, the panel awarded the parents 55 hours of compensatory education services.

iii. Remedial Limits

Other and all relatively recent Pennsylvania court and appeals panel decisions illustrate further judicially construed limitations on the scope of gifted education, specifically in terms of the remedial authority of the first and second tiers of the state's impartial dispute-resolution system.⁹⁹

First, the state's intermediate, appellate court held that Pennsylvania law does not provide a reimbursement remedy for parents who unilaterally incur expenses to replicate their gifted child's prior individualized program during the pendency of the administrative proceedings.¹⁰⁰ Although the parent in this case attempted to use IDEA cases for such authority, the court concluded:

There is no statute, regulation or case law cited by [him], nor did our research uncover any authority for reimbursement to the parents of the cost of materials and/or services purchased for supplementary special education of a student outside of the school district.¹⁰¹

Similarly, the court rejected the parent's request for the district's reimbursement of his attorneys' fees and independent educational evaluation (IEE), finding these remedies as authorized only under the IDEA, not the state gifted-education regulations.¹⁰² In a separate concurrence, one of the three judges who decided the case commented:

It truly is unfortunate when the proper education of a gifted child must be determined through an adversarial litigation process. A court is not the best forum for deciding such issues. Instead, for the education system and administrative review process to function properly, there must be more cooperation by school districts in addressing the legitimate concerns of parents of gifted children than occurred at least initially in this case.¹⁰³

Second, the same court reversed the review panel's affirmance of a hearing officer's award of 1954 hours of compensatory education for various district violations of the state's regulations mandating individualized gifted-education programming.¹⁰⁴ The fatal problem, in the court's view, was that this remedy was for "college-level instruction, private tutoring and/or education beyond the curriculum offerings of the District," thus going beyond the district's duty as established in the *Centennial* decision.¹⁰⁵

Third, the Pennsylvania appeals panel, while acknowledging that the successive IEPs for a gifted student were "sketchy," "superficial," and inadequately implemented, upheld only a limited award of compensatory education services for a gifted student.¹⁰⁶ Based on the judicial guidance to date and the ill-fitting standard of appropriateness, the panel was conservative in importing, by analogy, IDEA case law.¹⁰⁷ Yet, more recent appeals panel decisions have upheld full compensatory education awards, reflecting at least limited disagreement within the panel as to the applicable standards.¹⁰⁸

Fourth, Pennsylvania's intermediate, appellate court concluded that while the panel had authority to order carefully circumscribed compensatory education,¹⁰⁹ it lacked the authority for its orders that the district (a) provide inservice training for designated employees¹¹⁰; (b) hire an outside expert to facilitate the development of the IEP,¹¹¹ and (c) classify the student as the member of another matriculating class, thus allowing for a possibly earlier graduation.¹¹²

Fifth, the same court followed, without mention of the possible distinction, IDEA precedent to limit a compensatory education award to one year or, if there were mitigating circumstances for the delay in the parents' filing for the due process hearing, two years based on the threshold issue of statute of limitations.¹¹³

Next, the same court reversed an appeals panel order for the defendant-district to reevaluate a child within nine months of the district's original determination that he was not eligible as a gifted student.¹¹⁴ The two reasons that the court cited for its reversal were (a) that the appeals panel raised the issue of reevaluation on its own, without the parents putting it into dispute; and (b) that the appeals panel had affirmed the hearing officer's decision that the district's original evaluation was proper.

More recently, the Pennsylvania appeals panel upheld a district's refusal to cover the cost of various sports-related activities, such as basketball camps and clinics, as part of a previous award of 1431 hours of compensatory education services, which had been based on the district's failure to provide the student with gifted education services in math and reading.¹¹⁵ Although the previous award had been expressly demarcated as "the parents choice of developmental, remedial, and enriching services available within [the district's] gifted and general educational curricula," the panel clarified in this subsequent decision in the same case that "compensatory education awards are not 'blank checks' for which parents can shop for any service they wish to secure for their child" and the implicit standard in this case was that the services must be reasonably related to the curricular areas that constituted the denial of FAPE—reading and math.¹¹⁶

The following year, Pennsylvania's Commonwealth Court upheld the appropriateness of the formulation and implementation of a gifted student's IEP, concluding that the document complied with the relevant regulations and that its implementation was sufficiently individualized. For the first conclusion, an "important" part of the court's reasoning was that the parents had "ample opportunities . . . to contribute, change, and reform the GIEP before approving it." Similarly district-friendly for the second conclusion, the court reasoned that "because some classmates of [the student] did the same or similar work . . . does not render the GIEP insufficiently individualized."¹¹⁷

Most recently, the Pennsylvania appeals panel upheld the appropriateness of a 61-page gifted IEP, concluding that "both in the process and results of its development . . . more than met the applicable legal standards of the [state's gifted education] regulations." By way of dicta, the panel responded to the bulky and record and length proceedings in this case as follows: "If gifted students in Pennsylvania should be entitled to a higher level of services, the place to resolve this policy matter is the Legislature or the State Board of Education, not by stretching past its limits the administrative adjudicative process."¹¹⁸

iv. Other Relevant Rulings

In a published hearing officer decision that illustrates the limits of Pennsylvania's gifted education regulations, parents lost on threshold, jurisdictional grounds their DPH challenge to the district's successive bus suspensions of their child.¹¹⁹ Inasmuch as the student's gifted IEP did not list transportation as a related or support service, the hearing officer concluded that his gifted entitlement was not at issue. Thus, he granted the district's motion to dismiss the case based on lack of jurisdiction.¹²⁰

Although at the margin of the scope of this monograph, a recent Pennsylvania case illustrated the intersection of gifted programs and charter schools in a state that provides relatively strong statutory bases for both. Specifically, Pennsylvania's intermediate, appellate court upheld the state charter school appeal's board decision to grant the application of a charter school primarily intended as an educational option for gifted students, thereby overruling the rejection of said application by the school district where the school was located.¹²¹ The court concluded that although its curriculum was targeted to gifted students, the proposed charter school did not violate the state charter's school law's anti-discrimination provision on either a *de jure* or *de facto* basis, finding that admissions were open to, and the school was prepared to address the needs of, non-gifted and disabled students.

II. Gifted Plus

A. Neither the federal special education law, the IDEA, nor the overlapping pair of disability-based civil rights acts—Sec. 504 and its sister statute, the ADA—applies if the student is gifted only.

Giftedness does not, in itself, fit within the definition of "disability," which is the cornerstone of the IDEA's coverage, including IEPs and DPHs.¹²² This "pure" situation is contrasted with the "dual" situation of a child asserted not only to be gifted but also to have an IDEA disability. Thus, the U.S. Department of Education's Office of Special Education Programs ("OSEP"), which is responsible for administering the IDEA at the federal level, has made clear that it has "no responsibility for 'gifted' and 'talented' students with the exception of any student, who consistent with the IDEA, has a disability and requires special education and related services."¹²³

Exemplifying the "pure" situation, in the aforementioned¹²⁴ Pennsylvania case the court rejected the student's IDEA claim as "extraordinarily convoluted, . . . a veritable rat's nest [and] . . . entirely without merit."¹²⁵ The fatal problem was that the parent did not claim, much less prove, that her child qualified under any of the IDEA classifications of disability. Again explaining that the state legislature has the discretion to decide whether gifted students have a right not only to an individualized education but also to any of the corresponding IDEA procedural safeguards, the court commented that "the extent to which Pennsylvania chooses to apply the same procedural protections to its determination regarding the placement of students in gifted . . . educational program is, within constitutional limitations, . . . solely a matter of state law."¹²⁶

Perhaps a more surprising example is the case of a Pennsylvania parent who prevailed at both the first (i.e., hearing officer) and second (i.e., appeals panel) tiers of the pre-judicial dispute resolution process in his claim that the district's enrichment-only model of gifted education for grades 8-12 violated state law; however, upon appeal, the Commonwealth Court roundly rejected his requested relief of (a) an independent evaluation at the district's expense, and (b) attorney's fees.¹²⁷ The parent, proceeding *pro se* (i.e., without an attorney) at the pre-judicial levels, apparently did not understand that his gifted daughter was not covered by the IDEA, which—unlike the state's gifted-education regulations—provides for such remedies. His request for reimbursement to maintain the "stay-put" placement of his daughter suffered the same fate.¹²⁸

Similarly, giftedness does not, in itself, fit within the broader definition of "disability" under Section 504 and the ADA, which consists of three essential elements—(a) physical or mental impairment, (b) of a major life activity, (c) to a substantial extent.¹²⁹ There are no published case law examples "on point," perhaps because this conclusion is so unmistakable.

Moreover, an allegedly gifted-plus child is not covered under the Section 504 and ADA where the child's second exceptionality does not meet this three-part definition. For example, in a recent decision, a federal district court in Wisconsin rejected the Section

504 discrimination claim of a child who alleged that the district excluded him from its gifted education program on the basis of his AD/HD.¹³⁰ His claim failed for two alternate reasons. First, the evidence was rather clear that although his AD/HD did not substantially impair the major life activity of learning; the district had defensible determined that he did not need special education, and his academic performance was in the average range. Second, he was otherwise "otherwise qualified" for the gifted program, based on his average test scores, problematic homework record, and unimpressive result in the math contest.

B. Conversely, however, the IDEA requirements, including the free appropriate public education ("FAPE") obligation for individualized special education and related services and the various enforcement mechanisms,¹³¹ do apply if child is eligible not only as gifted but also under one or more of the specified classifications of "disability."

1. Eligibility Case Law (for Disability, Not Just Giftedness)

Eligibility under the IDEA requires (a) meeting the criteria of one or more of 13 enumerated classifications of impairment, such as specific learning disability ("SLD"),¹³² and (b) "by reason thereof"—typically in the form of adverse effect—needing special education.¹³³ If the child meets these two essential elements, as determined by the multi-disciplinary evaluation process and, if necessary, the dispute resolution mechanism of the IDEA,¹³⁴ the child is entitled to special education and related services under the IDEA. For a child who is also gifted, this situation is oft-referred to as "dual exceptionality." The legal protection is dual to the extent that the child may be covered not only by the IDEA but also, depending on the state,¹³⁵ by legislation or regulations applicable to gifted students.¹³⁶ The problems with establishing and effectuating IDEA coverage for such students include (a) recognition, among educators and judges, of dual exceptionality,¹³⁷ and (b) interpretation of the individualized FAPE requirement,¹³⁸ including but not at all limited to application of the mainstreaming mandate of the IDEA¹³⁹ and contradiction between the floor-like standard of appropriateness under the IDEA and the ceiling-like needs of gifted students.¹⁴⁰

An overabundance of published cases illustrates the primary problem—recognition of dual exceptionality. The primary problem is the potential masking effect of giftedness on the child's identification as meeting the criteria for disability under the IDEA, particularly the adverse effect to the extent of needing special education. Recently, for example, a federal court in Texas bluntly rejected IDEA eligibility of a gifted student with attention deficit/hyperactivity disorder ("AD/HD") who scored high in the state's high-stakes achievement test but failed to maintain the requisite grades to remain in the district's gifted magnet program.¹⁴¹ Although acknowledging that "some students in gifted programs need, and should absolutely be given special education," the court rejected IDEA eligibility for this student, finding that his poor performance was attributable to lack of motivation and attributing this responsibility to the parents, not the district.¹⁴² Similarly, a federal court in Tennessee rejected IDEA eligibility, in terms of the classification of emotional disturbance,¹⁴³ for a gifted student with serious socialization

problems.¹⁴⁴ Pointing to his high grades and standardized test scores, the court concluded that "[the student's] educational performance . . . has not been adversely affected by his socialization problems."¹⁴⁵ The difficulties with this conclusion include determining whether there has been an adverse effect without precise pre-post measures and determining whether "educational performance" extends beyond test scores—for example, to proper conduct or social skills—without any definition in the IDEA regulations.

Other examples abound. A federal court in Pennsylvania rejected IDEA eligibility, in terms of the classification of SLD, of a kindergarten child who was purportedly gifted.¹⁴⁶ First, the court concluded that she did not meet the state criteria for eligibility as a gifted student. Alternatively, however, the court—seemingly clouded by the child's successful performance in kindergarten—saw "no evidence" of the requisite severe discrepancy between her ability and achievement.¹⁴⁷ As a final judicial example, the Second Circuit Court of Appeals ruled that a gifted high school student in Vermont who also had emotional/behavioral problems was not eligible under the IDEA because he did not evidence the requisite adverse effect on educational performance, as defined by the Vermont regulations.¹⁴⁸ Again, the problems were that the student performed well on typical academic indicators, such as grades and test results, likely due to his giftedness, and, here, the state regulations seemed to preclude other measures of educational performance.¹⁴⁹ Published hearing or review officer decisions reflect this same myopic majority view of dual exceptionality.¹⁵⁰

The case law on the other side, which is more accepting of dual exceptionality, clearly amounts to the minority.¹⁵¹ The prime example is a Pennsylvania appeals court decision that upheld an appeals panel ruling that the gifted student in this case was also eligible in terms of having SLD, here in the area of written expression.¹⁵² The district's primary argument was that the student did not meet the second criterion of disability—the need for special education. Rejecting this argument, the court found sufficient support in (a) the appeals panel's determination that the child needed supplementary aids or services, and (b) both his parents' and his teacher's testimony that he had problems with the rate and degree of completion of his written work. Published hearing/review officer decisions provide limited additional support.¹⁵³

Thus, the odds are difficult but not insuperable in terms of establishing dual exceptionality via litigation, with likely attribution at least in part to the potential masking effect of the child's giftedness in relation to the imprecise legal boundaries of special education.

2. Eligibility Case Law (for Giftedness, Not Just Disability)

The obverse eligibility problem is underrepresentation of students with IDEA disabilities in local gifted-education programs. For example, a court-approved settlement agreement for the state of Illinois included a provision addressing the underrepresentation of students with disabilities in gifted programs.¹⁵⁴ Yet, the limited other case law has been less than expansive in resolving this issue. More specifically, various published

hearing/review officer decisions have upheld district determinations of individual students with disabilities not meeting state eligibility standards for gifted education.¹⁵⁵ Adding partial support to this stingy trend, a federal trial court in Pennsylvania declined to order evaluation for giftedness for a child with a learning disability because the evidence was insufficient to trigger the identification process under the then applicable state regulations.¹⁵⁶

3. FAPE Case Law

The published case law is lesser in amount and authority where the school district has recognized that the particular gifted child is eligible under the IDEA or its counterpart in state law. Such cases have focused instead on FAPE issues, and their outcomes typically have been based on the child's disability, rather than gifted, status. Providing a judicial example, the Fourth Circuit rejected the FAPE claim of a student with a dual exceptionality; although his IEP had a gifted component, the court focused on the objectives and services addressing his learning disability.¹⁵⁷ Similarly and more recently, the Fifth Circuit appeared to reject the notion that the IDEA standard for FAPE is higher for a gifted-plus student.¹⁵⁸ More specifically, although noting that some of the student's classes were advanced, or accelerated, the court applied the general substantive standard for FAPE under the IDEA, concluding that his IEP yielded the requisite academic and non-academic benefits. Another court decision illustrates the overlap between enforcement mechanisms. After the parents of a gifted student with a hearing impairment filed a complaint with OCR that resulted in a formal finding that the district's interpreter provided the child with FAPE under Sec. 504,¹⁵⁹ the parents resorted to the hearing officer/judicial route, where they prevailed on the same claim under the IDEA.¹⁶⁰ Exemplifying the larger body of pertinent administrative case law, a Massachusetts hearing officer decided that the in-district placement of a gifted child with emotional disturbance was both appropriate and the least restrictive environment.¹⁶¹ Rejecting the parents' proposed placement in a private school for gifted students that did not offer services to address his disability, the hearing officer observed that Massachusetts's law provides no gifted-placement entitlement.¹⁶² Similarly, an Alabama hearing officer concluded that the district's deletion of an orthopedically impaired student's gifted status and services did not constitute a denial of FAPE.¹⁶³ Further, the child's gifted status usually has been only incidental in most other pertinent published hearing/review officer FAPE decisions.¹⁶⁴

In the occasional exception, typically in a state that provides special programs for students with giftedness as well as for those with disabilities, the particular issue or issues have caused the hearing or review officer to look to the child's gifted- as well as disability-based needs.¹⁶⁵ Sometimes the decision reflects a state of confusion. For example, a New York hearing officer decided that the IEP of a gifted-plus child was not appropriate under the IDEA where the child met the admissions criteria for the gifted program and the district had not provided appropriate modifications and supports reasonably calculated for his progress in the gifted program.¹⁶⁶ Although the outcome may be supportable on other legal bases, such as Sec. 504 (which was the basis of the parents' case) or—depending on the jurisdiction if it had not been New York—state law,

the hearing officer's reliance on IDEA regulations and IDEA case law makes this decision clearly questionable authority.¹⁶⁷ The reason is that in New York, as the review officer in a more recent case at least partially clarified, giftedness is not an entitlement under its state law, much less under the IDEA, and, thus, the IEP process does not provide such gifted-based substantive standard.¹⁶⁸

A second example of such potential confusion arises where the child has a dual exceptionality and the state has adopted regulations pursuant to the IDEA that also extend, typically via the broader term "exceptional students," to gifted students. In a Florida case, the hearing officer relied on such regulations to reimburse the parents for an IEE that established that the child, who had autism, was also eligible for the gifted program.¹⁶⁹ The apparent conflict with another recent Florida decision, where the hearing officer relied on case law under Pennsylvania's similar state regulations rather than under the IDEA,¹⁷⁰ arguably may be resolved in terms of two distinctions: (a) in the instant case, Florida's regulations—in parallel with the IDEA—specifically entitled parents of exceptional (i.e., both gifted and disabled) children to IEE reimbursement rights; and (b) in the other Florida decision, the child was gifted-only and, thus, not entitled to the rights or standards of IDEA case law. An aforementioned¹⁷¹ Pennsylvania appeals panel decision further illustrates the common confusion when more than one exceptionality is at issue.

Serving as a transition to the next item in this monograph, a Pennsylvania court case illustrates the outer boundaries of IDEA protections and the overlapping rather than identical coverage of Sec. 504 and the ADA.¹⁷² Relevant here to the extent that one of the two plaintiff children was gifted, this case stands for the proposition that just because a child, who may or may not happen to be gifted, is duly determined not to be eligible under Sec. 504 (or the ADA), the district still has a child-find obligation under the IDEA to provide notice and an evaluation if there is reason to suspect that the child may meet the two-part definition of disability under the IDEA. In this case, the gifted plaintiff exhibited respiratory problems ostensibly attributable to sick building syndrome and the hearing officer concluded that she did not meet the three-part definition of disability under the state equivalent of Sec. 504, but the appeals panel and the court held that the district's failure to follow the procedural requirements of the IDEA, including notice and an evaluation for other health impairment, entitled the parents to compensatory education.¹⁷³

C. Likewise, the requirements of Sec. 504 and the ADA apply if the gifted child is eligible in terms of their three definitional elements of "disability."¹⁷⁴

The three-part definition of disability that is identical between these two civil rights statutes is generally broader than the two-part definition of disability under the IDEA.¹⁷⁵ Thus, IDEA-eligible students are also covered by Sec. 504 and the ADA, which offer an alternative route under the rubric of a nondiscrimination claim for such students. Conversely, Sec 504 (and the ADA) provide civil rights coverage, which may include individually appropriate accommodations and related services, for those gifted students who meet only the Sec. 504/ADA definition, not the IDEA definition, of disability. In

either event, the route under Sec. 504/ADA in the K-12 context is the parents' choice of (a) an impartial due process hearing, leading, if appealed, to judicial review; and/or (b) a complaint to OCR, typically resulting in a settlement or a formal letter of findings (LOF).¹⁷⁶

1. Hearing Officer and Judicial Decisions

As a federal appeals court decision illustrates, gifted students who pursue a Sec. 504 claim—by virtue of asserted dual exceptionality—must first "exhaust" (i.e., fully utilize) the due process mechanism that is shared with the IDEA.¹⁷⁷ The appellate court endorsed the trial court's opinion, which made clear that the exceptions to this exhaustion policy were relatively narrow, inasmuch as its purpose is to "afford[ing] the state (and defendants) the opportunity to rectify any errors."¹⁷⁸ Further illustrating the stringency of the exhaustion doctrine, a federal court in New York dismissed the suit of a parent on behalf of his gifted, hearing impaired daughter after he initiated but then withdrew from the due process hearing just at the point where proposed settlement would have provided the relief he had sought.¹⁷⁹ The court found that his withdrawal constituted a failure to exhaust the IDEA dispute-resolution process, that the asserted exceptions of futility and unavailable relief were not applicable, and that his daughter's gifted status was not a relevant distinguishing factor for this purpose.

Taking the statutory provision that requires exhaustion a step further, a federal court in Pennsylvania interpreted it as preempting the student's Sec. 504 and ADA claims, leaving their case to be reviewed exclusively under the IDEA.¹⁸⁰

Thus far, however, where parents of children with alleged dual exceptionality have utilized, in accordance with the exhaustion doctrine, the IDEA dispute resolution mechanism, their reliance on Sec. 504 has been notably limited. As a rare published example, a Maryland review officer rejected the district's proposal to remove a child with dual exceptionality from the gifted program to provide a more restrictive placement in terms of her learning disability, reasoning that excluding her from the gifted program on account of her disability would violate Sec. 504.¹⁸¹ Conversely, a New York hearing officer concluded that a district did not violate Sec. 504 upon denying a child admission to its gifted program, because he did not meet the program's various eligibility requirements that were unrelated to his learning disability.¹⁸²

As a result of the exhaustion doctrine, the published court decisions concerning or arising from dual eligibility are also limited. In the aforementioned¹⁸³ Tennessee case, the federal court summarily rejected the gifted student's eligibility under Sec. 504. Not apprehending the potential difference in the statutory definitions of disability, the court merely relied on its IDEA analysis. However, the court may well have ultimately reached the same conclusion based on a careful application of each of the three elements, particularly the combination of the last two (i.e., substantial limitation on learning), because the appropriate frame of reference for determining whether the impairment's limitation is "substantial" under Sec. 504 and the ADA appears to be the average child in the national population.¹⁸⁴ Moreover, the courts have recently established that this

determination of whether the limitation is substantial is with, not without, the mitigating effects of medication.¹⁸⁵ Thus, for example, if the Tennessee teenager's social maladjustment was not substantial as compared to the social problems of the average teenager nationally or, even if they were that severe, if medication sufficiently mitigated his social impairment, he would not meet this essential third element of Sec. 504/ADA disability. Inasmuch as they often perform academically at or above, rather than substantially below the average child does and inasmuch as common learning impairments such as AD/HD are often amenable to medication, gifted students face an increasingly uphill battle in establishing Sec. 504 (and ADA) eligibility if they have physical or mental impairments with the particular major life activity of learning.

However, whether the reason is placating the parent, helping the child, or not keeping current with the case law, district practices sometimes do not tow the strict line established by the courts for Sec. 504 eligibility. Thus, in the Second Circuit case,¹⁸⁶ the multi-disciplinary evaluation team determined that the gifted plaintiff with emotional problems qualified as having a disability under Sec. 504 but not under the IDEA. Compounding the confusion, the district offered the student an IEP, which is typically associated with the IDEA rather than Sec. 504. In any event, seeking reimbursement for their unilateral placement of their child at a residential school, the parents challenged the appropriateness of his proposed program, not the determination of his eligibility, under Sec. 504. Deciding in favor of the district, the court concluded that the IEP represented a reasonable accommodation of his needs and that placement with intellectual peers of his own age was not critical.¹⁸⁷

2. OCR Rulings

Instead of the impartial hearing officer process, the alternative route of OCR's complaint resolution process is usually less expensive, at least for the parents, and less time consuming, at least as compared to cases that proceed to judicial review.¹⁸⁸ As part of its administering Sec. 504 and the ADA in the school context, OCR responds to complaints in addition to initiating compliance reviews. In recent years, the agency has put a priority on early and informal complaint resolution; yet, formal rulings in terms of LOFs, whether via voluntary or imposed resolutions, continue to serve practically, albeit not technically, as precedents when published. The published OCR LOFs¹⁸⁹ tend to focus on admissions to gifted programs for students who have or are asserted to have a disability under Sec. 504 (or the IDEA).¹⁹⁰ In those cases, the trend has been toward districts. First, in an early case, OCR concluded that one of the defendant-district's gifted programs at the secondary level violated the Sec. 504 equal-opportunity-for-participation regulation by not determining in each case whether the applicant had been classified as an IDEA student and, in those cases where the program administrator was aware of the child's disability, by not disseminating to parents its process of consulting with the child's IEP team.¹⁹¹ Yet, in all of the recent LOFs, OCR has rejected disability-related claims of Sec. 504 violations in the admissions process of various districts' gifted programs.¹⁹² The reasons for this trend are subject to speculation; OCR's recent emphasis on informal dispute resolution is a likely contributing factor. As a result, it may be that OCR has improved the access of students with disabilities to gifted programs via unpublished

settlements of complaint investigations and compliance reviews; if so, the impact may be significant in the districts or states covered by the settlement agreement, while not having the same effect in terms of the official, published side of the law.¹⁹³

D. Somewhat similarly, a minority-group child who is or may be gifted is covered by the protections of civil rights laws, which prohibit discrimination based on race or national origin.

Various respected sources have agreed that underrepresentation of minority-group children in gifted education programs is a significant problem, warranting legislation and inviting litigation.¹⁹⁴ Brown presented OCR data that confirms the notable underrepresentation of Afro-American and Latino students in gifted programs.¹⁹⁵ Other commentators have proposed federal¹⁹⁶ or state¹⁹⁷ gifted-education legislation to address the problem. Because the underrepresentation problem remains largely unresolved,¹⁹⁸ Karnes and Marquardt predicted a wave of litigation.¹⁹⁹

However, no such wave has emerged. The reason, which is reflected in analogous areas, such as high-stakes testing²⁰⁰ and retention in grade,²⁰¹ is that the primary legal bases—the Fourteenth Amendment equal protection clause and Title VI of the Civil Rights Act—have posed, as interpreted by the courts, high hurdles for plaintiff-students. The difficulty of prevailing in such suits, particularly in recent times, is further evidenced in the special context of desegregation cases. Despite the prerequisite prior finding of *de jure* segregation, which puts the defendant-district's acts in an adverse light, the proverbial pendulum has shifted notably against the plaintiffs in cases where minority underrepresentation in gifted programs was at issue. More specifically, in early cases, particularly where the pertinent evidence revealed blatant negative manipulation, the courts rejected the district's desegregation plans.²⁰² In more recent cases, the courts have concluded that the district had achieved the Fourteenth Amendment or Title VI requirements of "unitary," i.e., desegregated, status, despite findings that minority underrepresentation in the gifted program remained; good faith, affirmative efforts in the admissions process sufficed.²⁰³ Where there is no history of *de jure* segregation, the pertinent published case law is nonexistent, or at least unavailing.²⁰⁴ Rather, revealing the difficulties of affirmative action in modern times, one finds instead that districts face at least as real a risk of a reverse discrimination suit if they move too far to resolve the underrepresentation issue.²⁰⁵

Similarly, published cases from the alternative OCR route have yielded limited results to date. Despite a recent priority on this issue, at least as a corollary of the overrepresentation of minority students in special education programs, OCR has issued only three published pertinent LOFs to date. In one case, OCR found a violation of Title VI with respect to the underrepresentation of national origin minority, limited English proficient students in gifted programs.²⁰⁶ However, in the racial cases, the outcome has been in the opposite direction. In the first published LOR, OCR concluded that "while black students are underrepresented in the [gifted] program when compared to their district-wide enrollment, the underrepresentation has not resulted from any discriminatory practice or procedure."²⁰⁷ In support of its conclusion, OCR cited not only

the district's objective referral, evaluation, and placement criteria, but also its progress in increasing the number of minority students in the program without altering the admissions criteria.²⁰⁸ In the second such LOF, OCR similarly concluded that the racial underrepresentation did not violate Title VI.²⁰⁹ However, as with the aforementioned²¹⁰ nexus of Sec. 504 and the ADA with gifted students, OCR's enforcement of Title VI includes unpublished cases. According to a knowledgeable OCR official, the agency has entered into "numerous Title VI resolution agreements with state education agencies and school districts to ensure that qualified minority students have access to gifted programs and services."²¹¹ For examples, she identified statewide resolution agreements currently in effect in Alabama, South Carolina, and Tennessee.²¹²

Conclusion

The law of gifted education is largely a matter of state legislation and regulations. It is at this level that the primary decisions are made as to whether and, if so, to what extent gifted students have an entitlement to differentiated education. Thus far, for example, no state law has established a customized, more rigorous substantive standard for FAPE than the floor-based, reasonably calculated benefit model of the IDEA.

Within the framework of these statutes, contrary to an earlier prediction, the case law concerning "gifted-only" students is not "burgeoning,"²¹³ but, nevertheless, it provides clearer boundaries as to the applicable procedural and substantive requirements. Pennsylvania, which has a relatively strong set of regulations but still separate from the requirements of the IDEA, has been the locus of most of the pertinent case law. This case law has yielded relatively restrictive boundaries and varying outcomes in terms of individualized programs and even more notable limitations on remedial relief, as compared to court decisions under the IDEA.

The legal issues are more complex for "gifted-plus" students, i.e., those gifted children who are also covered under civil rights laws protecting students with disabilities or minority status. The intersections of these respective—primarily state and primarily federal—legal streams and the alternative forums of hearing officer/court and OCR enforcement, have formed whirlpools concerning eligibility, including underrepresentation, and FAPE issues.

At the same time, against the backdrop of the vast experiment with legalization of special education under the IDEA²¹⁴ and its surrounding circle of Sec. 504 and the ADA,²¹⁵ one cannot help but resonate with the relatively solitary voice of a concurring judge in one of the pertinent published decisions concerning gifted education:

It truly is unfortunate when the proper education of a gifted child must be determined through an adversarial litigation process.²¹⁶

Yet we live in a litigious society, where traditional trust has, along with social civility, eroded, and the context of this judge's observation was a case where the district had clearly violated the law and the court left the parent without compensatory relief. Unless and until, parents and school districts form a cohesive collaboration on these matters, with an eventual goal of providing truly gifted education (i.e., responsive to the individual needs and abilities) for all children, the primary legal activity will be at state legislatures for policy making²¹⁷—including defining which children are truly gifted—and, in those states that opt for the individualized program and impartial enforcement features of the IDEA, at administrative agencies (including hearing officers) and in the courts. As with the IDEA, mediation and other forms of alternative dispute resolution are emphatically necessary but unfortunately insufficient.²¹⁸ Moreover, both policy makers and enforcement officials, including those in the adjudicative arena, will have to be much more thoughtful in terms of fashioning clear, creative and customized standards to meet

the needs of students who are "gifted alone" or—even more demanding in terms of both difficulty and necessity—who are gifted plus."

N.B. The citations herein are in legal, or what is commonly known as "Bluebook"—not APA—style. For the specific manual, see THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (17th ed. 2000) (available from the Harvard Law Review Ass'n; www.legalbluebook.com). Nevertheless, for the sake of the lay readers, the notes are placed at the end of the text, rather than at the bottom of each page.

Endnotes

¹ "Administrative" in this context refers to hearing and review officer decisions at the state level (designated in the citations herein as "SEA") and Office for Civil Rights (designated in the citations herein as "OCR") policy letters and letters of findings. "Published" here refers to court decisions and administrative rulings that are reported in either traditional print sources, known as "reporters," or computer databases, such as LEXIS.

² By "unpublished," we refer here to full-text decisions and rulings that are not included in the generally available print and on-line sources, rather than the narrower definition of decisions that judges select for publication. For sources that cite such broadly-defined unpublished court decisions, see, e.g., FRANCES KARNES & RONALD MARQUARDT, *GIFTED CHILDREN AND LEGAL ISSUES: AN UPDATE* 25 (2000); MARTHA MCCARTHY & NELDA CAMBRON-MCCABE, *PUBLIC SCHOOL LAW* 234 & 250 (1981); Frances Karnes & Ronald Marquardt, *The Fragmented Framework of Legal Protection for the Gifted*, 72 PEABODY J. EDUC. 166, 172 (1997); Renee Vintzel Lorigas, *Equal Educational Opportunity for the Gifted*, 1980 DET. C.L. REV. 957, 1015 (1980). Similarly, we do not include cases without judicial opinion. See, e.g., Karnes & Marquardt, at 176.

³ For an analysis of unpublished hearing officer decisions, see, e.g., Frances Karnes, Debra Troxclair & Ronald Marquardt, *Due Process in Gifted Education*, 20 ROEPER REV. 297 (1998). For an analysis of unpublished review officer decisions, see, e.g., Perry Zirkel & Paul Stevens, *The Law Concerning Public Education of Gifted Students*, 10 WEST'S EDUC. L. REP. 305 (1987), *reprinted in* 10 J. EDUC. GIFTED 305 (1987). For similarly limited research on unpublished OCR letters of findings, see, e.g., Frances Karnes, Debra Troxclair & Ronald Marquardt, *The Office for Civil Rights and the Gifted: An Update*, 19 ROEPER REV. 162 (1997).

⁴ Conversely, it does not include published court decisions where the child was not gifted or argued to be gifted. For the coverage of such cases, see KARNES & MARQUARDT, *supra* note 2, at 121-24.

⁵ For coverage of such cases, see, e.g., KARNES & MARQUARDT, *supra* note 2, at 48-57; Frances Karnes & Ronald Marquardt, *Gifted Education and the Courts: Teacher Certification and Employment Decisions*, 17 ROEPER REV. 229 (1995). For more recent cases, see, e.g., *Peters v. Jenney*, 327 F.3d 307 (4th Cir. 2003); *Hager v. Pike County Bd. of Educ.*, 286 F.3d 366 (6th Cir. 2002); *Zotos v. Lindburgh Sch. Dist.*, 121 F.3d 356 (8th Cir. 1997); *Salmon v. West Clark Comty. Sch. Dist.*, 64 F. Supp. 2d 850 (S.D. Ind. 1999); *Carney v. Cleveland Heights-Univ. Heights. City Sch. Dist.*, 758 N.E.2d 234 (Ohio Ct. App. 2001), *appeal dismissed*, 755 N.E.2d 351 (Ohio 2001). For state certification requirements, see, e.g., Frances Karnes, Kristen Stephens & James Whorton, *Certification and Specialized Competencies for Teachers in Gifted Education Programs*, 22 ROEPER REV. 201 (2002).

⁶ See, e.g., KARNES & MARQUARDT, *supra* note 2, at 90-103. For more recent examples, see *Levine v. Levine*, 731 A.2d 558 (N.J. Super. Ct. 1999); *Johns v. Cioci*, 865 A.2d 931 (Pa. Super. Ct. 2004).

⁷ See, e.g., KARNES & MARQUARDT, *supra* note 2, at 84-89.

⁸ See, e.g., *id.* at 124-25, *citing* *Duran v. Nitsche*, 780 F. Supp. 1048 (E.D. Pa. 1991), *vacated as moot*, 972 F.3d 1331 (3d Cir. 1992)(constitutional case where the child's gifted status was entirely peripheral to the issue); *Mr. and Mrs. I v. Maine Sch. Admin. Dist. No. 55*, 43 IDELR ¶ 197 (D. Me. 2005)

(IDEA and §504 issues, with peripheral mention of access to gifted program); *Brandt v. Bd. of Educ. of Chicago*, 326 F. Supp. 2d 916 (N.D. Ill. 2004) (First Amendment expression case not based on students' gifted status per se); *Sch. Dist. of Philadelphia v. Pennsylvania Dep't of Educ.*, 547 A.2d 520, 522 (Pa. Commw. Ct. 1988) (rejected district's argument that its recommendation of hearing impaired child for gifted eligibility evidences appropriateness of its IDEA program for him). For other such cases, see *Tallman v. Barnegat Bd. of Educ.*, 37 IDELR ¶ 158 (3d Cir. 2002); *Yankton Sch. Dist. v. Schramm*, 93 F.3d 1369 (8th Cir. 1996); *Vorchheimer v. School Dist. of Philadelphia*, 532 F.2d 880 (3d Cir. 1976); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001); *Meehan v. Patchogue-Medford Sch. Dist.*, 29 F. Supp. 2d 129 (E.D.N.Y. 1998); *Brad J. v. Commonwealth of Pennsylvania Dep't of Educ.*, 22 IDELR 712 (E.D. Pa. 1995); *Pinto v. Alabama Coalition for Equity, Inc.*, 662 So.2d 894 (Ala. 1994); *Alabama Coalition for Equity, Inc. v. Hunt*, 19 IDELR 810 (Ala. 1993); *Lake View Sch. Dist. No. 25 v. Huckabee*, 35 Ark. 31 (2002); *In re Grant of Charter Sch. Application of Englewood on the Palisades Charter Sch.*, 727 A.2d 15 (N.J. Super. Ct. 1999); *State v. Campbell County Sch. Dist.*, 19 P.2d 518 (Wyo. 2001); *In re Theodor A.*, 26 IDELR 1090 (Iowa SEA 1997); *Cedar Rapids Cmty. Sch. Dist.*, 22 IDELR 278 (Iowa SEA 1994); *Palmyra Sch. Dist.*, 22 IDELR 858 (N.J. SEA 1997); *P.D. v. Leonia Bd. of Educ.*, EHLR 509:165 (N.J. SEA 1987); *Florida Union Free Sch. Dist.*, 17 EHLR 549 (N.Y. SEA 1991); *Council Rock Sch. Dist.*, 29 IDELR 758 (Pa. SEA 1998); *Roane County (TN) Sch. Dist.*, 34 IDELR ¶ 94 (OCR 2001); *Palm Beach County (FL) Sch. Dist.*, 34 IDELR ¶ 38 (OCR 2000); *San Francisco (CA) Unified Sch. Dist.*, 33 IDELR ¶ 162 (OCR 2000); *Pennsylvania Dep't of Educ.*, EHLR 353:260 (OCR 1989). The dividing line is not at all a bright one. For marginal cases that were included, see, e.g., *infra* notes 97, 130, 147, and 166. For legal synthesis of gifted-alone court decisions with less selective boundaries, see Rachel Piven-Kehrle, Annotation, *Special Education Requirements of Gifted Students*, 115 A.L.R.5th 183 (2004).

⁹ Sec. 504 and the ADA have the same definition of "[individual with a] disability," which is different from the definition of "[child with a] disability" under the IDEA. Compare 29 U.S.C. § 705(20)(A)(i); 42 U.S.C. § 12102(2)(A), with 34 C.F.R. 300.7(c). However, Sec. 504 only applies to educational institutions that receive federal financial assistance, whereas the ADA also extends to private schools (and other private entities that provide public accommodations) that do not receive such assistance. See, e.g., PERRY ZIRKEL, SECTION 504, THE ADA, AND THE SCHOOLS (2003) (available from LRP Publications, tel. 800/860-5086).

¹⁰ These other administrative interpretations include policy letters from agencies, such as the Office of Special Education Programs ("OSEP"), which administers the IDEA, and the Office for Civil Rights ("OCR"), which administers Sec. 504 and the ADA in relation to education institutions. See, e.g., Perry Zirkel, *Do OSEP Policy Letters Have Legal Weight?*, 171 WEST'S EDUC. L. REP. 391 (2003).

¹¹ "Weight" relates in this context to stability.

¹² Within the judiciary, the trial court—although it makes for good television shows—is the lowest level. As a result, for the state system, the trial courts' decisions are rarely published, and even for the federal system, the trial level has the lowest rate of publication. At the other extreme, appeals to the highest court are usually discretionary rather than mandatory in terms of the court reviewing the merits of the claim, and the rate of publication is high. Whereas the federal system is designed for uniformity, the states represent variety. Thus, for a quick example, the name of New York's trial level is the Supreme Court, whereas its highest level is anticlimactically called the Court of Appeals.

¹³ Appendix A differs in two ways from the cases cited in these footnotes: (a) it provides parallel citations and additional proceedings; and (b) it is limited to the directly pertinent cases.

¹⁴ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). Some gifted-education advocates have pointed with hope to the Court's reference to the possibility of "some identifiable quantum of education [being] a constitutionally protected prerequisite to the meaningful exercise of either the right to speak or the right to vote" (*id.* at 283). See, e.g., Peggy Bittick, *Equality and Excellence: Equal Educational Opportunity for Gifted and Talented Children*, 36 SO. TEX. L. REV. 119, 134 (1995).

However, this hope is futile because (a) this reference is merely dicta that has not received subsequent judicial reinforcement, and (b) it would only apply to a minimum, not a gifted, education.

¹⁵ For an example of such an argument, which has not made a judicial ripple in the ensuing 20-plus years, see Loridas, *supra* note 2, at 1001.

¹⁶ *Student Doe v. Pennsylvania*, 593 F. Supp. 54 (E.D. Pa. 1984). The state—not school district—defendants had the added defense of Eleventh Amendment immunity. *Id.* at 56.

¹⁷ *Id.* at 57. The court also made short shrift of her procedural due process claim based on the exhaustion doctrine; she should have utilized the available remedy of a due process hearing, which Pennsylvania provides for students who are, or argued to be, gifted, prior to filing suit in court. *Id.*

¹⁸ *Student Roe v. Pennsylvania*, 638 F. Supp. 929, 933 (E.D. Pa. 1986), *aff'd mem.*, 813 F.2d 398 (3d Cir. 1987).

¹⁹ *Id.* Citing its *Student Doe* decision, the court reiterated that it is not "irrational for defendants to rely on IQ scores in making their determinations of giftedness." *Id.* This same rationality test does not apply if the students are in a suspect classification, such as racial minority students. See *infra* Part II—Gifted Plus.

²⁰ She apparently avoided the exhaustion doctrine by initiating a due process hearing but arguing that the procedures were constitutionally defective. *Id.* at 931.

²¹ Under Pennsylvania law, she did not have a property right to gifted education because (a) her IQ was not 130 or higher; (b) the regulations' allowance for eligibility of other students was not a mandate, or entitlement; and (c) compulsory education does not establish a right to individualized programming. *Id.* at 931. She did not have a liberty interest in gifted education because (a) regular education provided her with the access to basic useful knowledge; and (b) her First Amendment right to receive information and ideas was similarly unavailing. *Id.* at 931-32.

²² *Johnpoll v. Elias*, 513 F. Supp. 430 (E.D.N.Y. 1980).

²³ *Bennett v. City Sch. Dist. of New Rochelle*, 497 N.Y.S.2d 72, 80 (App. Div. 1985).

²⁴ Commentators have characterized federal legislation for gifted education as "underwhelming." Charles Russo et al., *The Educational Rights of Gifted Students: Lost in the Legal Shuffle?*, 16 ROEPER REV. 67 (1993). Congress dis-established the Office of Gifted and Talented with the passage of the Omnibus Budget Reconciliation Act of 1981 and re-established it with the passage of the Javits Act of 1988. Roseann Padula, *The Plight of Connecticut's Brightest Students: Bradley v. Meriden Board of Education*, 29 CONN. L. REV. 1319, 1327-28 (1997). For an overview of the federal initiatives in gifted education, see, e.g., KARNES & MARQUARDT, *supra* note 2, at 1-3; Kristen Stephens, *Gifted Students and the Law*, 23 GIFTED CHILD TODAY 30, 31-32 (Jan.-Feb. 2000); Charles Russo, *Unequal Educational Opportunities for Gifted Students: Robbing Peter to Pay Paul?*, 29 FORDHAM URBAN L.J. 727, 739-42 (2001). The most recent underwhelming federal legislative commitment with regard to gifted education is represented by the various specific references in the No Child Left Behind Act, such as the provision that specifies "the percentage of students completing gifted and talented ... courses" as one of the permissible additional academic indicators of meeting the annual yearly progress requirement. 20 U.S.C. § 1111(b)(2)(C)(vii); see also *id.* §§ 2122 (b)(9)(A) (sub-grant application requirements retraining teachers to address different learning styles, including gifted and talented students), 5131(a)(7) (one of the permissible uses of Title V programs), 6301 (purposes include continuation of awards for gifted and talented programs), 7215 (one of the permissible uses of local funds), 7853(e) (evaluation criterion and national leadership), and 7801 (definition of 'gifted and talented').

²⁵ See, e.g., Bittick, *supra* note 14, at 149-50; Donna Ford et al., *Meeting the Educational Needs of the Gifted: A Legal Imperative*, 17 ROEPER REV. 224, 228 (1995).

²⁶ See, e.g., Russo, *supra* note 24, at 728. For a more customized formula, see Mary Lou Herring, *Model Federal Statute for the Education of Talented and Gifted Children*, 67 CHI.-KENT L. REV. 1035 (1991).

²⁷ See *supra* notes 16-21 and accompanying text.

²⁸ *Lisa H. v. State Bd. of Educ.*, 447 A.2d 669 (Pa. Commw. Ct. 1982).

²⁹ *Id.* at 673. The court also mentioned alternative grounds for the dismissal: lack of standing and failure to exhaust administrative remedies. *Id.* at 674-75.

³⁰ *Bennett v. City Sch. Dist. of New Rochelle*, 497 N.Y.S.2d 72, 78-79 (App. Div 1985); cf. *Sabur v. Brosnan*, 36 IDELR ¶ 264 (E.D.N.Y. 2002)(rejected state constitutional claim for student with "advanced skills in, among other things, mathematics, music, reading and science").

³¹ *Broadley v. Bd. of Educ. of Meriden*, 639 A.2d 502 (Conn. 1994).

³² *Id.* at 506.

³³ The authors of a gifted-advocacy article criticized *Broadley* as a "dangerous" precedent, pointing out that the court did not accord great weight to the finding that the child in this case had become bored and frustrated with school. Charles Russo et al., *Gifted Education and the Law: A Right, Privilege, or Superfluous?*, 18 ROEPER REV. 179, 180 (1996). However, their criticism missed the primary point of such cases—that such policy issues are for the legislature, not the courts. Another commentator interpreted *Broadley* narrowly, arguing that "an individual gifted child who provides evidence of an inability to achieve a minimal education would state a viable claim [based on Connecticut's constitution]." Gwen E. Murray, *Special Education for Gifted Children: Answering the "Right" Question*, 15 QUINNIPIAC L. REV. 103, 145 (1995). The likelihood of proving such a claim would appear to be negligible, and the avenue of strengthened state legislation or regulations would seem to offer more broad-based relief. In the wake of *Broadley*, law student Ann Schotz Heim predicted a continuation of the status quo on both the judicial and legislative fronts until "[t]he public's deeply-rooted education about equality and the value of an education. . . [is] changed." Note, *Gifted Students and the Right to an Ability-Appropriate Education*, 27 J.L. & EDUC. 131, 137 (1998).

³⁴ *DeRolph v. State*, 712 N.E.2d 125 (Ohio C.P. 1999), *appeal dismissed*, 719 N.E.2d 3 (1999).

³⁵ *Id.* at 215 and 216-17. The court identified the state's weak gifted-education legislation, which requires identification of, but does not mandate services for, gifted students and which provides no technical assistance, as a contributing factor along with the arbitrary and low level of new funding. *Id.* Moreover, the court's recitation of the need for gifted education, being based on the deposition of a gifted-education leader, reads like the advocacy literature. *Id.* at 132-33 and 217-18.

³⁶ However, the order in this case is apparently in limbo, while the state's highest court struggles to resolve its continuing interactions with the legislature concerning school funding. *DeRolph v. State*, 780 N.E.2d 529 (Ohio 2003), *cert. denied*, 540 U.S. 966 (2003) ("*DeRolph IV*").

³⁷ The trial court's decision in *DeRolph* was February 26, 1999, and Ohio's latest gifted-education legislation was effective September 28, 1999, suggesting that there may have been such an effect in Ohio.

³⁸ Padula, *supra* note 24, at 1357-58.

³⁹ Mary Coleman, James Gallagher & Andrew Foster, Updated Report on State Policies Relating to the Identification of Gifted Students (1994)(available from ERIC government documents service—access no. ED 372 591); *see also* Mary Coleman & James Gallagher, *State Identification Policies: Gifted students from Special Populations*, 17 ROEPER REV. 268 (1995).

⁴⁰ State of the States: Gifted and Talented Education Report, 1999-2000 (2001)(available from the Council of State Directors of Programs for the Gifted and the National Association for Gifted Children). For earlier overviews, now only pertinent for comparative historical purposes, see A POLICYMAKER'S GUIDE TO ISSUES IN GIFTED AND TALENTED EDUCATION 3-7 (Patricia Mitchell ed. 1981), *excerpted in* AIMEE HOWLEY, CRAIG HOWLEY & EDWINA PENDARVIS, TEACHING GIFTED CHILDREN 121-23 (1986); Jeffrey Zettel, *The Education of Gifted and Talented Children from a Federal Perspective*, in SPECIAL EDUCATION IN AMERICA: ITS LEGAL AND GOVERNMENTAL FOUNDATIONS 51 (Joseph Ballard, Bruce Ramirez & Frederick Weintraub eds., 1982); JEFFREY ZETTEL, GIFTED AND TALENTED EDUCATION FROM A NATIONWIDE PERSPECTIVE (1980)(available from ERIC Document Reproduction Service—access no. Ed 197-576). For selected samples of legislation, regulations, handbooks, resource materials, and other policy-related documents in the early 1990s, see A. Harry Passow & Rose Rudnitski, State Policies Regarding Education of the Gifted as Reflected in Legislation and Regulation (1993)(available from The National Research Center on the Gifted and Talented). Passow and Rudnitski's fuzzy definitions of, and differentiation among, legislation, regulations, guidelines, policy, and related terms are typical of the lay literature. *Id.* at xx. The National Center of Education Statistics' brief tabulation of "state legislation on gifted and talented programs" is based on the 1994 and 1996 State of the States reports, thus being not only out of date but also having these limitations in terms of methodology and subject matter. U.S. DEPT OF EDUC., DIGEST OF EDUCATION STATISTICS 67 (2001).

⁴¹ Mary Landrum, Antonis Katsiyannis & Jan DeWaard, *A National Survey of Current Legislative and Policy Trends in Gifted Education; Life After the National Excellence Report*, 21 J. EDUC. GIFTED 352 (1998).

⁴² *See, e.g.*, Elizabeth Shaunessy, *State Policies Regarding Gifted Education*, 26 GIFTED CHILD TODAY 16 (2003); Michael Swanson, National Survey on the State Governance of K-12 Gifted and Talented Education (2002) (available at <http://www.giftedtn.org/tiger>); Gifted Education State Policy Database (available at <http://www.ecs.org>). For the narrower issue of the legal obligations of charter schools under state laws, see Suzanne Eckes & Jonathan Plucker, *Charter Schools and Gifted Education: Legal Obligations*, 34 J.L. & EDUC. 421 (2005).

⁴³ *See, e.g.*, James Cassidy & Ann Hossler, *State and Federal Definitions of the Gifted: An Update*, 15 GIFTED CHILD TODAY 46 (Jan./Feb.1992); Frances Karnes & Emily Collins, *State Definitions of the Gifted and Talented*, 1 J. EDUC. GIFTED 44 (1977); Frances Karnes & Susan Koch, *State Definitions of the Gifted and Talented: An Update and Analysis*, 8 J. EDUC. GIFTED 285 (1985); Kristen Stephens & Frances Karnes, *State Definitions for the Gifted and Talented Revisited*, 66 EXCEPTIONAL CHILDREN 219 (2000).

⁴⁴ After the author developed the design for the table, in consultation with attorney Chris Rhodes of the Harrisburg firm of Stock & Leader, Georgetown University law graduate Lisa Goldstein was responsible for compiling its various entries except for those for Nebraska through New Mexico, which attorney Rhodes did as part of the development process. The table is limited to state legislation and regulations; thus, it does not include state guidelines or policies that do not have the binding force of law, even though they may have interpretive and practical value. Similarly, it does not reflect actual practice, which may be at partial or complete variance with the official law. The original entries were as of May 2002, but the updated entries—compiled solely by the author—are as of May 2005. For a source providing successively more recent information on state laws on gifted education, see the policy database of the Education Commission of the States (www.ecs.org).

⁴⁵ New Hampshire and, most recently as a result of repealed legislation, South Dakota are the notable exceptions.

⁴⁶ One of the statutory lessons is that just because students with disabilities have such legal protections does not necessarily mean that students who are gifted are entitled to corresponding rights. *Cf.* *Wright v. Ector County Indep. Sch. Dist.*, 867 S.W.2d 863, 872 (Tex. Ct. App. 1993)(rejected argument that change in state legislative provision for students with disabilities implies equal, or balanced, treatment for students who are gifted).

⁴⁷ On the one extreme of this group, Tennessee is the only state that provides the full IDEA model. On the other margin, West Virginia comes quite close, with its own variation of the IEP requirement.

⁴⁸ The most recent example is Arizona, which in April 2005 separated gifted students from the partial coverage they had previously received jointly with students with disabilities.

⁴⁹ The reader is recommended to review Appendix B for the full variety of features. For a summary analysis, see Perry Zirkel, *State Laws for Gifted Education: An Overview of Legislation and Regulations*, __ ROEPER REV. __ (2005).

⁵⁰ ARIZ. REV. STAT. §§ 15-779(1) and 15-779.03(A). However, Arizona's law lacks the full IDEA individual rights that would put enforcing "teeth" behind this standard.

⁵¹ Jeanne Purcell, *Gifted Education at a Crossroads: The Program Status Study*, 39 GIFTED CHILD Q. 57 (1995). For her predecessor study, see Jeanne Purcell, *Programs in States without a Mandate: An "Endangered Species"?* 15 ROEPER REV. 93 (1992). However, basing her classification of "mandate" on the biannual survey of state directors of gifted education, which includes agency guidelines and other non-binding interpretations and which failed to differentiate between group- and individual-based requirements, her findings warrant caution. For example, she classified Mississippi, Utah, and Virginia as mandatory states; yet, as Appendix B of this monograph reveals, these jurisdictions—unlike the IDEA and the statutes and regulations of other specified states—lack requirements at the individual level, such as individualized programs and impartial dispute-resolution mechanisms.

⁵² Andrew Foster, James Gallagher & Mary Coleman, *Model Legislation: Gifted and Talented* (1994)(available from ERIC government documents service—access no. ED 372 590).

⁵³ *Zweifel v. Joint Dist. No. 1, Belleville*, 251 N.W.2d 822 (Wis. 1977). The parents' primary and unsuccessful argument was that since some school districts offer an opportunity for early admission to kindergarten for exceptional students, the uniformity clause in the state constitution requires all districts to do so.

⁵⁴ *Id.* at 824. The dissenting judge considered the reason to be irrelevant, countering that the focus should have been whether the four-year old was sufficiently mature for kindergarten. *Id.* at 828.

⁵⁵ *Wright v. Ector County Indep. Sch. Dist.*, 867 S.W.2d 863 (Tex. Ct. App. 1993). The enrollment statute required districts to have kindergarten for children who are at least five years of age, but the parents had already sent their child to a private kindergarten.

⁵⁶ *Ackerman v. Rubin*, 231 N.Y.S.2d 112 (Sup. Ct. 1962), *aff'd mem.*, 232 N.Y.S. 872 (App. Div. 1962). There is a long line of judicial authority for district discretion in such matters as promotion and graduation, as evident in cases where the student was not gifted. *See, e.g., Fiacco v. Santee*, 421 N.Y.S. 431 (App. Div. 1979); *Bd. of Educ. of Sycamore v. State ex rel. Wickham*, 88 N.E. 412 (Ohio 1909).

⁵⁷ 231 N.Y.S. at 113.

⁵⁸ *Id.* at 114.

⁵⁹ *Sands Point Acad. v. Bd. of Educ.*, 311 N.Y.S.2d 588 (Sup. Ct. 1970).

⁶⁰ *Id.* at 591.

⁶¹ Their other arguments were based on the federal and state constitutions. See *supra* notes 23, 30-33, and accompanying text.

⁶² *Bennett v. City Sch. Dist. of New Rochelle*, 497 N.Y.S.2d 72, 75-77 (App. Div. 1985). The court's analysis included a rejection of the analogy to statutory provisions for students with disabilities, pointing out that although the state funding provisions were the same, the federal mandate and other state provisions were distinguishable. *Id.* at 77-78.

⁶³ The reasons are subject to speculation. One possibility, for example, is that the relatively high activity under the special education regulations, which until recently covered the gifted and disability categories together, may have both provided and reflected a fertile environment—including specialized parent attorneys—for due process and judicial proceedings. For Pennsylvania's position, which is generally among the top five in published hearing/review officer and court decisions, depending on the study and methodology, see Perry Zirkel & Anastasia D'Angelo, *Special Education Case Law: An Empirical Trends Analysis*, 161 WEST'S EDUC. L. REP. 731 (2002).

⁶⁴ The earlier limited exceptions are a Tennessee hearing officer decision, which was limited to procedural grounds, and a Florida hearing officer decision, which relied on a Pennsylvania precedent. See *infra* notes 65, 83, and accompanying text. More recently, hearing officers in Kansas and Louisiana relied on substantive grounds in their respective state laws, but decided in favor of the defendant-districts based on the relatively relaxed standard for FAPE. See *infra* notes 88-95 and accompanying text. Most of the court decisions interpreting Pennsylvania's gifted-education legislation and regulations may be persuasive, albeit not binding, in other states with similar, mandatory laws for gifted students. Standing in contrast is a case that was based on two unusual legislative provisions in Pennsylvania—(a) a statute requiring free transportation for any enrolled exceptional child, whether gifted or having a disability, and (b) another statute, not specific to exceptional children, allowing "dual enrollment" of students in nonpublic schools to participate part-time in district programs. *Woodland Hills Sch. Dist. v. Pennsylvania Dep't of Educ.*, 516 A.2d 875 (Pa. Commw. Ct. 1986). In this case, the court interpreted this statutory combination to entitle dually enrolled gifted students to free transportation, here at the middle of the day based on the schedule of the district's gifted program, at no expense to the parents. The court reasoned as follows: "The parents' election to have their children attend a nonpublic school and to be dually enrolled in the District's gifted program should not impose on them the choice between a duty to provide midday transportation or in the alternative forego their children's right to gifted special education." *Id.* at 878.

⁶⁵ *In re Eleven-Year-Old Child*, 16 EHLR 569 (Tenn. SEA 1989). The state law, as characterized by the hearing officer, incorporated the IDEA procedures by defining "handicapped children," the then applicable term for children with disabilities, as including gifted children. *Id.* at 570.

⁶⁶ *Abington Sch. Dist.*, 21 IDELR 508 (Pa. SEA 1994).

⁶⁷ See *infra* note 155 and accompanying text.

⁶⁸ *Cent. York Sch. Dist. v. Pennsylvania Dep't of Educ.*, 399 A.2d 167 (Pa. Commw. Ct. 1979).

⁶⁹ As the result of an IDEA case concerning, *inter alia*, impartiality, Pennsylvania revised its regulations, which applied to "exceptional" students on both sides of the spectrum, to provide an appeals panel as the second tier. See *Muth v. Cent. Bucks Area Sch. Dist.*, 839 F.2d 113 (3d Cir. 1988), *rev'd on other grounds sub nom. Dellmuth v. Muth*, 498 U.S. 223 (1989).

⁷⁰ *Scott S. v. Pennsylvania Dep't of Educ.*, 512 A.2d 790 (Pa. Commw. Ct. 1986).

⁷¹ The standard for review in Pennsylvania state courts of second-tier decisions tends to be deferential rather than stringent. *See, e.g.*, *New Brighton Area Sch. Dist. v. Matthew Z.*, 697 A.2d 1056 (Pa. Commw. Ct. 1997); *Huldah A. v. Easton Area Sch. Dist.*, 601 A.2d 860, 862 (Pa. Commw. Ct. 1992).

⁷² 539 A.2d 785 (1988).

⁷³ Its significance lies in the relative balance between its faithfulness to the regulatory directive for individualization and its inference of a limitation to the ceiling for this directive. Thus, the prediction that "this decision may result in a greater federal effort . . . to provide a mandate for appropriate instruction for . . . developing the capabilities of . . . gifted and talented students" was overly optimistic. Ronald Marquardt & Frances Karnes, *The Courts and Gifted Education*, 50 WEST'S EDUC. L. REP. 9, 14 (1989). The prognosticators subsequently attributed the limited effect of *Centennial* to its "mixed signals," the weak economy, judicial deference, and state variety. Ronald Marquardt & Frances Karnes, *The Courts and Gifted Education Revisited*, 113 WEST'S EDUC. L. REP. 539, 544-45 (1996).

⁷⁴ More recently, as cited in Appendix B, Pennsylvania separated its regulations for gifted students from those for students with disabilities. This revision affected certain areas, such as discipline, but not the requirement of individually appropriate education.

⁷⁵ 539 A.2d at 790.

⁷⁶ *See supra* note 70 and accompanying text.

⁷⁷ *Id.* at 791.

⁷⁸ *Ellis v. Chester Upland Sch. Dist.*, 651 A.2d 616 (Pa. Commw. Ct. 1994). The court also affirmed the conclusion that the district's procedural violations constituted harmless error. *Id.* at 619.

⁷⁹ *Id.* at 620. The court distinguished the entitlement of gifted students from those with disabilities based on the differential language in the state regulations. *Id.* Additionally, this limitation may be characterized in terms of remedial authority, inasmuch as the court concluded that the parent thereby was not entitled to the requested remedy of tuition reimbursement and transportation. *Id.*

⁸⁰ *New Brighton Area Sch. Dist. v. Matthew Z.*, 26 IDELR 717 (Pa. Commw. Ct. 1997).

⁸¹ *Id.* at 718.

⁸² *York Suburban Sch. Dist. v. S.P.*, 872 A.2d 1285 (Pa. Commw. Ct. 2005).

⁸³ *Leon County Sch. Bd.*, 35 IDELR ¶ 168 (Fla. SEA 2001).

⁸⁴ *Burgettstown Area Sch. Dist.*, 26 IDELR 336 (Pa. SEA 1997). The key to this case was the separate treatment, in the relevant regulations, between gifted-only and dually-exceptional students. At the time, the distinction was only in the definition and use of the terms "eligible" and "exceptional" within a common set of regulations. *Id.* at 337. In 2001, Pennsylvania revised its regulations to have separate sets, or chapters, for students with disabilities (tied directly, via a side-by-side format, to the IDEA regulations) and for gifted students. 22 PA. CODE Ch. 14 and 16.

⁸⁵ *Slippery Rock Area Sch. Dist.*, 28 IDELR 217 (Pa. SEA 1998).

⁸⁶ *Stroudsburg Area Sch. Dist.*, 25 IDELR 91 (Pa. SEA 1996).

⁸⁷ Lower Merion Sch. Dist., 42 IDELR ¶ 256 (Pa. SEA 2004). Noting that the parents were both attorneys as well as gifted advocates, the panel separately characterized what they were requesting as "individualized private instruction," which is beyond their legal entitlement. *Id.* at *1413-15. The panel also noted the parties "damaged relationship," evidenced by the "1,138 pages of testimony and numerous exhibits." *Id.* at 1415 n.17.

⁸⁸ St. Martin Parish Pub. Sch., 42 IDELR ¶ 49, at * 205 (La. SEA 2004).

⁸⁹ *Id.* Inasmuch as Louisiana law only requires the district of residence to pay the cost of a gifted program in another district if it has not offered an adequate program, the hearing officer denied the parents' request to require the transfer of funds to the other district, which had a gifted education program that was unquestionably "excellent." *Id.*

⁹⁰ USD 259 Wichita Pub. Sch., 39 IDELR ¶ 82 (Kan. SEA 2003).

⁹¹ *Id.* at *1512-13.

⁹² *Howey v. Tippecano Sch. Corp.*, 734 F. Supp. 1485, 1491 (N.D. Ind. 1990); *see also* Perry Zirkel, *Special Education; "Needless Adversariness,"* 74 PHI DELTA KAPPAN 809 (1993); Perry Zirkel, *The Over-Legalization of Special Education*, 195 EDUC. L. REP. (WEST) 35 (2005).

⁹³ USD 259 Wichita Pub. Sch., 39 IDELR ¶ 82, at * 1513 (Kan. SEA 2003). He rejected granting the requested remedy on this basis, reasoning that "[a]s tempting as it may be to award private school cost reimbursement because of this behavior, it would be tantamount to a punitive damage award which is not contemplated under applicable law." *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* He also noted that the parents were "confrontational and discomfiting" during the proceedings, exhibiting "a considerable amount of hostility" toward the hearing officer, although asserting that "these observations . . . did not play a role in this decision." *Id.* at • 1514 n.25.

⁹⁶ Lancaster Sch. Dist., 39 IDELR ¶ 118 (Pa. SEA 2003); Steel Valley Sch. Dist., 36 IDELR ¶ 290 (Pa. SEA 2002); Charleroi Sch. Dist., 35 IDELR ¶ 148 (Pa. SEA 2001); Pennsbury Sch. Dist., 22 IDELR 823 (Pa. SEA 1995); Easton Area Sch. Dist., 20 IDELR 497 (Pa. SEA 1993). In two other, less important decisions adverse to the plaintiff-parents, the appeals panel decided that a particular gifted child did not need the related service of vision therapy and that stay-put allows for limited adaptations necessitated by grade advancement. Pennsbury Sch. Dist., 26 IDELR 1208 (Pa. SEA 1997); Greensburg Salem Sch. Dist., 21 IDELR 1144 (Pa. SEA 1994). The appeals panel re-visited the issue of stay-put for a sibling in the same family. Greensburg Salem Sch. Dist., 27 IDELR 525 (Pa. SEA 1997).

⁹⁷ Lancaster Sch. Dist., 39 IDELR ¶ 118 (Pa. SEA 2003).

⁹⁸ *Id.* at *1671. The appeals panel manifested possible confusion with the district's separable obligations under the state's special education regulation, commenting in seemingly related dicta that "[the student] probably should have had a functional behavioral assessment, a behavioral intervention plan and the counseling services requested by the school psychologist . . . since his behaviors cleared blocked his learning." *Id.*

⁹⁹ The entitlement and remedial limits overlap to a large extent, with the only significant difference being the posture of the case upon judicial review. Whether arising in terms of what the parent sought at the district level or what the parent received at the first or second tier of the pre-judicial process, if the parents are not entitled to the remedy, it is, in effect, not their right, or entitlement.

¹⁰⁰ *Huldah A. v. Easton Area Sch. Dist.*, 601 A.2d 860 (Pa. Commw. Ct. 1992). For overlapping authority, see *supra* notes 78-79 and accompanying text.

¹⁰¹ 601 A.2d at 862.

¹⁰² *Id.* In a subsequent case, the Pennsylvania appeals panel decision responded as follows to the parents' assertion of an exception where the district's acts were "egregious": "[I]t would be an egregious error for this panel to order the District to pay the parents' attorney's fees in the absence of any legal authority to do so." *Stroudsburg Area Sch. Dist.*, 25 IDELR 91, 92 (Pa. SEA 1996).

¹⁰³ *Id.* at 863. He similarly waxed eloquently and, in terms of his reference to federal law over-expansively, that "[Pennsylvania's] regulations, in conformity with the mandates of state and federal law, are designed to guard against school districts losing our best and brightest by failing to provide them with the special attention they need to avoid the real threat of educational boredom faced by a gifted child whose special talents are not recognized or nurtured properly." *Id.*

¹⁰⁴ *Brownsville Area Sch. Dist. v. Student X*, 729 A.2d 198 (Pa. Commw. Ct. 1999).

¹⁰⁵ The court had in an earlier case ducked deciding the issue of whether, under Pennsylvania law, the IEP entitlement includes college-level courses, because the appealing party (in this case, the district) had waived the issue by not raising it in timely manner below. *Gateway Sch. Dist. v. Pennsylvania Dep't of Educ.*, 559 A.2d 118 (Pa. Commw. Ct. 1989).

¹⁰⁶ *Conemaugh Valley Sch. Dist.*, 34 IDELR ¶ 81 (Pa. SEA 2001).

¹⁰⁷ *Id.* at 304. The panel pointed out that the Pennsylvania regulations used the *Rowley* standard of appropriateness, which provides a limited "floor" of opportunity (see *infra* note 140), whereas the individual programs of gifted students need to be measured in terms of a ceiling. *Id.* at 304 n.37. In line with the panel's call for "the legislature or [state education department to] thoughtfully revise state law so as to be reasonably calculated to provide meaningful benefit [to interested parties]," Pennsylvania otherwise revised, including separating, its gifted-education regulations in 2001 but retained the *Rowley* standard. *Easton Area Sch. Dist.*, 20 IDELR 497, 500 (Pa. SEA 1993); 22 PA. CODE § 16.1.

¹⁰⁸ *Compare Steel Valley Sch. Dist.*, 36 IDELR ¶ 290 (Pa. SEA 2002)(different standard for appropriateness), *with Charleroi Sch. Dist.*, 35 IDELR ¶ 148 (Pa. SEA 2001)(same standard). The compensatory awards in these two cases were 840 hours and 270 hours, respectively.

¹⁰⁹ *Saucon Valley Sch. Dist. v. Robert O.*, 785 A.2d 1069, 1075 (Pa. Commw. Ct. 2001), *citing* *Brownsville Area Sch. Dist. v. Student X*, 729 A.2d 198, 200 (Pa. Commw. Ct. 1999). Yet, while excerpting a quotation from *Brownsville* that cited IDEA case law, the court attempted to distinguish FAPE under IDEA from adequate, or appropriate, education under state law, based on Pennsylvania's recent revision to separate its regulations for gifted students from those with disabilities. 785 A.2d at 1075 n.10.

¹¹⁰ The court concluded that this remedy was contrary to the purpose and effect of state legislation that delegated this authority to district discretion. 785 A.2d at 1077.

¹¹¹ The state regulations accord this matter to school districts. Thus, by way of dicta, the court suggested a possible exception if the district had violated the state requirements as to the membership of the IEP team. *Id.* at 1078.

¹¹² Again, setting the graduation requirements based on the year of matriculation was, in the court's view, a matter for the district's discretion. *Id.* at 1079. At the same time, the court expressly reserved the issue of whether the panel had authority to grant credit for pre-high school courses toward graduation. *Id.* at 1079 n. 20.

¹¹³ *Carlynton Sch. Dist. v. D.S.*, 815 A.2d 666 (Pa. Commw. Ct. 2003). The court also ruled that the doctrine of *res judicata* does not apply to decisions under the state education agency's complaint resolution procedure (CRP), thus clarifying that the hearing/appeals process is separate from and not bound by CRP findings and conclusions. *Id.*

¹¹⁴ *Hempfield Sch. Dist. v. Tyler M.*, 38 IDELR ¶ 68 (Pa. Commw. Ct. 2003). The appeals panel had reasoned that it "takes children time to mature with respect to performance" and that use of a different WISC-III subtest would have yielded a qualifying IQ score, but the court regarded this reasoning as unsupported and unpersuasive. *Id.* at 282 n. 11.

¹¹⁵ *Lancaster Sch. Dist.*, 40 IDELR ¶ 277 (Pa. SEA 2003).

¹¹⁶ *Id.* at *1142. The hearing officer in this second, clarifying proceeding had estimated the value of the covered services as amounting to \$57,581. *Id.* at *1141.

¹¹⁷ *Sabo v. Charleroi Area Sch. Dist.*, 43 IDELR ¶ 201 (Pa. Commw. Ct. 2004).

¹¹⁸ *Charleroi Area Sch. Dist.*, 43 IDELR ¶ 262 (Pa. SEA 2005).

¹¹⁹ *Glendale Sch. Dist.*, 39 IDELR ¶ 109 (Pa. SEA 2003).

¹²⁰ The parents did not raise any IDEA or Section 504 issues, and the hearing officer properly concluded that their remaining claims, which were based on the Fourteenth Amendment due process and the state's regulations for regular education students, were beyond his purview. *Id.*

¹²¹ *Cent. Dauphin Sch. Dist. v. Founding Coalition*, 847 A.2d 195 (Pa. Commw. Cr. 2004).

¹²² The full applicable term is "child with a disability." 20 U.S.C. § 1401(3)(A)-(B); *see also* 34 C.F.R. § 300.7. IEPs are the documents that represent the mandate for individualized programming, and DPHs are the impartial dispute-resolution mechanism that typically precedes judicial decision-making.

¹²³ Letter to Anonymous, 22 IDELR 454 (OSEP 1994). The agency's use here of "and requires special education" is redundant, given the IDEA's definition of disability. Presumably, it is only included for the purpose of emphasis.

¹²⁴ *See supra* notes 18-21 and accompanying text.

¹²⁵ *Student Roe v. Pennsylvania*, 638 F. Supp. 929, 930 (E.D. Pa. 1986), *aff'd mem.*, 813 F.2d 398 (3d Cir. 1987).

¹²⁶ *Id.* at 930-31.

¹²⁷ *Huldah A. v. Easton Area Sch. Dist.*, 601 A.2d 860 (Pa. Commw. Ct. 1992).

¹²⁸ *See supra* notes 100-02 and accompanying text.

¹²⁹ The full applicable term is "individual with a disability." 29 U.S.C. § 705(20)(A)(i); 42 U.S.C. § 12102(2)(A).

¹³⁰ *D.P. v. Sch. Dist. of Poynette*, 41 IDELR ¶ 6 (W.D. Wis. 2004).

¹³¹ The enforcement mechanisms include impartial DPHs with judicial review, the complaint resolution process of the state education department, and—based on the overlapping coverage of Sec. 504

and the ADA, the complaint resolution process of OCR. For the DPH-court route, the IDEA—like Sec. 504 and the ADA—provides attorneys' fees for parents who prevail on behalf of their eligible children.

¹³² This particular classification would, at least theoretically, appear to be one of the leading possibilities for gifted students. Different from the other classifications, SLD is premised on a severe discrepancy between intellectual ability and academic achievement in one or more of seven specific areas, such as written expression, reading comprehension, or mathematics calculation. 34 C.F.R. § 300.541.

¹³³ *Id.* § 300.7(c). Two of these classifications—deaf-blindness and multiple disabilities—are a combination of one or more of the other eleven, thus leading some commentators to refer to eleven separate classifications. The bridging language of "by reason thereof" suggests that the need for special education is merely a measure of the requisite extent of adverse effect, which is a common criterion of the various classifications. The U.S. Department of Education has recognized the difficulty of assessing adverse effect on educational performance, including but not limited to highly intelligent students who are progressing in regular education. *See, e.g.*, Letter to Pawlisch, 24 IDELR 959, 961 (OSEP 1996); Letter to Lillie, 23 IDELR 714, 717-18 (OSEP 1995); Letter to Ulisi, 18 IDELR 683, 684 (OSEP 1992). For a thorough analysis, see Robert Garda, *Untangling Eligibility Requirements under the Individuals with Disabilities Education Act*, 69 MO. L. REV. 441 (2004).

¹³⁴ *See, e.g.*, 34 C.F.R. §§ 300.530-300.536 (procedures for evaluation and determination of eligibility) and 300.507-300.511 (due process hearings).

¹³⁵ *See* Part I (Gifted Alone) and Appendix B (Chart of State Laws).

¹³⁶ The U.S. Department of Education has been ambiguous about the FAPE obligation under IDEA for children with dual exceptionality. *See, e.g.*, Letter to Anonymous, 21 IDELR 65, 66 (OSEP 1994) ("unique needs of a gifted child with a disability").

¹³⁷ An astute commentator pointed out, "in many gifted and talented children with disabilities, the gift hides the disability or the disability hides the gift." Laura Ketterman, *Does the Individuals with Disabilities Education Act Exclude Gifted and Talented Children with Emotional Disabilities?* 32 ST. MARY'S L.J. 913, 914 (2001). Conversely, some court decisions incidentally mention the child's dual status in the factual background of an issue entirely independent of the child being gifted. Their only relevance here, which is admittedly marginal, is that they illustrate that various districts have recognized, without any litigation, the IDEA coverage of gifted students under specific learning disability or another enumerated classification. *See, e.g.*, Warren G. *ex rel.* Tom G. v. Cumberland County Sch. Dist., 190 F.3d 80, 82 (3d Cir. 1999).

¹³⁸ The concomitant IDEA concept of "least restrictive environment" ("LRE") is part of, although sometimes in tension with, the overall FAPE obligation.

¹³⁹ For example, Ketterman, *supra* note 137, at 936 argued that "[m]ainstreaming produces less academic achievement for gifted and talented children while homogeneous grouping improves their achievement." However, she did not cite empirical support for her argument, and by using the education term "mainstreaming," she failed to observe that the IDEA's LRE mandate, or at least presumption, does not at all negate the possibility of homogeneous grouping.

¹⁴⁰ In its landmark IDEA decision in *Board of Education v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court interpreted "free appropriate public education" as having a primarily procedural purpose, analogous to a door for access, and, thus, a limited substantive standard, analogous to a floor of opportunity. *See, e.g.*, Perry Zirkel, *Building an Appropriate Education from Board of Education v. Rowley: Razing the Door and Raising the Floor*, 42 MD. L. REV. 466 (1983). Ketterman, *supra* note 137, at 937, proposed amending the eligibility language of the IDEA to require "special education to children with disabilities that adversely affect their educational performance *and/or learning potential*" [emphasis

supplied]. The problem is that she confuses, with semantic circularity, the general adverse-effect of the various enumerated classifications with the specific special-education criterion for eligibility. See *supra* note 133 and accompanying text. Moreover, she missed the potentiality factor for eligibility, not just appropriateness, under the IDEA. See, e.g., *West Chester Area Sch. Dist. v. Bruce C.*, 194 F. Supp. 2d 417, 421 (E.D. Pa. 2002).

¹⁴¹ *Austin Indep. Sch. Dist. v. Robert M.*, 168 F. Supp. 2d 635 (W.D. Tex. 2001). The child had a private diagnosis of AD/HD. The IDEA classifications that the parents asserted for him were other health impairment and emotional disturbance. The court questioned these classifications in dicta, but ultimately decided the case on the second essential element. *Id.* at 639 & n.4.

¹⁴² *Id.* at 639 n.5 and 640. However, the court indiscriminately intertwined IDEA standards for eligibility with those for FAPE, concluding that what the school district offered to him—which was merely regular education—was reasonably calculated to confer benefit. *Id.* at 640. An interrelated problem is the fuzzy boundaries of what special education is, whether the child is gifted or not. For two views of this issue, for a child who the parents initially asserted was, but the district determined was not, gifted, see *West Chester Area Sch. Dist.*, 35 IDELR ¶ 235 (Pa. SEA 2001), *rev'd*, *West Chester Area Sch. Dist. v. Bruce C.*, 194 F. Supp. 2d 417 (E.D. Pa. 2002). Alternatively, IDEA ineligibility in some cases is premised on another essential element of SLD, such as severe discrepancy. See, e.g., *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086 (9th Cir. 2002).

¹⁴³ The IDEA label for this classification originally was "serious emotional disturbance," but as a result of the 1997 amendments to the IDEA, the current designation as "emotional disturbance." The criteria for this classification remain unchanged. 34 C.F.R. § 300.7(c)(4).

¹⁴⁴ *Roane County Sch. Sys. v. Ned A.*, 22 IDELR 574 (E.D. Tenn. 1995). For other similar cases, see *Venus Indep. Sch. Dist. v. Daniel S.*, 36 IDELR ¶ 185 (N.D. Tex. 2002); *Doe v. Bd. of Educ. of Connecticut*, 17 EHLR 73 (D. Conn. 1990).

¹⁴⁵ 22 IDELR at 577. The court alternatively reasoned that he was ineligible based on the social maladjustment exclusion in the definition for emotional disturbance. However, the court failed to address the limitation of this exclusion to purely socially maladjusted students in contrast with those who also evidence the criteria of emotional disturbance. 34 C.F.R. § 300.7(c)(4)(ii).

¹⁴⁶ *Nagle v. Wilson Sch. Dist.*, 21 IDELR 794 (E.D. Pa. 1994), *rev'd sub nom Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751 (3d Cir. 1995). The Third Circuit's decision to reverse and remand the decision was on the procedural error of failing to accept additional evidence at the trial court's review. This ruling did not affect at all the lower court's ruling regarding the child's eligibility as gifted.

¹⁴⁷ *Id.* at 798. Although it reversed and remanded this ruling for failure to accept additional evidence, but the Third Circuit did not question the interpretation and application of the substantive eligibility criteria in terms of either giftedness or SLD.

¹⁴⁸ *J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60 (2d Cir. 2000).

¹⁴⁹ The parties did not raise, and, thus, the court did not address the issue of whether the state regulations conflict with the IDEA in terms of constricting the rights of individual students and are thereby subject to federal preemption. For a related reference to this issue, see Letter to Pawlisch, 24 IDELR 959, 960 (OSEP 1996).

¹⁵⁰ See, e.g., *Los Angeles Unified Sch. Dist.*, 31 IDELR ¶ 71 (Cal. SEA 1999); *San Jose Unified Sch. Dist.*, 29 IDELR 813 (Cal. SEA 1998); *In re Child with Disabilities*, 19 IDELR 198 (Conn. SEA 1992); *Darien Bd. of Educ.*, EHLR 401:146 (Conn. SEA 1988); *Collier County Sch. Bd.*, 44 IDELR ¶ 80 (Fla. SEA 2005); *Weston Pub. Sch. Dist.*, 34 IDELR ¶ 75 (Mass. SEA 2001); *Springfield Pub. Sch.*, 17

EHLR 264 (Mass. SEA 1990); Bd. of Educ. of City Sch. Dist. of New York, 33 IDELR ¶ 145 (N.Y. SEA 1999); Conrad Weiser Area Sch. Dist., 27 IDELR 100 (Pa. SEA 1997); Aransas Indep. Sch. Dist., 29 IDELR 141 (Tex. SEA 1998); *cf.* Crown Point Cmty. Sch. Corp., 32 IDELR ¶ 281 (Ind. SEA 2000)(terminated eligibility). For a related OCR ruling under Sec. 504, see Hillsborough (FL) County Sch. Dist., 29 IDELR 731 (OCR 1998). For an example of the parents, not the district, proving that the gifted child was not also eligible as having a disability, see Santa Ana Unified Sch. Dist., 21 IDELR 1189 (Cal. SEA 1994).

¹⁵¹ Adding negligibly to this side are published court decisions where the child is indisputably covered by both state gifted-education legislation and the IDEA but the issue was not, at least in terms of its outcome, dependent upon the child's giftedness. *See, e.g.,* Fowler v. Unified Sch. Dist. No. 259, 107 F.3d 797 (10th Cir. 1997).

¹⁵² Conrad Weiser Area Sch. Dist. v. Department of Educ., 603 A.2d 701 (Pa. Commw. Ct. 1992). The disability-eligibility issue in this case arose under the Pennsylvania law that, in relevant respect, is parallel and corollary to the IDEA. For another, more recent court decision that recognized dual exceptionality of a gifted child, here based on both the IDEA categories of emotional disturbance and other health impairment, see Venus Unified Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002).

¹⁵³ *See, e.g.,* Benjamin R., EHLR 508:183 (Mass. SEA 1986)(gifted child is qualified for "limited special education"); *cf.* Sch. Dist. of Philadelphia, 28 IDELR 1109 (Pa. SEA 1998)(seemingly stipulated); Philadelphia Sch. Dist., 27 IDELR 447 (Pa. SEA 1997)(learning disability beyond foreign language based on district's actions).

¹⁵⁴ Corey H. v. Bd. of Educ. of Chicago, 27 IDELR 688, 694 (N.D. Ill. 1998).

¹⁵⁵ *See, e.g.,* City of Erie Sch. Dist., 22 IDELR 394 (Pa. SEA 1995)(upheld district's determination that deaf child was not eligible as gifted); Tullahoma City Sch., 17 EHLR 213 (Tenn. SEA 1990)(upheld district's determination that learning disabled student was not gifted according to state standards).

¹⁵⁶ Laughlin v. Cent. Bucks Sch. Dist., 20 IDELR 894 (E.D. Pa. 1994).

¹⁵⁷ D.B. v. Craven County Bd. of Educ., 32 IDELR ¶ 86 (4th Cir. 2000). For other such decisions see Adam J. v. Keller Indep. Sch. Dist., 328 F.3d 804 (5th Cir. 2003); Guth v. Christen, 44 IDELR ¶ 34 (E.D. La. 2005) (parent of gifted student did not prevail for purpose of attorneys' fees on IDEA "child find" claim); Donlan v. Wells Ogunquit Cmty. Sch. Dist., 226 F. Supp. 2d 261 (D. Me. 2002); *cf.* A.B. v. Lawson, 354 F.3d 315 (4th Cir. 2004)(least restrictive environment rationale for student who was above average but not necessarily gifted). In a variation of FAPE, the Fourth Circuit focused on the child's disability, not his gifted status under state law, in upholding the district's manifestation determination and change in school in the wake of his misconduct. Additionally, the court ruled that the reassignment to another school was not a change in placement, and thus not subject to the IDEA's "stay-put" provision, where he continued to receive the same services but in a different setting. AW v. Fairfax County Sch. Bd., 372 F.3d 674 (4th Cir. 2004).

¹⁵⁸ Lewisville Indep. Sch. Dist. v. Charles W., 40 IDELR ¶ 60 (5th Cir. 2003). *But cf.* West Chester Area Sch. Dist. v. Bruce C., 194 F. Supp. 2d 417, 421 (E.D. Pa. 2002) (citing the IDEA's FAPE standard in the Third Circuit, which is gauged in light of the child's potential).

¹⁵⁹ Charlotte County (FL) Sch. Dist., 27 IDELR 1067 (OCR 1997). OCR's focus is FAPE under Sec. 504, which a district fulfills for a special education (i.e., double-covered) student—like killing two birds with one stone—by providing FAPE in accordance with the narrower, deeper requirements of the IDEA.

¹⁶⁰ B.A. v. Sch. Bd. for Charlotte County, 27 IDELR 1035 (M.D. Fla. 1998). This preliminary injunction enforced the hearing officer's decision that ordered the district to provide a new, more effective interpreter. Charlotte County Sch. Bd., 27 IDELR 650 (Fla. SEA 1997). The difference in outcome is more likely attributable to the investigative v. adjudicative nature of the respective dispute-resolution forums than to the Sec. 504 v. IDEA focus.

¹⁶¹ Ware Pub. Sch., 16 EHLR 341 (Mass. SEA 1990).

¹⁶² *Id.* at 344.

¹⁶³ Marshall County Bd. of Educ., 25 IDELR 794 (Ala. SEA 1997). The hearing officer differentiated between the status and services under state law but concluded that neither deletion denied the student FAPE under the IDEA. *Id.* at 802.

¹⁶⁴ *See, e.g.*, Conecuh County Bd. of Educ., 23 IDELR 572 (Ala. SEA 1995); Nenana City Pub. Sch., 18 IDELR 489 (Alaska SEA 1991); Los Angeles Unified Sch. Dist., 26 IDELR 373 (Cal. SEA 1997); Greenwich Bd. of Educ., 40 IDELR ¶ 223 (Conn. SEA 2003); Tredyffrin/Easttown Sch. Dist., 36 IDELR ¶ 149 (Pa. SEA 2002); Quaker Valley Sch. Dist., 31 IDELR ¶ 255 (Pa. SEA 1999); Sch. Dist. of Philadelphia, 28 IDELR 1109 (Pa. SEA 1998); Philadelphia Sch. Dist., 27 IDELR 447 (Pa. SEA 1997); Wissahickon Sch. Dist., 26 IDELR 1370 (Pa. SEA 1997); Council Rock Sch. Dist., 22 IDELR 397 (Pa. SEA 1995); Conrad Weiser Sch. Dist., 21 IDELR 759 (Pa. SEA 1994); *In re Ari P.*, EHLR 401:268 (Pa. SEA 1988); *In re Branden F.*, EHLR 509:192 (Pa. SEA 1987); Humble Indep. Sch. Dist., 29 IDELR 833 (Tex. SEA 1998); Granite Sch. Dist., 22 IDELR 405 (Utah SEA 1995); *In re Child with Disabilities*, 17 EHLR 915 (W. Va. SEA 1990).

¹⁶⁵ *See, e.g.*, Pennsbury Sch. Dist., 32 IDELR ¶ 223 (Pa. SEA 1999)(homebound instruction is not a gifted or special education placement); Radnor Township Sch. Dist., 27 IDELR 526 (Pa. SEA 1997)(private placement met neither disability nor gifted needs); Upper Darby Sch. Dist., 26 IDELR 1183 (Pa. SEA 1997)(IEP did not address child's giftedness); *cf.* Los Angeles Unified Sch. Dist., 26 IDELR 373, 381 (Cal. SEA 1997)(dicta about need to meet child's dual needs); Bd. of Educ. of the City Sch. Dist. of Mt. Vernon, 25 IDELR 1219 (N.Y. SEA 1997)(proposed IEP, which provided gifted education on a "push in" basis, constituted FAPE in the LRE rather than the placement parents sought in self-contained class for students who are both gifted and learning disabled); *In re Minor Child*, 17 EHLR 708 (Tenn. SEA 1991)(IEP team should determine whether child is gifted and, if so, whether to program for it).

¹⁶⁶ Bd. of Educ. of the City Sch. Dist. of New York, 28 IDELR 1093 (N.Y. SEA 1998).

¹⁶⁷ For a more defensible, Sec. 504 analysis, see *infra* note 181 and accompanying text.

¹⁶⁸ Bd. of Educ. of the City Sch. Dist. of Syracuse, 33 IDELR ¶ 257 (N.Y. SEA 2000). This clarification is not necessarily complete, because the previous New York decision was framed in terms of permissible, not mandatory, elements of the IEP. Bd. of Educ. of the City Sch. Dist. of New York, 28 IDELR at 1104.

¹⁶⁹ Sarasota County Sch. Bd., 34 IDELR ¶ 224 (Fla. SEA 2001).

¹⁷⁰ *See supra* note 83 and accompanying text.

¹⁷¹ *See supra* notes 97-98 and accompanying text.

¹⁷² Punxsutawney Area Sch. Dist. v. Kanouff, 663 A.2d 831 (Pa. Commw. Ct. 1995). The opinion in this case is not particularly clear, and giftedness is peripherally pertinent at best.

¹⁷³ In her case the district belatedly provided notice of a change in placement to homebound instruction, which raised questions of not only the lack of timely notice and an evaluation but also least restrictive environment. *Id.* at 76.

¹⁷⁴ See *supra* text accompanying note 127.

¹⁷⁵ However, the courts have become more restrictive in recent years in terms of the Sec. 504/ADA definition of disability, thus largely limiting its coverage to those within the IDEA definition of disability. See, e.g., *N.L. v. Knox County Pub. Sch.*, 315 F.3d 688 (6th Cir. 2003); see also Perry Zirkel, *Conducting Defensible Eligibility Determinations under Section 504 and the ADA*, 176 WEST'S EDUC. L. REP. 1 (2003); Perry Zirkel, *Section 504 and the ADA: The Top Ten Recent Concepts/Cases*, 147 WEST'S EDUC. L. REP. 761, 761-62 (2000).

¹⁷⁶ See generally ZIRKEL, *supra* note 9. However, OCR typically does not focus on substantive issues, such as eligibility and FAPE, deferring to hearing officers to decide such matters. See, e.g., *Oak Ridge (TN) Sch. Dist.*, 29 IDELR 390 (OCR 1998); *Westfield (MA) Pub. Sch.*, 28 IDELR 622 (OCR 1997); *Virginia Beach City (VA) Pub. Sch.*, 26 IDELR 27 (OCR 1996); *Northside (TX) Indep. Sch. Dist.*, 25 IDELR 162 (OCR 1996).

¹⁷⁷ *Hope v. Cortines*, 69 F.3d 687 (2d Cir. 1995). This particular student was both gifted and dyslexic and filed suit under the ADA. The underlying federal trial court opinion further reveals that the district had determined that he was eligible under the IDEA and that the parents' claims also included Title VI of the Civil Rights Act (based on race). *Hope v. Cortines*, 872 F. Supp. 14 (E.D.N.Y. 1995).

¹⁷⁸ 852 F. Supp. at 22-23.

¹⁷⁹ *Kielbus v. New York City Bd. of Educ.*, 140 F. Supp. 2d 284 (E.D.N.Y. 2001). The relief he sought under Sec. 504 and the ADA was a bilingual general education curriculum, meaning for her participation in regular classes with the assistance of an American Sign Language instructor. *Id.* at 289-90.

¹⁸⁰ *Nagle v. Wilson Sch. Dist.*, 21 IDELR 794, 796 (E.D. Pa. 1994), *rev'd on other grounds sub nom Susan N. v. Wilson Sch. Dist.*, 70 F.3d 751 (3d Cir. 1995). This interpretation would appear to constitute a return to the exclusivity doctrine of *Smith v. Robinson*, 468 U.S. 992 (1984), which Congress obviously was overruling by adding the 1986 nonexclusivity amendment to the IDEA. See, e.g., *Chuhuran v. Walled Lake Consolidated Sch.*, 22 IDELR 450, 451 (6th Cir. 1995). In any event, for the disposition of the IDEA claim, see *supra* notes 146-47 and accompanying text.

¹⁸¹ *Baltimore City Pub. Sch.*, EHLR 508:127 (Md. SEA 1986). At the time, Maryland had a two-tiered system under the IDEA, which was one of the bases for the case. The parent apparently exhausted this second level of the system because the child was eligible under IDEA rather than purely Sec. 504.

¹⁸² *New York City Sch. Dist. Bd. of Educ.*, 17 EHLR 87 (N.Y. SEA 1990). The requirements, which were delegated under state law to local board policy, included creativity and task commitment.

¹⁸³ See *supra* notes 144-45 and accompanying text.

¹⁸⁴ See, e.g., *Costello v. Mitchell Pub. Sch. Dist.*, 79, 266 F.3d 916 (8th Cir. 2001); *Bercovitch v. Baldwin Sch., Inc.*, 133 F.3d 141 (1st Cir. 1998); *Ballard v. Kinkaid Sch.*, 147 F. Supp. 2d 603 (S.D. Tex. 2001); *T.J.W. v. Dothan City Bd. of Educ.*, 26 IDELR 999 (M.D. Ala. 1997).

¹⁸⁵ See, e.g., *Murphy v. United Parcel Serv.*, 527 U.S. 516 (1999); *Albertsons, Inc. v. Kirkingburg*, 527 U.S. 555 (1999); cf. *Ballard v. Kinkaid Sch.*, 147 F. Supp. 2d 603 (S.D. Tex. 2001) (Irlen lenses mitigated the child's scotopic sensitivity syndrome to the extent that it was not a substantially limiting impairment on learning).

¹⁸⁶ See *supra* note 148 and accompanying text.

¹⁸⁷ *J.D. v. Pawlet Sch. Dist.*, 224 F.3d at 71-72. Somewhat similarly, a Connecticut hearing officer, after upholding without analysis a district's determination that a gifted child with social/emotional problems was eligible under Sec. 504, not the IDEA, decided that an in-district, rather than private placement, was appropriate. In *re Child with Disabilities*, 19 IDELR 198 (Conn. SEA 1992).

¹⁸⁸ On the other hand, the fact finding process is an administrative investigation rather than a quasi-judicial hearing; the agency typically defers substantive matters to the impartial hearing officer mechanism; and the formal remedies are less flexible. See, e.g., *Cunningham v. Riley*, 98 F. Supp. 2d 554 (D. Del. 2000); ZIRKEL, *supra* note 9, at 3:196 and App. 10:1.

¹⁸⁹ In partial contrast, studies of unpublished LOFs found that, while the outcomes predominated in favor of districts, the majority concerned admissions and race or national origin. See Karnes et al., *supra* note 3; Ronald Marquardt & Frances Karnes, *Gifted Education and Discrimination: The Role of the Office for Civil Rights*, 18 J. EDUC. GIFTED. 87 (1994). For a summary of these studies, see Debra Troxclair, *Civil Rights for Gifted*, 9 UNDERSTANDING OUR GIFTED 5 (Winter 1997).

¹⁹⁰ Students who are covered by the IDEA are subsumed within the broader disability definition and, thus coverage, of Sec. 504 and the ADA. For cases not in this predominating admissions category, see *Howard County (MD) Sch.*, 33 IDELR ¶ 193 (OCR 1999) (district had legitimate reasons for not allowing gifted student with learning disability to "skip" from seventh to ninth grade and for not affording him the opportunity to choose a foreign language); *Galt (CA) Joint Elementary Sch. Dist.*, 20 IDELR 441 (OCR 1993) (violation in terms of physical accessibility of gifted program); *Girard (PA) Sch. Dist.*, 18 IDELR 1048 (OCR 1992) (partial, procedural violations).

¹⁹¹ *Sch. Dist. of the City of Saginaw (MI)*, EHLR 352:536 (OCR 1987). The agreed-upon corrective action was (a) to amend the program's application form to provide the applicant's parents and principal the opportunity to note any relevant disability-related factors and (b) to include the child's IEP with the application. *Id.* at 352:538.

¹⁹² See *Palatine (IL) Cmty. Consol. Sch. Dist.*, 42 IDELR ¶ 181 (OCR 2004); *Monterey (CA) Peninsula Unified Sch. Dist.*, 38 IDELR ¶ 220 (OCR 2002); *Bayonne (NJ) Sch. Dist.*, 35 IDELR ¶ 36 (OCR 2001); *Lewisville (TX) Indep. Sch. Dist.*, 33 IDELR ¶ 138 (OCR 1999); *Fulton County (GA) Sch. Dist.*, 28 IDELR 495 (OCR 1997); *San Saba (TX) Indep. Sch. Dist.*, 25 IDELR 755 (OCR 1996); *Darien (CT) Bd. of Educ.*, 22 IDELR 900 (OCR 1995); *Ventura (CA) Unified Sch. Dist.*, 17 EHLR 854 (OCR 1991); *St. Charles (IL) Cmty. Unit Sch. Dist. No. 303*, 17 EHLR 910 (OCR 1990).

¹⁹³ The iceberg-like nature of published case law is an ever-present limitation that has been subjected to only negligible empirical study. See, e.g., Anastasia D'Angelo, Gary Lutz, & Perry Zirkel, *Are Published IDEA Hearing Officer Decisions Representative?*, 14 J. DISABILITY POL'Y STUDIES 241 (2004).

¹⁹⁴ See, e.g., MINORITY STUDENTS IN SPECIAL AND GIFTED EDUCATION (M. Suzanne Donovan & Christopher T. Cross eds. 2002); U.S. DEP'T OF EDUC., NATIONAL EXCELLENCE: A CASE FOR DEVELOPING AMERICA'S TALENT 3 (1993); Coleman et al., *supra* note 39; Foster et al., *supra* text accompanying note 52; Padula, *supra* note 24, at 1362. Alternatively, extending the underrepresentation issue to females, at least in terms of advanced math classes, and attributing the disproportions to the imbalance of opportunities and experience, rather than to the selection process, Gallagher proposed the creation of "programs . . . designed to find and encourage those students with special abilities—regardless of race, gender, or ethnic origin—while they are still in preschool or primary school." James Gallagher, *Education of Gifted Students: A Civil Rights Issue*, 76 PHI DELTA KAPPAN 408, 410 (1995).

¹⁹⁵ Cynthia Brown, *Gifted Identification as a Constitutional Issue*, 19 ROEPER REV. 157, 158 (1997).

¹⁹⁶ Ford et al., *supra* note 25, at 227.

¹⁹⁷ See, e.g., Foster et al., *supra* note 52, at 13.

¹⁹⁸ Brown, *supra* note 195, at 158. The majority of states have special identification provisions specific to various underrepresented groups. See, e.g., Coleman et al., *supra* note 39, at 19 and 22. Yet, relatively few states collect and report data specific to these groups. See, e.g., State of the States, *supra* note 40, at 13.

¹⁹⁹ FRANCES KARNES & RONALD MARQUARDT, GIFTED CHILDREN AND THE LAW: MEDIATION, DUE PROCESS AND COURT CASES 51 (1991).

²⁰⁰ See, e.g., Perry Zirkel, *High Stakes Testing Accommodations and Modifications for Students with Disabilities*, 155 WEST'S EDUC. L. REP. 13 (2001); Perry Zirkel, *Tabular Analysis of the Case Law Concerning High Stakes Testing*, 143 WEST'S EDUC. L. REP. 697, 700-704 (2000). For the most recent example, see *GI Forum Image de Tejas v. Texas Educ. Agency*, 87 F. Supp. 2d 667 (W.D. Tex. 2000).

²⁰¹ See, e.g., *Bester v. Tuscaloosa City Bd. of Educ.*, 722 F.2d 1514 (11th Cir. 1984); *Erik V. v. Causby*, 977 F. Supp. 384 (E.D.N.C. 1997).

²⁰² See, e.g., *Davis v. East Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425, 1440 (5th Cir. 1983); *Hart v. Cmty. Sch. Bd. of Educ.*, 512 F.2d 37, 50 (2d Cir. 1975); *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 501 F.2d 383, 383-84 (4th Cir. 1974); *Diaz v. San Jose Unified Sch. Dist.*, 633 F. Supp. 808, 824 n.20 (N.D. Cal. 1985); cf. *United States v. Yonkers Bd. of Educ.*, 635 F. Supp. 1538 (S.D.N.Y. 1986); *Hobson v. Hansen*, 269 F. Supp. 401, 458 and 515 (D.D.C. 1967), *aff'd sub nom. Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969)(unconstitutional *de facto* segregation).

²⁰³ See, e.g., *Jacksonville Branch, NAACP v. Duval County Sch. Bd.*, 883 F.3d 945, 953 (11th Cir. 1999); *Montgomery v. Starkville Mun. Separate Sch. Dist.*, 854 F.2d 127, 131 (5th Cir. 1988); *Lee v. Autauga County Bd. of Educ.*, 2004 U.S. Dist. LEXIS 20933 (M.D. Ala. 2004); *Tasby v. Moses*, 265 F. Supp. 2d 757, 779 (N.D. Ill. 2003); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist.*, 237 F. Supp. 2d 988, 1023 (E.D. Ark. 2002); *Lee v. Lee County Bd. of Educ.*, 2002 WL 1268395 (M.D. Ala. 2002); *Berry v. Sch. Dist. of City of Benton Harbor*, 195 F. Supp. 2d 971, 983 (W.D. Mich. 2002); *Hampton v. Jefferson County Bd. of Educ.*, 102 F. Supp. 2d 358, 367 (W.D. Ky. 2000); *Keyes v. Congress of Hispanic Educators*, 902 F. Supp. 1274, 1300-01 (D. Colo. 1995); *Tasby v. Woolery*, 869 F. Supp. 454, 466-67 (N.D. Tex. 1994); *Arvizu v. Waco Indep. Sch. Dist.*, 732 F. Supp. 721, 724 (W.D. Tex. 1989); cf. *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 342 (4th Cir. 2001); *Coalition to Save Our Children v. State Bd. of Educ. of Delaware*, 90 F.3d 752, 762-64 (3d Cir. 1996); *Thomas County Branch of NACCP v. City of Thomasville Sch. Dist.*, 299 F. Supp.2d 1340 (M.D. Ga. 2004); *Johnson v. Bd. of Educ. of Champaign Unit Sch. Dist. No. 4*, 188 F. Supp. 2d 944, 979 (C.D. Ill. 2002); *Vaughns v. Bd. of Educ. of Prince George's County*, 18 F. Supp. 2d 569, 593 (D. Md. 1998); *Simmons v. Hooks*, 843 F. Supp. 1296, 1301-03 (E.D. Ark. 1994). But cf. *Reed v. Rhodes*, 1 F. Supp. 2d 705, 737 (N.D. Ohio 1998) (underrepresentation resolved). The limited exception continues where the district fails to engage in good faith efforts to address this problem. See *People Who Care v. Rockford Bd. of Educ.*, 851 F. Supp. 905, 917 (N.D. Ill. 1994).

²⁰⁴ Illustrating the closing of another door, an Illinois appellate court concluded that the state board of education did not have authority, under either the Fourteenth Amendment equal protection clause, federal anti-discrimination legislation, or state gifted-education legislation, to withhold funds from gifted programs that it found to be intentionally racially imbalanced. *Bd. of Educ. of Peoria v. Sanders*, 502 N.E.2d 730, 734-36 (Ill. Ct. App. 1986). In related litigation, the federal courts refused to accord the state board standing to challenge the alleged racial underrepresentation in the district's gifted program. *Bd. of Educ. of Peoria v. Illinois State Bd. of Educ.*, 810 F.2d 707 (7th Cir. 1987).

²⁰⁵ See, e.g., *Rosenfeld v. Montgomery County Pub. Sch.*, 41 F. Supp. 2d 581 (D. Md. 1999), *aff'd in part and vacated in part*, 2001 U.S. App. LEXIS 27330 (4th Cir. 2001). Based on the analogous area of selective, high-demand public schools, this issue can only be regarded as unsettled. Compare, e.g., *Eisenberg v. Montgomery County Pub. Sch.*, 197 F.3d 123 (4th Cir. 1999); *Wessmann v. Gittens*, 160 F.3d 790 (1st Cir. 1998), with *Hunter v. Regents of Univ. of California*, 190 F.3d 1061 (9th Cir. 1999); *Doe v. Kamehameha Sch.*, 295 F. Supp. 2d 1141 (D. Hawaii 2003). The Supreme Court's decision in higher education provides relevant but not complete guidance. *Gratz v. Bollinger*, 539 U.S. 306 (2003).

²⁰⁶ *Ogden (UT) City Sch. Dist.*, 21 IDELR 387 (OCR 1994).

²⁰⁷ *Cumberland County (NC) Sch. Dist.*, 19 IDELR 505 (OCR 1992).

²⁰⁸ *Id.* at 507.

²⁰⁹ *Sumter County (SC) Sch. Dist.*, 25 IDELR 998 (OCR 1996).

²¹⁰ See *supra* note 193 and accompanying text.

²¹¹ Telephone interview with Barbara Shannon, Senior National Attorney, U.S. Office for Civil Rights (Feb. 21, 2003).

²¹² *Id.*

²¹³ Zirkel & Stevens, *supra* note 3, at 367. Rather, while "expanding" modestly, it continues to be relatively "limited." *Id.* at 366.

²¹⁴ See, e.g., David Neal & David Kirp, *The Allure of Legalization Reconsidered: The Case of Special Education*, in *SCHOOL DAYS, RULE DAYS* (David Kirp & Donald Jensen eds., 1986); Steven Goldberg, *The Failure of Legalization in Education: Alternative Dispute Resolution and the Education for All Handicapped Children Act of 1975*, 18 J.L. & EDUC. 441 (1989); Perry Zirkel, *Over-Due Process Revisions for the Individuals with Disabilities Education Act*, 55 MONT. L. REV. 403 (1994); Perry Zirkel, "Transaction Costs" and the IDEA, EDUC. WEEK, May 21, 2003, at 44 and 34. For additional examples, see *supra* note 92 and accompanying text.

²¹⁵ See, e.g., ZIRKEL & ALEMAN, *supra* note 9, at 1:3; Perry Zirkel, *Section 504: The New Generation of Special Education Cases*, 85 WEST'S EDUC. L. REP. 601 (1993).

²¹⁶ *Huldah A. v. Easton Area Sch. Dist.*, 601 A.2d 860, 863 (Pa. Commw. Ct. 1992).

²¹⁷ See, e.g., Lawrence Hardy, *The Politics of Gifted Education*, 190 AM. SCH. BD. J. 26 (August 2003).

²¹⁸ See, e.g., Jonathan Beyer, *A Modest Proposal: Mediating IDEA Disputes without Splitting the Baby*, 28 J.L. & EDUC. 37 (1999); Steven Goldberg, *Special Education Mediations: Responding to a Proposal for Reform*, 30 J.L. & EDUC. 127 (2001).

Appendix A
Table of Cases and Rulings

Appendix A. Table of Cases¹ and Rulings²

I. Administrative Decisions and Interpretations³

Anonymous, Letter to, 22 IDELR 454 (OSEP 1994)

Anonymous, Letter to, 21 IDELR 65 (OSEP 1994)

Abington Sch. Dist., 21 IDELR 508 (Pa. SEA 1994)

Aransas Indep. Sch. Dist., 29 IDELR 141 (Tex. SEA 1998)

Ari P., In re, EHLR 401:268 (Pa. SEA 1988)

Baltimore City Pub. Sch., EHLR 508:127 (Md. SEA 1986)

Bayonne (NJ) Sch. Dist., 35 IDELR ¶ 36 (OCR 2001)

Benjamin R., EHLR 508:183 (Mass. SEA 1986)

Bd. of Educ of the City Sch Dist. of New York, 33 IDELR ¶ 145 (N.Y. SEA 1999)

Bd. of Educ of the City Sch. Dist. of New York, 28 IDELR 1093 (N.Y. SEA 1998)

Bd. of Educ. of the City Sch. Dist. of Mt. Vernon, 25 IDELR 1219 (N.Y. SEA 1997)

Bd. of Educ. of the City Sch. Dist. of Syracuse, 33 IDELR ¶ 257 (N.Y. SEA 2000)

¹ The structure of a typical citation consists of 1) the case name (in italics); 2) the volume no.; 3) the published set of volumes where the full opinion is found (e.g., “IDELR” is the designation for the INDIVIDUALS WITH DISABILITIES EDUCATION LAW REPORTS); 4) the no. of the first page of the opinion, and 5) parenthetical information as to the source (i.e., agency or court) and date of the opinion. Where the case is found in more than publication, the entry contains each of the parallel citations. For the publication that contains all the administrative rulings and most of the court decisions, the following clarifications may be helpful: 1) the older cases are cited to “EHLR,” which was the predecessor publication of IDELR; 2) the EHLR citations have a dual, coded page no. rather than a volume no.; 3) the cases appearing in the most recent volumes of IDELR, starting with volume 30, have a case no. (prefaced by “¶”) rather than a page no. Finally, the entries listed in brackets are superseded by published decisions for the same case at a higher level of administrative or judicial authority, as listed elsewhere in the first or second parts of this Table.

² For the boundaries of this listing, see *supra* notes 1-8 and accompanying text in the main body of this monograph. This table consists of two parts: 1) published administrative decisions and interpretations, and 2) published court decisions.

³ This first part consists of the following published rulings or decisions from federal agencies and state hearing or review officers: 1) letters of findings, as a result of administrative investigations under Sec. 504 and the ADA by the Office for Civil Rights (designated in parentheses by “OCR”); 2) policy letters under the IDEA from the Office of Special Education Programs (designated in parentheses by “OSEP”); 3) and state education agency hearing or review officer decisions under either the IDEA or corresponding state laws (designated by “SEA”).

Branden F., In re, EHLR 509:192 (Pa. SEA 1987)

Burgettstown Area Sch. Dist., 26 IDELR 336 (Pa. SEA 1997)

Charleroi Area Sch. Dist., 43 IDELR ¶ 262 (Pa. SEA 2005)

Charleroi Sch. Dist., 35 IDELR ¶ 148 (Pa. SEA 2001)

Charlotte County (FL) Sch. Dist., 27 IDELR 1067 (OCR 1997)

[*Charlotte County Sch. Bd.*, 27 IDELR 650 (Fla. SEA 1997)]

[*Chester-Upland Sch. Dist.*, 20 IDELR 1107 (Pa. SEA 1994)]

Child with Disabilities, In re, 19 IDELR 198 (Conn. SEA 1992)

Child with Disabilities, In re, 17 EHLR 915 (W. Va. SEA 1990)

City of Erie Sch. Dist., 22 IDELR 394 (Pa. SEA 1995)

Collier County Sch. Bd., 44 IDELR ¶ 80 (Fla. SEA 2005)

Conemaugh Valley Sch. Dist., 34 IDELR ¶ 81 (Pa. SEA 2001)

Conecuh County Bd. of Educ., 23 IDELR 572 (Ala. SEA 1995)

Conrad Weiser Area Sch. Dist., 27 IDELR 100 (Pa. SEA 1997)

Conrad Weiser Sch. Dist., 21 IDELR 759 (Pa. SEA 1994)

Council Rock Sch. Dist., 22 IDELR 397 (Pa. SEA 1995)

[*Craven County Bd. of Educ.*, 27 IDELR 235 (N.C. SEA 1997)]

Crown Point Cmty. Sch. Corp., 32 IDELR ¶ 281 (Ind. SEA 2000)

Cumberland County (NC) Sch. Dist., 19 IDELR 505 (OCR 1992)

Darien Bd. of Educ. EHLR 401:146 (Conn. SEA 1988)

Darien (CT) Bd. of Educ., 22 IDELR 900 (OCR 1995)

Easton Area Sch. Dist., 20 IDELR 497 (Pa. SEA 1993)

Eleven-Year-Old Child, In re, 16 EHLR 569 (Tenn. SEA 1989)

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Galt (CA) Joint Elementary Sch. Dist., 20 IDELR 441 (OCR 1993)
Girard (PA) Sch. Dist., 18 IDELR 1048 (OCR 1992)
Glendale Sch. Dist., 39 IDELR ¶ 109 (Pa. SEA 2003)
Granite Sch. Dist., 22 IDELR 405 (Utah SEA 1995)
Greensburg Salem Sch. Dist., 27 IDELR 525 (Pa. SEA 1997)
Greensburg Salem Sch. Dist., 21 IDELR 1144 (Pa. SEA 1994)
Greenwich Bd. of Educ., 40 IDELR ¶ 223 (Conn. SEA 2003)
Hillsborough (FL) County Sch. Dist., 29 IDELR 731 (OCR 1998)
Howard County (MD) Sch., 33 IDELR ¶ 193 (OCR 1999)
Humble Indep. Sch. Dist., 29 IDELR 833 (Tex. SEA 1998)
[J.D., In re], 26 IDELR 501 (Vt. SEA 1997)
Lancaster Sch. Dist., 40 IDELR ¶ 277 (Pa. SEA 2003)
Lancaster Sch. Dist., 39 IDELR ¶ 118 (Pa. SEA 2003)
Leon County Sch. Bd., 35 IDELR ¶ 168 (Fla. SEA 2001)
Lewisville (TX) Indep. Sch. Dist., 33 IDELR ¶ 138 (OCR 1999)
Los Angeles Unified Sch. Dist., 31 IDELR ¶ 71 (Cal. SEA 1999)
Los Angeles Unified Sch. Dist., 26 IDELR 373 (Cal. SEA 1997)
Lower Merion Sch. Dist., 42 IDELR ¶ 256 (Pa. SEA 2004)
Marshall County Bd. of Educ., 25 IDELR 794 (Ala. SEA 1997)
Minor Child, In re, 17 EHLR 708 (Tenn. SEA 1991)
Monterey Peninsula Unified Sch. Dist., 38 IDELR ¶ 220 (OCR 2002)
Nenana City Pub. Sch., 18 IDELR 489 (Alaska SEA 1991)

New York City Sch. Dist. Bd. of Educ., 17 EHLR 87 (N.Y. SEA 1990)

Ogden (UT) City Sch. Dist., 21 IDELR 387 (OCR 1994)

Palatine (IL) Cmty. Consol. Sch. Dist., 42 IDELR ¶ 181 (OCR 2004)

Pennsbury Sch. Dist., 32 IDELR ¶ 223 (Pa. SEA 1999)

Pennsbury Sch. Dist., 26 IDELR 1208 (Pa. SEA 1997)

Pennsbury Sch. Dist., 22 IDELR 823 (Pa. SEA 1995)

Philadelphia Sch. Dist., 27 IDELR 447 (Pa. SEA 1997)

[*Punxsutawney Area Sch. Dist.*, 26 IDELR 1349 (Pa. SEA 1997)]

Quaker Valley Sch. Dist., 31 IDELR ¶ 255 (Pa SEA 1999)

Radnor Township Sch. Dist., 27 IDELR 526 (Pa. SEA 1997)

St. Martin Parish Pub. Sch., 41 IDELR ¶ 48 (La. SEA 2004)

St. Charles (IL) Cmty. Unit Sch. Dist. No. 303, 17 EHLR 910 (OCR 1990)

San Jose Unified Sch. Dist., 29 IDELR 813 (Cal. SEA 1998)

San Saba (TX) Indep. Sch. Dist., 25 IDELR 755 (OCR 1996)

Santa Ana Unified Sch. Dist., 21 IDELR 1189 (Cal. SEA 1994)

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Steel Valley Sch. Dist., 36 IDELR ¶ 290 (Pa. SEA 2002)

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Wissahickon Sch. Dist., 26 IDELR 1370 (Pa. SEA 1997)

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Bd. of Educ. of Peoria v. Illinois State Bd. of Educ., 810 F.2d 707 (7th Cir. 1987)

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[*Broadley v. Meriden Bd. of Educ.*, 19 IDELR 125 (Conn. Super. Ct. 1994)]

Broadley v. Bd. of Educ. of Meriden, 229 Conn. 1, 639 A.2d 502, 90 Ed.Law Rep. 265, 20 IDELR 1334 (Conn. 1994)

Brownsville Area Sch. Dist. v. Student X, 729 A.2d 198, 134 Ed.Law Rep. 534, 30 IDELR ¶ 866 (Pa. Commw. Ct. 1999), *appeal denied*, 745 A.2d 1225, 560 Pa. 731 (Pa. 1999)

Carlynton Sch. Dist. v. D.S., 38 IDELR ¶ 99 (Pa. Commw. Ct. 2003).

⁴ Parallel citations are provided where the court's opinion is available, alternatively, in more than one published set of volumes. For example, the higher of the two *Broadley* decisions is available in four alternate sources: 1) "Conn." refers to the official reports of the Connecticut Supreme Court; 2) "A.2d" refers to the second series of the Atlantic reporter; 3) "Ed.Law Rep." refers to WEST'S EDUCATION LAW REPORTER; and 4) "IDELR" refers to the INDIVIDUALS WITH DISABILITIES EDUCATION LAW REPORTS.

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[*Davis v. East Baton Rouge Parish Sch. Bd.*, 541 F. Supp. 1048, 5 Ed.Law Rep. 439 (M.D. La. 1982)]

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Gateway Sch. Dist. v. Pennsylvania Dep't of Educ., 559 A.2d 118, 54 Ed.Law 235 (Pa. Commw. Ct. 1989)

Guth v. Christen, 44 IDELR ¶__ (E.D. La. 2005)

Hampton v. Jefferson County Bd. of Educ., 102 F. Supp. 2d 358, 145 Ed.Law Rep. 985 (W.D. Ky. 2000)

[*Hart v. Cmty. Sch. Bd. of Educ.*, 383 F. Supp. 699 and 769 (E.D.N.Y. 1974)]

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[*Montgomery v. Starkville Mun. Separate Sch. Dist.*, 665 F. Supp. 487, 41 Ed.Law Rep. 173 (N.D. Miss. 1987)]

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Scott S. v. Pennsylvania Dep't of Educ., 512 A.2d 790, 33 Ed.Law Rep. 1167 (Pa. Commw. Ct. 1986)

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Unified Sch. Dist. 259 Wichita Pub. Sch., 39 IDELR ¶ 82 (Kan. SEA 2003)

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[*Vaughns v. Bd. of Educ. of Prince George's County*, 574 F. Supp. 1280, 15 Ed.Law Rep. 143 (D. Md. 1983), 598 F. Supp. 1262, 21 Ed.Law Rep. 1228 (D. Md. 1984), 758 F.2d 983, 23 Ed.Law Rep. 1291 (4th Cir. 1985), 941 F. Supp. 579, 113 Ed.Law Rep. 1231 (D. Md. 1996), 980 F. Supp. 834, 122 Ed.Law Rep. 709 (D. Md. 1997)]

Vaughns v. Bd. of Educ. of Prince George's County, 18 F. Supp. 2d 569, 130 Ed.Law Rep. 143 (D. Md. 1998)*

Venus Unified Sch. Dist. v. Daniel S., 36 IDELR ¶ 185 (N.D. Tex. 2002)

Warren G. ex rel. Tom G. v. Cumberland County Sch. Dist. 190 F.3d 80, 138 Ed.Law Rep. 91, 31 IDELR ¶ 27 (3d Cir. 1999)

Woodland Hills Sch. Dist. v. Pennsylvania Dep't of Educ., 516 A.2d 875, 35 Ed.Law Rep. 718 (Pa. Commw. Ct. 1986)

Wright v. Ector County Indep. Sch. Dist., 867 S.W.2d 863, 88 Ed. Law Rep. 859 (Tex. Ct. App. 1993)

York Suburban Sch. Dist. v. S.P., 872 A.2d 1285, 43 IDELR ¶ 140, 197 Ed.Law Rep. 653 (Pa. Commw. Ct. 2005)

Zweifel v. Joint Dist. No. 1, Belleville, 251 N.W.2d 822 (Wis. 1977)

* These decisions are only part of a long judicial history in a desegregation case. Only the latest decisions that cite gifted education, typically under the criterion of student assignments, are cited herein.

Appendix B
Overview of State Legislation and Regulations for Gifted Education

Overview of State Legislation and Regulations for Gifted Education

Information on the following chart is as of August 2005. The headings for each category are as follows:

State Responsibilities: "Fund" = funding;
 "Stan" = standards;
 "TA" = technical assistance

School/District Responsibilities: "ID" = identification;
 "Prog" = programming (on a group, not individualized, basis);
 "TT" = teacher training or qualifications;
 "DC" = data collection;
 "PE" = program evaluation

Individual Rights: "IP" = individualized programming;
 "PS" = procedural safeguards (other than due process hearings);
 "DPH" = due process hearings;
 "CP" = complaint procedure

Other (Miscellaneous)

The entry under each heading, which is only a subjective approximation, is either "○," representing a weak or partial provision, or "●," designating a more specific and strong provision. For the basis and boundaries for the entries, along with an acknowledgment of the two research associates who compiled the original information prior to the update, see *supra* note 43 in the main body, or text, of this monograph.

The footnotes excerpt or paraphrase the relevant legislation and regulations, with citations. The use of "*id.*" in the citation refers, by way of abbreviation, to same source as the previously cited one.

	State Responsibilities			School/District Responsibilities						Individual Rights				Other
	Fund	Stan	TA	ID	Prog	T-T	DC	PE	IP	PS	DPH	CP		
AL	● ¹	● ²		○ ³	○ ⁴	○ ⁵			● ⁶	● ⁷	● ⁸	● ⁹	State high school; ¹⁰ Certification for specialists ¹¹	
AK	● ¹²	○ ¹³		○ ¹⁴	● ¹⁵	● ¹⁶			○ ¹⁷		○ ¹⁸		State council; ¹⁹ Transportation; ²⁰ Charter school ²¹	
AZ	● ²²	○ ²³		● ²⁴	● ²⁵	● ²⁶		○ ²⁷		○ ²⁸			Non-English speakers ²⁹	
AR	○ ³⁰	○ ³¹	○ ³²	● ³³	● ³⁴	● ³⁵	○ ³⁶	● ³⁷		○ ³⁸	○ ³⁹		State advisory council; ⁴⁰ Summer programs; ⁴¹ Special school ⁴²	
CA	● ⁴³	○ ⁴⁴	○ ⁴⁵	○ ⁴⁶	○ ⁴⁷	● ⁴⁸	● ⁴⁹	○ ⁵⁰	○ ⁵¹	○ ⁵²			Parental participation; ⁵³ Special summer school; ⁵⁴ Weekend classes; ⁵⁵ College classes; ⁵⁶ Transportation; ⁵⁷ AP exam funding ⁵⁸	
CO	○ ⁵⁹	○ ⁶⁰	○ ⁶¹	○ ⁶²	○ ⁶³	○ ⁶⁴	○ ⁶⁵	○ ⁶⁶					Applications to programs ⁶⁷	
CT				○ ⁶⁸	○ ⁶⁹	○ ⁷⁰								
DE	○ ⁷¹			○ ⁷²	○ ⁷³								Advisory council; ⁷⁴ Early kindergarten admission ⁷⁵	
FL	○ ⁷⁶			○ ⁷⁷	○ ⁷⁸	○ ⁷⁹	○ ⁸⁰	○ ⁸¹	● ⁸²	● ⁸³	● ⁸⁴	● ⁸⁵		
GA		● ⁸⁶		● ⁸⁷	● ⁸⁸		○ ⁸⁹	○ ⁹⁰		○ ⁹¹	○ ⁹²		Class size; ⁹³ Special summer programs; ⁹⁴ Academic competition ⁹⁵	
HI				○ ⁹⁶	○ ⁹⁷									

	State Responsibilities			School/District Responsibilities						Individual Rights				Other
	Fund	Stan	TA	ID	Prog	TT	DC	PE	IP	PS	DPH	CP		
ID			○ ⁹⁸	○ ⁹⁹	● ¹⁰⁰		○ ¹⁰¹						Scholarship program; ¹⁰² At-risk scholarship program ¹⁰³	
IL	○ ¹⁰⁴	● ¹⁰⁵	● ¹⁰⁶	● ¹⁰⁷	● ¹⁰⁸	○ ¹⁰⁹		○ ¹¹⁰		○ ¹¹¹	○ ¹¹²		Summer programs; ¹¹³ Advisory council; ¹¹⁴ [Chicago - Study Commission ¹¹⁵]	
IN	○ ¹¹⁶		○ ¹¹⁷	○ ¹¹⁸	○ ¹¹⁹	○ ¹²⁰	○ ¹²¹						Summer school ¹²²	
IA	● ¹²³	● ¹²⁴	○ ¹²⁵	○ ¹²⁶	○ ¹²⁷	● ¹²⁸		○ ¹²⁹	● ¹³⁰				Advisory council; ¹³¹ Missing gym; ¹³² International center; ¹³³ Postsecondary ed. options ¹³⁴	
KS	● ¹³⁵			● ¹³⁶	● ¹³⁷				● ¹³⁸	● ¹³⁹	● ¹⁴⁰	● ¹⁴¹	Advisory council; ¹⁴² Honors scholarship program ¹⁴³	
KY	○ ¹⁴⁴			● ¹⁴⁵	● ¹⁴⁶	○ ¹⁴⁷		● ¹⁴⁸	● ¹⁴⁹	● ¹⁵⁰	○ ¹⁵¹		Advisory council; ¹⁵² Special program ¹⁵³	
LA	○ ¹⁵⁴	● ¹⁵⁵	● ¹⁵⁶	○ ¹⁵⁷	○ ¹⁵⁸	○ ¹⁵⁹	○ ¹⁶⁰	○ ¹⁶¹	● ¹⁶²	● ¹⁶³	● ¹⁶⁴	● ¹⁶⁵	Early kindergarten admission; ¹⁶⁶ Special school; ¹⁶⁷ Summer school ¹⁶⁸	
ME	○ ¹⁶⁹	○ ¹⁷⁰	○ ¹⁷¹	● ¹⁷²	● ¹⁷³	● ¹⁷⁴		● ¹⁷⁵		○ ¹⁷⁶	○ ¹⁷⁷		Independent contractors ¹⁷⁸ Summer training institute ¹⁷⁹	
MD	○ ¹⁸⁰	○ ¹⁸¹		○ ¹⁸²	○ ¹⁸³			○ ¹⁸⁴						
MA			○ ¹⁸⁵		○ ¹⁸⁶									
MI	● ¹⁸⁷			○ ¹⁸⁸	○ ¹⁸⁹								Advisory council ¹⁹⁰	
MN	● ¹⁹¹			○ ¹⁹²	○ ¹⁹³	○ ¹⁹⁴								

	State Responsibilities			School/District Responsibilities						Individual Rights				Other
	Fund	Stan	TA	ID	Prog	T'T	DC	PE	IP	PS	DPH	CP		
MS	<input type="radio"/> 195	<input checked="" type="radio"/> 196		<input type="radio"/> 197	<input checked="" type="radio"/> 198				<input type="radio"/> 199				Math/science school, ²⁰⁰ Arts school ²⁰¹	
MO	<input type="radio"/> 202	<input type="radio"/> 203		<input type="radio"/> 204			<input type="radio"/> 205						Local schools for the gifted ²⁰⁶	
MT	<input type="radio"/> 207	<input type="radio"/> 208		<input type="radio"/> 209	<input type="radio"/> 210									
NE	<input type="radio"/> 211	<input checked="" type="radio"/> 212	<input type="radio"/> 213	<input checked="" type="radio"/> 214	<input type="radio"/> 215	<input type="radio"/> 216	<input checked="" type="radio"/> 217	<input checked="" type="radio"/> 218	<input type="radio"/> 219	<input type="radio"/> 220	<input type="radio"/> 221		Authorization for intermediate units to provide services ²²²	
NV	<input checked="" type="radio"/> 223	<input checked="" type="radio"/> 224		<input checked="" type="radio"/> 225	<input checked="" type="radio"/> 226	<input checked="" type="radio"/> 227				<input type="radio"/> 228	<input type="radio"/> 229	<input type="radio"/> 230		
NH														
NJ ²³¹			<input checked="" type="radio"/> 232	<input checked="" type="radio"/> 233	<input type="radio"/> 234	<input checked="" type="radio"/> 235		<input checked="" type="radio"/> 236	<input type="radio"/> 237		<input type="radio"/> 238		State commission ²³⁹	
NM	<input checked="" type="radio"/> 240	<input checked="" type="radio"/> 241		<input checked="" type="radio"/> 242	<input type="radio"/> 243			<input checked="" type="radio"/> 244	<input checked="" type="radio"/> 245	<input checked="" type="radio"/> 246	<input checked="" type="radio"/> 247	<input checked="" type="radio"/> 248		
NY	<input type="radio"/> 249	<input type="radio"/> 250	<input type="radio"/> 251	<input checked="" type="radio"/> 252	<input checked="" type="radio"/> 253	<input type="radio"/> 254				<input checked="" type="radio"/> 255			Advisory council ²⁵⁶	
NC		<input checked="" type="radio"/> 257	<input type="radio"/> 258	<input type="radio"/> 259	<input type="radio"/> 260	<input checked="" type="radio"/> 261		<input type="radio"/> 262	<input type="radio"/> 263	<input type="radio"/> 264	<input type="radio"/> 265			
ND				<input type="radio"/> 266	<input type="radio"/> 267	<input checked="" type="radio"/> 268								
OH			<input checked="" type="radio"/> 269	<input checked="" type="radio"/> 270	<input checked="" type="radio"/> 271		<input checked="" type="radio"/> 272			<input checked="" type="radio"/> 273	<input type="radio"/> 274			
OK	<input type="radio"/> 275	<input checked="" type="radio"/> 276	<input checked="" type="radio"/> 277	<input type="radio"/> 278	<input type="radio"/> 279	<input checked="" type="radio"/> 280	<input type="radio"/> 281	<input type="radio"/> 282		<input type="radio"/> 283	<input type="radio"/> 284		Advisory council, ²⁸⁵ Math/science school ²⁸⁶	
OR	<input checked="" type="radio"/> 287	<input type="radio"/> 288			<input type="radio"/> 289	<input type="radio"/> 290				<input type="radio"/> 291		<input type="radio"/> 292		
PA	<input checked="" type="radio"/> 293	<input checked="" type="radio"/> 294		<input checked="" type="radio"/> 295	<input checked="" type="radio"/> 296				<input checked="" type="radio"/> 297	<input checked="" type="radio"/> 298	<input checked="" type="radio"/> 299		Transportation ³⁰⁰	
RI		<input type="radio"/> 301		<input type="radio"/> 302	<input type="radio"/> 303			<input type="radio"/> 304					Advisory council, ³⁰⁵ Gifted academy, ³⁰⁶ Gifted academy for LEP ³⁰⁷	

	State Responsibilities			School/District Responsibilities						Individual Rights				Other
	Fund	Stan	TA	ID	Prog	TT	DC	PE	IP	PS	DPH	CP		
SC	<input type="radio"/> 308	<input checked="" type="radio"/> 309		<input type="radio"/> 310	<input checked="" type="radio"/> 311								Math and science school; ³¹² Emphasis on teaching; ³¹³ Arts school; ³¹⁴ College scholarship ³¹⁵	
SD ³¹⁶														
TN	<input checked="" type="radio"/> 317	<input checked="" type="radio"/> 318		<input type="radio"/> 319	<input type="radio"/> 320	<input type="radio"/> 321	<input type="radio"/> 322		<input checked="" type="radio"/> 323	<input checked="" type="radio"/> 324	<input checked="" type="radio"/> 325	<input checked="" type="radio"/> 326	Enrollment in college courses; ³²⁷ School construction; ³²⁸ Use of private schools; ³²⁹ Advisory council; ³³⁰ Joint study committee; ³³¹ Noncompliance; ³³² Transportation; ³³³ Special Ed. Services Ass'n ³³⁴	
TX	<input checked="" type="radio"/> 335	<input checked="" type="radio"/> 336		<input type="radio"/> 337	<input checked="" type="radio"/> 338	<input checked="" type="radio"/> 339							LD discrimination prohibited; ³⁴⁰ Electronic course; ³⁴¹ School counselor; ³⁴² Leadership school; ³⁴³ Math/science school ³⁴⁴	
UT	<input checked="" type="radio"/> 345			<input checked="" type="radio"/> 346	<input checked="" type="radio"/> 347									
VT	<input type="radio"/> 348			<input checked="" type="radio"/> 349	<input type="radio"/> 350	<input type="radio"/> 351								
VA				<input type="radio"/> 352	<input checked="" type="radio"/> 353	<input type="radio"/> 354	<input type="radio"/> 355	<input checked="" type="radio"/> 356		<input type="radio"/> 357	<input type="radio"/> 358		Gifted ed. consortium; ³⁵⁹ Special program; ³⁶⁰ Academic opportunities pilot program ³⁶¹	
WA	<input type="radio"/> 362	<input checked="" type="radio"/> 363	<input type="radio"/> 364	<input checked="" type="radio"/> 365	<input type="radio"/> 366								Early college entrance program ³⁶⁷	
WV		<input checked="" type="radio"/> 368		<input type="radio"/> 369	<input type="radio"/> 370		<input type="radio"/> 371		<input checked="" type="radio"/> 372	<input checked="" type="radio"/> 373	<input checked="" type="radio"/> 374	<input checked="" type="radio"/> 375	Vo-tech academy ³⁷⁶	
WI		<input checked="" type="radio"/> 377		<input type="radio"/> 378	<input type="radio"/> 379	<input checked="" type="radio"/> 380								

	State Responsibilities			School/District Responsibilities						Individual Rights				Other
	Fund	Stan	TA	ID	Prog	TT	DC	PE	IP	PS	DPH	CP		
WY	<input type="radio"/> 381	<input checked="" type="radio"/> 382		<input type="radio"/> 383			<input checked="" type="radio"/> 384							
DC														
PR		<input type="radio"/> 385			<input type="radio"/> 386								Music scholarship ³⁸⁷	

ALABAMA

¹ **Funding** - Each school board shall set aside from its revenues from all such sources such amounts as are needed to carry out the provisions of this chapter, if such funds are available without impairment of regular classes and services provided for nonexceptional children. ALA. CODE § 16-39-3.

² **Standards** - Each school board shall provide not less than 12 consecutive years of appropriate instruction and special services for exceptional children, beginning with those six years of age, in accordance with the provisions of this chapter. *Id.* § 16-39-3.

³ **Identification** - A placement committee is a committee designated and appointed by the superintendent for determining the eligibility of exceptional children for placement in special school programs or classes. The committee shall be composed of representatives from the fields of medicine, education, and psychology whenever practicable. The committee, after study of all data available on each exceptional child, shall make recommendations concerning each child's admission to a school program or class or withdrawal from a school program or class. *Id.* § 16-39-2. Intellectually gifted children and youth are those who perform at high levels in academic or creative fields when compared with others of their age, experience, or environment. These children and youth require services not ordinarily provided by the regular school program. Children and youth possessing these abilities can be found in all populations, across all economic strata, and in all areas of human endeavor. Each LEA must develop and implement procedures to ensure that students who exhibit gifted characteristics are referred for gifted services. Efforts must be made to identify students among all populations and socio-economic groups as well as students with disabilities and students who are Limited English Proficient (LEP). Parents, teachers, and students must be informed of these procedures. All second grade students will be observed as potential gifted referrals using a gifted behavior checklist provided by the State Department of Education. Standard Referral. A student may be referred for consideration for gifted services by teachers, counselors, administrators, parents or guardians, peers, self, and other individuals with knowledge of the student's abilities. Standard referrals may occur at any time for students in grades K-12. Parents must be informed when students are referred. Gifted Referrals Screening Team (GRST). Each local education agency must establish a team(s) to review referrals to determine if further assessment is indicated. Each team should consist of at least three individuals including someone knowledgeable about the student and someone knowledgeable about gifted education. Screening must be completed prior to completing other individually administered assessments. Aptitude should be assessed through an individual or group test of intelligence or creativity. At least three examples of performance must be included from the following list: Achievement test scores, Portfolio, Product, Grades, Work samples, Leadership/motivation subscale scores from a behavior rating scale, or Other documentation as deemed appropriate by the GRST. Characteristics. A behavior rating scale designed to assess gifted behaviors should be used. Information must be gathered to determine if there are any environmental, cultural, economic, language differences, or a disabling condition that might mask a student's true abilities and thereby affect student performance in the areas evaluated. Tests and evaluative materials selected and administered should be sensitive to cultural, economic, and linguistic differences. For special populations such as the sensory impaired, LEP, or physically impaired, assessments used must be appropriate for their special needs. Each local education agency must establish an Eligibility Determination Team(s) (EDT) to implement procedures to determine eligibility of students for gifted services. Each team should consist of at least three individuals including someone knowledgeable about the student being assessed, someone knowledgeable about gifted students in general, and someone able to interpret the assessment information gathered. A student may be determined automatically eligible for gifted services when: the obtained full scale/composite IQ score on an individually administered test of intelligence (NOT a screener) is two standard deviations above the mean or higher; or either the Verbal Average Standard score or Figural Creativity Index of the Torrance Tests of Creative Thinking is at or above the 97 national percentile. When students do not meet the automatic criteria described above, a matrix of multiple criteria must be utilized to determine eligibility. The matrix, developed by the State Department of Education, requires information in the areas described above in Ala. Admin. Code. r. 290-8-9-.13(4)(a)1.-5. ALA. ADMIN. CODE r. 290-8-9-.14.

⁴ **Programming** - State of Alabama shall prepare and adopt an incremental five-year plan commencing with the school year beginning in September 1972 for the implementation of appropriate instruction and special services for exceptional children residing in its school district, including a reasonable procedure for obtaining certifications of exceptional children by a specialist. ALA. CODE § 16-39-4. The State Board of Education shall adopt regulations covering minimum standards of instruction and special services to be provided for each type of exceptionality at each age or grade level. ALA. CODE § 16-39-5. Local education agencies must develop, and implement, according to state guidelines, a written plan for serving gifted students. *Id.* r. 290-8-9-.14.

⁵ **Teacher Training** - The State Board of Education is authorized to make training grants to professional personnel who seek special training in exceptional child education to qualify said personnel to meet professional requirements set forth in said state board's regulations and shall be responsible for the administration of said program. ALA. CODE § 16-39-12. The State Board of Education shall adopt regulations covering reasonable qualifications for teachers, instructors, therapists and other personnel needed to work with exceptional children. *Id.* § 16-39-5. In addition to meeting rules .04 and .34, the curriculum to prepare the prospective teacher of the gifted shall provide the teacher with the following knowledge and ability: 1) knowledge of definitions, characteristics, prevalence, and the incidence of giftedness; cultural and socioeconomic factors that impact on the identification and instruction of the gifted, with particular emphasis on special populations, including minority students, underachieving students, and students with physical and emotional disabilities; the curriculum in elementary and secondary education; creative and productive thought, critical thinking, leadership training, and visual and performing arts; Programming models for gifted students; and counseling techniques for gifted students; 2) ability to: recognize unique cognitive and social characteristics and learning styles of gifted students; Select, utilize, and evaluate assessment instruments appropriate to the unique needs of gifted students; select, design, utilize, and evaluate curriculum materials for gifted students; maximum the use of technological advances in the instructional program; apply diverse theories and various approaches to manage behavior; Incorporate the contributions and participation of parents and other teachers in the instructional program; solicit, manage, and evaluate the support and contribution of various professional groups and community services, including the development of mentor relationships; and Incorporate creative and productive thought, critical thinking, leadership skills, and visual and performing arts in the gifted curriculum. ALA. ADMIN. CODE r. 290-3-3-.38.

⁶ **Individualized Programming** - Each gifted student must have a written plan that describes the services to be provided. GEPs may be developed on an individual basis, group basis, or both. School officials must provide prior notice to parents regarding the date, time, and location of the GEP meeting. The GEP must be developed within thirty calendar days after the student has been determined eligible for gifted education services. The participants must include the gifted education teacher, the parents, the student (when appropriate), and other persons at the discretion of the parents or local education agency (i.e., the general education teacher or LEA representative). When parents cannot attend the GEP meeting, the meeting can be conducted with the teacher (or other staff member responsible for the student's program) and the student (when appropriate). A GEP for gifted students must contain the following information: name of student, implementation to and from dates, individualized goals or program description, placement, transportation, if appropriate, and dated signatures of each GEP Committee member. The GEP Committee must meet at least once each year to review and, if appropriate, revise the GEP. If the parents or the student's teacher have reason to believe that the GEP needs revision prior to the annual meeting, either party may request a GEP meeting to consider revision. When a GEP Committee meeting has been requested, the LEA must conduct the meeting within thirty calendar days. A copy of the GEP must be provided to parents upon request.... The GEP Committee will determine the appropriate placement for the provision of gifted services to a student. Local education agencies must utilize a variety of service options that may include but are not limited to resource room pull-out, regular class services (i.e., compacting, cluster grouping, subject acceleration) grade acceleration, mentorships, ability groupings, advanced classes, academic competition, and independent study. *Id.* r. 290-8-9-.14.

⁷ **Procedural Safeguards** - No child shall be given special services under the terms of this chapter as an exceptional child until he is properly classified as an exceptional child; provided, that the child's parent or guardian shall be informed of the reasons for such classification. The principal of the school in which an exceptional child is taught shall keep a written record of the case history of each exceptional child, showing the reason for any withdrawal of such exceptional child from the regular school program in the public school and his enrollment in or withdrawal from a special school program for exceptional children. Such confidential record shall be available for inspection by appropriate school officials and appropriate faculty at any time with the consent of the school principal. ALA. CODE § 16-39-8. The local education agency must obtain written parental consent prior to evaluating a student. An identified gifted student may be placed in a program for the gifted upon written approval of the parents. Participation in this program is not mandatory should the parent and/or the student choose not to participate. A copy of the rights pertaining to gifted education services must be given to the parents with the consent for evaluation. Each local education agency must develop and implement procedures to evaluate students referred for gifted services. Eligibility must be determined within ninety days of the referral. The local education agencies must provide written notice to parents regarding the eligibility decision. Procedural Safeguards. Each LEA must establish a grievance procedure, consistent with local policy, through which parents and students may resolve concerns regarding identification, evaluation, eligibility, or services for gifted students. *Id.* r. 290-8-9-.14.

⁸ **Due Process Hearing** - When attempts to resolve the issue at the local level fail, parents may utilize the Complaint Procedures, Mediation, or Impartial Due Process Hearing Procedures developed by the State Department of Education as an appropriate administrative remedy for matters pertaining to violations of state law or regulation regarding the identification, evaluation, eligibility, or services for gifted students. To obtain a copy of these procedures, call Special Education Services at (334) 242-8114, or write to Special Education Services, Post Office Box 302101, Montgomery, Alabama 36130-2101. *Id.* r. 290-8-9-.14. Attorney's fees are not available for prevailing parents in the due process hearings for gifted, as contrasted with disabled, students. E-mail from Barry Blackwell, Educational Administrator, Alabama State Department of Education (July 5, 2004) (on file with author).

⁹ **Complaint Procedure** - *Id.*

¹⁰ **Other** - There is hereby created a pilot program to be called the Alabama High School of Mathematics and Science, which shall be a residential institution located in Mobile County, at a site to be determined by the board of directors. The school shall open and formally begin operation with the fall semester of 1991. ALA. CODE § 16-26A-3. There is created the Alabama School of Fine Arts, which shall be a residential and commuter institution located in the City of Birmingham, Jefferson County. *Id.* § 16-26B-3.

¹¹ **Other** - The State Board of Education shall adopt regulations covering the qualifications of specialists for each type of exceptionality and standards for certification of exceptional children. *Id.* § 16-39-5.

ALASKA

¹² **Funding** - Special needs funding is available to a district to assist the district in providing special education, gifted and talented education, vocational education, and bilingual education services to its students. ALASKA STAT. § 14.17.420. Each district that files a plan under AS 14.17.420(b) to provide special education and related services to gifted children is eligible for state financial aid under AS 14.17.300 - 14.17.490. ALASKA ADMIN. CODE tit. 4, § 52.865. State reimbursement for transportation of gifted children shall be as provided for transportation of all other pupils, except that eligibility for reimbursement is not limited to transportation between the child's residence and the school, but shall also include transportation between a school and another location of instruction as routinely required by the gifted education program of the district. ALASKA STAT. § 14.30.352.

¹³ **Standards** - Every school district shall establish educational services for gifted children that provide for student identification, student eligibility, student learning plans, and parental and student participation, including an appropriate review process, consistent with regulations adopted by the department. *Id.* § 14.30.352.

¹⁴ **Identification** - A district education program for gifted children must, at a minimum, provide for student identification [and] student eligibility criteria. ALASKA ADMIN. CODE tit. 4, § 52.800. "Gifted" means exhibiting outstanding intellectual ability, or creative talent. *Id.* § 52.890.

¹⁵ **Programming** - If a district offers gifted and talented education, vocational education, or bilingual education services, in order to receive funding under (a)(1) of this section, the district must file with the department a plan that indicates the services that will be provided to students who receive these services. ALASKA STAT. § 14.17.420. Each district shall administer a program offering education services in order to provide an appropriate educational program for gifted children enrolled in the district's schools, including charter schools and the district's correspondence study program. A district that offers a statewide correspondence study program that enrolls children who reside outside of the district shall administer a program offering education services in order to provide an appropriate educational program for gifted children. ALASKA ADMIN. CODE tit. 4, § 52.800.

¹⁶ **Teacher Training** - A person employed as a teacher of gifted children must possess a Type A certificate issued under 4 AAC 12.020 and must have completed six semester hours in gifted education. ALASKA ADMIN. CODE tit. 4, § 12.026.

¹⁷ **Individualized Programming** - A district education program for gifted children must, at a minimum, provide for . . . a process for development of student learning plans, that provides for teacher, parental and student participation.... *Id.* § 52.800.

¹⁸ **Due Process Hearing** - A district education program for gifted children must, at a minimum, provide . . . a review process that allows parents, on behalf of their child, to challenge and to have reviewed the district's program or an individual student learning plan provided for their child. *Id.*

¹⁹ **Other** - The Governor's Council on Disabilities and Special Education will serve as a forum for discussing issues related to gifted and special education, as well as act as an advocate for the rights of children who are gifted or disabled. ALASKA STAT. § 47.80.090.

²⁰ **Other** - State reimbursement for transportation of gifted children shall be as provided for transportation of all other pupils, except that eligibility for reimbursement is not limited to transportation between the child's residence and the school, but shall also include transportation between a school and another location of instruction as routinely required by the gifted education program of the district. *Id.* § 14.30.352. The department will provide supplemental state aid for the transportation of children receiving education services under this chapter in accordance with AS 14.30.352(b). ALASKA ADMIN. CODE tit. 4, § 52.870.

²¹ **Other** - The local school board shall include each document necessary to conduct a thorough review of the charter school, including plans for serving special education, vocational education, gifted, and bilingual students ALASKA ADMIN. CODE tit. 4, § 33.110.

ARIZONA

[N.B. The state passed, and the governor signed on 4/11/05, new legislation that separates gifted pupils from the special education law applicable to children with disabilities. The tentative text of new provisions, subject to official codification, is listed here under the respective tabular categories. See <http://www.azleg.state.az.us> - Bill No. 1072.]

²² **Funding** - If the governing board fails to submit the scope and sequence for gifted pupils as prescribed in the subsection B of this section or if the scope and sequence submitted by the governing board fails to receive full approval by the superintendent of public instruction, the school district is not eligible to receive state aid for the group A weight for three per cent of the student count and shall compute the weighted count for pupils in group A as provided in § 15-943 by adjustment of the student count accordingly. On or before December 1 of each year the department of education shall notify those school districts that appear to be in noncompliance and note the specific areas of deficiencies that must be corrected on or before April 1 of the following year to be eligible to use the actual student count rather than adjusted student count. On or before April 15 of each year, the department shall notify those districts that must use and adjusted student count for the next fiscal year's state aid as provided in chapter 9 of this title. ARIZ. REV. STAT. § 15-770.02(C). The annual financial report of a school district as prescribed in § 15-904 shall include the amount of monies spent on programs for gifted pupils and the number of pupils enrolled in programs or receiving services by grade level. *Id.* § 15-770.02(D). School districts that comply with § 15-779.01 and that submit evidence that all district teachers who have primary responsibility for teaching gifted pupils have obtained or are working toward obtaining the appropriate certification endorsement as required by the state board of education may apply to the department of education for additional funding for gifted programs equal to 55 dollars per pupil for 3 per cent of the district's student count, or 1,000 dollars, whichever is more. As an alternate to the individual district application process, a governing board must request that a county school superintendent apply on its behalf as part of an educational consortium. The consortium may include school districts in more than one county. If additional monies are available after funding all eligible school districts or educational consortia, the additional monies shall be used too increase the per pupil amount for each district or educational consortium funded. If sufficient monies are not available to meet all requests, the state board of education shall determine the allocation of monies based on the comprehensiveness across grade levels, appropriateness to the population being served, utility and demonstrated effectiveness of the sequence and the likelihood of the school district's or educational consortium's proposed program successfully meeting the needs of the gifted pupils. A school district shall include the monies it receives for gifted programs and services under this section of budget. *Id.* § 15-779.03(A).

²³ **Standards** - A. The governing board of each school district shall develop a scope and sequence for the identification process and curriculum modifications for gifted pupils to ensure that gifted pupils receive gifted education commensurate with their academic abilities and potentials. *Id.* § 15-770.02. The governing board shall submit the scope and sequence to the department of education for approval on or before July 1 if any changes were made during the previous fiscal year. *Id.* § 15-779.02(B).

²⁴ **Identification** – The governing board of each school district shall . . . (1) provide for routine screening for gifted pupils using one or more tests adopted by the state board as prescribed in §§ 15-203(A)(15) and 15-779.01. School districts may identify any number of pupils as gifted but shall identify as gifted at least those pupils who score at or above the ninety-seventh percentile, based in national norms, on a test adopted by the state board of education. *Id.* § 15-770.02(A)(1). "Gifted pupil" means a child who is lawful school age, who due to superior intellect or advanced learning disability, or both, is not afforded an opportunity for otherwise attainable progress and development in a regular classroom instruction and who needs gifted instruction or advanced supplemental services, or both, to achieve at levels commensurate with the child's intellect and ability. *Id.* § 15-779(2).

²⁵ **Programming** - (A) The governing board of each school district shall provide gifted education to gifted pupils identified in this article. (B) The governing board may modify the course of study and adapt teaching methods, materials, and techniques to provide educationally for those pupils who are gifted and possess superior intellect or advanced learning ability, or both, but may have an educational disadvantage resulting from a disability or a difficulty in writing, speaking or understanding the English language to an environmental background in which a language other than English is primarily or exclusively spoken. Programs and services provided for gifted pupils as provided in this subsection may not be separate from programs provided for other gifted pupils and may not be provided in faculties separate from the faculties used for other gifted pupils. Identification of gifted pupils as provided in this section shall be based on the

tests or subtests that are demonstrated to be effective with special populations including those with a disability or difficulty with the English language. *Id.* § 15-779.01. [The governing board shall also] include an explanation of how gifted education for gifted pupils differs from regular education in such arenas as: (a) content, including a broad based interdisciplinary curriculum; (b) process, including higher level thinking skills; (c) product, including variety and complexity; (d) learning environment, including flexibility. *Id.* § 15-779.02(A)(2). (C) The governing board shall submit the scope and the sequence to the department of education for approval on or before July 1 if any changes were made during the previous fiscal year. All school districts shall provide to gifted pupils education commensurate with their academic abilities and potentials. "Gifted Education" Means expanded academic course offerings or advanced supplemental services, or both, as may be required to provide an educational program that is commensurate with the academic abilities and potential of a gifted pupil. *Id.* § 15-779(1).

²⁶ **Teacher Training** - A gifted endorsement is required of individuals whose primary responsibility is teaching gifted students. The provisional gifted endorsement is valid for 3 years and is not renewable. The requirements are an Arizona elementary, secondary, or special education certificate and 1 of the following: Two years of verified teaching experience in which most students were gifted; Ninety clock hours of verified in-service training in gifted education; or six semester hours of courses in gifted education. Requirements for the gifted endorsement are: an Arizona elementary, secondary, or special education certificate; completion of 9 semester hours of upper division or graduate level courses in an academic discipline such as science, mathematics, language arts, foreign language, social studies, psychology, fine arts, or computer science; and two of the following: three years of verified teaching experience in gifted education as a teacher, resource teacher, specialist, or similar position, verified by the district; or a minimum of 135-clock hours of verified in-service training in gifted education; or completion of 12 semester hours of courses in gifted education. District in-service programs in gifted education may be substituted for up to 6 semester hours of gifted education courses. Fifteen clock hours of in-service is equivalent to 1 semester hour. In-service hours shall be verified by the district superintendent or personnel director. Practicum courses shall not be accepted toward this requirement; or completion of 6 semester hours of practicum or 2 years of verified teaching experience in which most students were gifted.

²⁷ **Program Evaluation** - School districts that receive additional assistance as provided in this section shall conduct evaluation studies of their programs for the gifted and submit information to the department of education regarding the results of their studies. The department shall develop evaluation guidelines, reporting forms, procedures and time lines. *Id.* § 15-770.02(B).

²⁸ **Procedural Safeguards** - Each LEA shall provide the following information to all parents or legal guardians: definition of a gifted child; services mandated for gifted students by the state of Arizona; services available from the LEA; [and] written criteria of the LEA for referral, screening, selection and placement. Each LEA shall develop policies and procedures which ensure that parents or legal guardians are: given the opportunity to have their children tested; given advance notice of the week that their children are to be tested; given the opportunity to withhold permission for testing. Each LEA shall: make testing available for students K-12 on a periodic basis but not less than 3 times per year; inform parents or legal guardians of the results of the district-administered test within 30 school days of determining the test results; [and] upon request, explain test results to parents or legal guardians. The scope and sequence shall be a written program description which demonstrates articulation across all grades and schools to ensure opportunities for continuous progress and shall include: statement of purpose; general population description; identification process and placement criteria including provisions for special populations; goals and objectives; curriculum, differentiated instruction, and supplemental services; program models; time allocations for services; [and] procedures and criteria for evaluation of student and program outcomes. ARIZ. ADMIN. CODE R7-2-406.

²⁹ **Other** - [Program adjustment is authorized for] gifted students who have] an educational disadvantage resulting from a disability or a difficulty in writing, speaking, or understanding the English language due to an environmental background in which a language other than English is primarily or exclusively spoken. See *supra* note 25.

ARKANSAS

³⁰ **Funding** - The Department of Education is designated as the state agency to receive and disburse federal funds designed to improve educational opportunities for gifted and talented children. ARK. CODE ANN. § 6-42-105.

³¹ **Standards** - It is the policy of this state to assist school districts in providing programs designed to meet the unique educational needs of gifted and talented children. *Id.* § 6-42-101. No school district may establish criteria which are less than the standards required in this document and the Arkansas Department of Education's Rules and Regulations for Gifted and Talented Program Approval. ARKANSAS DEPARTMENT OF EDUCATION, GIFTED AND TALENTED – RULES AND REGULATIONS: PROGRAM APPROVAL STANDARDS (1999), at http://arkedu.state.ar.us/pdf/rr_giftedtalented_99.pdf.

³² **Technical Assistance** - Education service cooperatives may provide shared educational programs and services such as programs for gifted and talented ARK. CODE ANN. § 6-13-1017(c). There is established in the Section for the Education of Exceptional Children in the Department of Education, an Office for the Education of Gifted and Talented Children to be headed by an administrator who shall be qualified by education, training, and experience to direct the state program for gifted and talented children. *Id.* § 6-42-103. The State Board of Education is authorized to cooperate with other public and private agencies in developing programs for gifted and talented children. *Id.* § 6-42-107. Each district should develop an inventory of community resources that can be used to meet the needs of gifted and talented students. Standards of Evidence verifying compliance with this regulation are provided. Ark. Rules and Regs., *supra* note 31, at § 4.00.

³³ **Identification** - Specific eligibility requirements for gifted and talented programs in each school district shall be determined by the school district board of directors. In order to qualify for such financial assistance as may be available from the state, school district eligibility requirements must be consistent with the guidelines for gifted and talented programs adopted by the State Board of Education with the advice of the Advisory Council for the Education of Gifted and Talented Children. ARK. CODE ANN. § 6-42-106. Gifted and talented children and youth are those of high potential or ability whose learning characteristics and educational needs require qualitatively differentiated educational experiences and/or services. Possession of these talents and gifts, or the potential for their development, will be evidenced through an interaction of above average intellectual ability, task commitment and/or motivation, and creative ability. Ark. Rules and Regs., *supra* note 31, at § 3.01. The process for identifying students has several stages. Nominations are sought from a wide variety of sources to ensure that all potentially gifted and talented students have an opportunity to be considered. Data are collected (on the nominated students) to aid in making decisions for selection of students who are in need of special education services. Placement of students is made in an appropriate program option. Ark. Rules and Regs., *supra* note 31, at § 7.01. Identification procedures are clearly stated, uniformly implemented, and communicated to the entire school staff. Ark. Rules and Regs., *supra* note 31, at § 7.02. A committee chaired by a trained specialist in gifted education and including administrators, teachers, and/or counselors collects and analyzes data, maintains appropriate records, and makes professional decisions on placement of students. Ark. Rules and Regs., *supra* note 31, at § 7.03. The identification process yields information obtained through a variety of procedures and from multiple independent sources. Procedures for obtaining information about students include at least two objective assessment methods such as group and individual tests of ability, achievement, and creativity. Procedures for obtaining information about students include at least two subjective assessment methods such as checklists, rating scales, biographical data, product evaluations, auditions, interviews, and grades. Information about students is obtained from multiple sources, which may include teachers, counselors, parents, community members, peers, and students' themselves. Ark. Rules and Regs., *supra* note 31, at § 7.04. Student placement decisions are based on multiple criteria. No single criterion or cut-off score is used to include or exclude a student. Ark. Rules and Regs., *supra* note 31, at § 7.05. Procedures used in the identification process are non-discriminatory with respect to race, cultural or economic background, religion, national origin, sex, or handicapping condition. Ark. Rules and Regs., *supra* note 31, at § 7.06. Instructionally useful information about individual students obtained during the identification process is communicated to the appropriate members of the instructional staff

regardless of final placement. Ark. Rules and Regs., *supra* note 31, at § 7.07. The purpose of careful and comprehensive identification procedures is to find and serve as many students as possible who need special programs to develop their exceptional abilities. It is important to identify students with potential for outstanding achievement. The emphasis in identification procedures should be on student need for specialized services. A comprehensive identification plan should be based on the best available research and recommendations of experts in the field. It must take into account the local student population and should ensure inclusion of potentially gifted and talented students from all cultural and economic backgrounds. The list of nominated students must be representative of the entire student population in terms of race, sex, and economic status. Each district's written identification procedures must include the following: Students must be identified as gifted and talented according to Arkansas Department of Education, Office of Gifted Education, guidelines. A process to explain the nomination procedure and seek nominations from parents, school personnel, students, and community members. An identification committee of at least five members, made up of professional educators, chaired by a trained specialist in gifted education. Provision for review of school records of nominated students and the gathering and compilation of additional data where needed. Parental consent in writing if additional individual testing is required. Assurance of confidentiality of records. A policy for placement decisions based on multi-criteria, including both objective and subjective data, with the stipulation that no single criterion or cut-off score is used to include or exclude a student. Use of at least two objective and two subjective measures (one of which must assess creativity), chosen from the following: OBJECTIVE: Standardized mental ability test; Standardized achievement test; Test of creative ability. SUBJECTIVE: Behavioral checklists (Parent and/or teacher); Rating Scales; Evaluations of products; Student interviews; Biographical inventories; Grades; Auditions. Assurance that procedures are non-discriminatory. Provision that educationally useful, student-specific information obtained in the identification process is communicated to the appropriate instructional staff. A process by which parents are informed of placement decisions, give permission for their child to participate, and have the opportunity to appeal a decision with which they disagree. Provisions for continuous evaluation of the identification process: Opportunity for consideration for placement at any time; Annual review of students' placement; Policies for exit from a program; and Maintenance of records of placement decisions and data on all nominated students for a minimum of five years or for as long as needed for educational decisions. A list of standards and evidence verifying compliance is provided in the regulations. Ark. Rules and Regs., *supra* note 31, at § 7.00.

³⁴ **Programming** - The advisory council shall participate with the staff of the department in determining the need for educational programs to serve gifted and talented children to be operated by the department, in selecting the sites for educational programs, in establishing student selection criteria for participation in the programs, in selecting students to participate in the programs, and in selecting faculty and staff for the programs. ARK. CODE ANN. § 6-42-104. The Department of Education shall develop such plans and procedures as may be required in order to receive and disburse such federal funds. *Id.* § 6-42-105. A program is systematically developed, with long-range goals that are coordinated to guide the development of gifted students from the time they are identified through graduation from high school. Ark. Rules and Regs., *supra* note 31, at § 8.01. A table of organization is developed which clearly delineates roles, responsibilities, and coordination procedures. Ark. Rules and Regs., *supra* note 31, at § 8.02. Students' placement in program options is based on their abilities, needs and interests, and resources of the district. Ark. Rules and Regs., *supra* note 31, at § 8.03. Administrative arrangements are used which promote interaction among gifted students and both their intellectual and chronological peers. Ark. Rules and Regs., *supra* note 31, at § 8.04. A minimum of 150 minutes a week direct instruction must be provided during the regular school day. Ark. Rules and Regs., *supra* note 31, at § 8.05. Curriculum for the gifted extends or replaces the regular curriculum. Ark. Rules and Regs., *supra* note 31, at § 9.01. Curriculum is differentiated in content, process, and/or product. Content is differentiated in breadth or depth, in tempo or pace, and/or in kind. Processes for gifted students stress creativity and higher level thinking skills. Students investigate problems in depth and develop products which are communicated to appropriate audiences. Ark. Rules and Regs., *supra* note 31, at § 9.02. Curriculum has scope and sequence to assure continuity. Ark. Rules and Regs., *supra* note 31, at § 9.03. Gifted children are as different from each other as they are from other children. They have needs for differing amounts of homogeneous grouping, and at various stages of development their interests differ. No single program option can ever meet all of

the needs of all gifted children. However, approved programs must meet for a total of 150 minutes a week during the regular school day. Programs should be systematically developed, with long-range goals that are coordinated to guide the development of gifted students from the time they are identified through graduation from high school. There must be consistency among the program's components; curriculum objectives and evaluation procedures need to be based on the district's philosophy of education. Most program alternatives will include some kind of combination of enrichment (experiences which supplement the regular curriculum), acceleration (activities designed to allow students to progress at a rate faster than average), and guidance (planned activities that promote understanding of the self and one's relationship to others). Districts are encouraged to be innovative in designing programs that combine these elements in ways that best meet the needs of their gifted students. In whatever form the program for the gifted is organized, there must be clear delineation of roles, responsibilities, and coordination procedures. A written table of organization outlining lines of responsibility and authority must be developed. Possible administrative arrangements for providing programs for the gifted are listed below. They represent the organizational patterns used in gifted programs across the United States. Please note that these are *descriptions* of ways to organize program options, not *prescriptions*. No matter which administrative arrangement is used, a minimum of 150 minutes a week direct instruction must be provided. Exceptions to the 150 minutes requirement may be granted upon written request to the Department of Education, Office of Gifted and Talented, in the following circumstances: If an approved teacher provides direct instruction to identified gifted students on a regular basis for at least 75 minutes per week, the remainder of the required 150 minutes may be met in the regular classroom, provided that there is a written management plan and that activities are developed and supervised by an approved teacher. Independent studies and mentorships are developed in consultation with an approved teacher. Though these program options may not require 150 minutes per week contact time an approved teacher must meet with the student for at least 30 minutes per week to assess progress.

Administrative Arrangements:

Modification in the Regular Classroom: Cluster grouping: Groups of gifted students are placed in a regular classroom. An approved teacher of the gifted provides instruction and curriculum to meet their special needs (ELEMENTARY/SECONDARY). Class size should be consistent with state standards.

Consultant teacher: An approved teacher of the gifted meets regularly with identified students and designs differentiated activities to meet their needs. The approved teacher works with the regular classroom teacher in delivering services to identified gifted students by developing management plans, providing demonstration lessons in the classroom, and supervising gifted students' progress (ELEMENTARY/SECONDARY). A consultant teacher may supervise a maximum of 75 students.

Course content: An approved teacher of the gifted works with the content teacher to design a differentiated curriculum to meet the needs of identified gifted and talented students in a regular classroom setting. The following provisions must be in place for this administrative arrangement to be used: (SECONDARY) Class size should be consistent with state standards. There is written documentation that the program component was developed in consultation with the district's administrator/coordinator of gifted programs. There is a written plan of curriculum differentiation for the identified gifted students. This may be in the form of an individual management plan or another form developed by the local district and approved by the Department of Education, Office of Gifted and Talented. An approved teacher of the gifted maintains oversight of the students' activities.

4. The content teacher must complete an Arkansas Department of Education approved staff development workshop related to curricular differentiation for the gifted. In order to better meet the needs of teachers as they work to meet the needs of individual students, each teacher involved in this model should receive annual training/staff development related to the education of gifted and talented children. See Ark. Rules and Regs., *supra* note 31, at § 5.00, paragraph 2.

Whole Group Enrichment: An approved teacher of the gifted works with the classroom teacher to design enrichment curriculum for the whole class. This option is considered long-term identification and therefore a portfolio should be maintained to document student(s) actions/responses. The delivery of services to students must be at least 30 minutes a week. The approved teacher of the gifted and the classroom teacher may organize teaching responsibilities as needed. This option may be used in conjunction with other options to serve identified students. However, if this is the only option for serving students, it may not be used beyond grade three. The following provisions must be in place for this administrative arrangement to be used: (ELEMENTARY K-2). There is written documentation that this program option was developed in consultation with the district's administrator/coordinator of gifted programs. There is a written plan of

curriculum enrichment for the grades being served. This includes a portfolio and/or management plan that maintains and documents student actions/responses. An approved teacher of the gifted maintains oversight of the students' activities. The delivery of services to students must be at least thirty (30) minutes a week and can be delivered by the approved teacher of the gifted, classroom teacher, or a combination of the two.

Instruction Through Technology: Instruction provided through technology, such as Distance Learning, Satellite, Internet, etc. must meet all requirements as outlined under the Course content option.

Pull-out Programs: *Resource room:* Gifted students participate in classes in which they receive instructional services different from those normally provided in the regular classroom. They have the opportunity to work at the level of their abilities and in their area of interest or talent (ELEMENTARY/SECONDARY). Recommended class size is 10-12.

Resource center: Students are transported on a regular basis to a center which serves a local district, county, or region. Instructional services are the same as those in a resource room (ELEMENTARY/SECONDARY). Recommended class size is 10-12.

Special Classes: *Self-contained classroom:* Gifted students are provided instructional services different from those normally provided in the regular classroom. All basic subject areas are included. Resources of the regular education program, such as art, music, and physical education, are used to supplement the gifted program (ELEMENTARY). Class sizes should be consistent with state standards.

Honors, advanced, Pre-Advanced Placement classes: Students of high ability, though not necessarily identified as gifted, are placed in a class in which the curriculum focuses on higher levels of thinking and complexity therefore avoiding "more of the same." The Pre AP curriculum is designed to prepare students for AP classes (SECONDARY). Class size should be consistent with state standards.

College Board Advanced Placement classes: Students have the opportunity to pursue college-level studies while still in secondary school and to receive advanced placement and credit, or one of these, upon entering college. Students should be encouraged to take the AP exam(s) (SECONDARY). Recommended class size is 17-20.

International Baccalaureate: The program is sponsored by the International Baccalaureate Office in Switzerland and begins at the eleventh grade (SECONDARY). Class size should be consistent with state standards.

Special classes/seminars: Courses are offered in subject matter fields not normally offered in high school which may be interdisciplinary in nature (SECONDARY). Recommended number of students per period is 15-20.

Special Schools: *Special school:* School serves only identified gifted students at local, county, or regional level. *School-within-a school:* School for gifted students functions as a separate unit although housed within a regular school complex. *Magnet schools:* School (or component within a school) which is designed to attract students with high interest/ability to its particular curriculum.

Extra-School Opportunities: *Mentorship:* Student works on a regular basis with an adult resource person, matching student interests and needs with the expertise of the mentor (ELEMENTARY/SECONDARY).

Concurrent enrollment in high school and college: Student is enrolled in college courses while continuing to attend high school (SECONDARY). Districts may choose to implement more than one of the foregoing patterns. However, the maximum total of identified gifted students for whom a full-time teacher of the gifted may provide direct services is 75. Waivers from this requirement, based upon program options offered, may be requested in writing by individual districts. Ark. Rules and Regs., *supra* note 31, at § 8.00.

Curriculum for the gifted must differ not only in degree, but in kind. It is important to avoid simply "more of the same." It should be coordinated with the district's basic curriculum objectives but must be *in place of* rather than *in addition to* required classroom work. Students should not be penalized for being identified as gifted by being given extra work. Teachers should be sensitive to student interests and talents in planning both cognitive and affective activities. To assure that curriculum opportunities are appropriate to the abilities, accomplishments, interests, and cognitive and affective needs of gifted students, modifications should be made in content, process and/or product. Content refers to the body of knowledge presented to the student. Differentiation may be made in level of complexity, pace of learning, or degree of abstractness. Another means of differentiation is the study of topics not ordinarily a part of the regular curriculum. The process skills, which should be a part of the curriculum for gifted students, include critical thinking, creative thinking, independent learning skills, research skills, problem-solving, and logic. Students in a gifted program should be expected to achieve a greater degree of proficiency in these skills than would be required in the basic curriculum. Products are the end result of a learning experience. Gifted students should be encouraged to develop products that use new techniques, materials, and forms. They should be encouraged to select a specific area of interest and talent and pursue an intensive study rather than be assigned a prescribed problem. Results of such investigations should be communicated to an

appropriate audience. Curriculum objectives must be carefully sequenced for continuity. Development of a scope and sequence will avoid the "grab-bag" approach. A list of standards and evidence verifying compliance is provided within the regulations. Ark. Rules and Regs., *supra* note 31, at § 9.00.

³⁵ **Teacher Training** - There is a written plan for staff development based on local education needs of gifted students. Ark. Rules and Regs., *supra* note 31, at § 5.01. Opportunities to increase knowledge of the education of gifted and talented students are provided for school board members, school and district administrators, teachers and support staff on a continuing and regular basis. Ark. Rules and Regs., *supra* note 31, at § 5.02. Persons who teach identified gifted students in homogeneous groups must hold current Arkansas teaching certification, pass appropriate state approved assessments, and meet performance standards as set by the State Board of Education through the Arkansas Department of Education, Professional Licensure Department for add-on endorsement in gifted education. Ark. Rules and Regs., *supra* note 31, at § 6.01. Persons who administer/coordinate a program for gifted and talented students kindergarten through grade twelve must hold current Arkansas teaching certification, pass appropriate State approved assessments, and meets performance standards as set by the state Board of Education through the Arkansas Department of Education, Professional Licensure Department for add-on endorsement in gifted education and in gifted education administration and promote the administration/coordination of programs and services for gifted students kindergarten through grade twelve. Ark. Rules and Regs., *supra* note 31, at § 6.02. A process for selection of administrators/coordinators and teachers of the gifted is clearly defined and established. Ark. Rules and Regs., *supra* note 31, at § 6.03. Job descriptions are developed for administrators/coordinators and teachers of the gifted. Ark. Rules and Regs., *supra* note 31, at § 6.04. Regularly scheduled time is provided for administrators/coordinators and teachers of the gifted to perform duties other than direct services to identified students. (The equivalent of five periods per week is recommended.) Ark. Rules and Regs., *supra* note 31, at § 6.05. A list of standards and the evidence verifying compliance with these regulations is provided in the regulations. Persons associated with the gifted and talented program need special qualifications in the areas of training, experience, and personal qualities. Selection of personnel is critical to the quality of the program. A process to ensure the selection of appropriate teachers of the gifted must be established and clearly articulated. At least one person serves as district administrator/coordinator of the gifted program. The percentage of time assigned to duties associated with the program will necessarily vary depending on the size of the district. In small districts it is likely that the same person will be the teacher of gifted students and the administrator/coordinator of the program. Training requirements for an administrator/coordinator are the same as those for an approved teacher of the gifted. It is strongly recommended that the district gifted and talented administrator/coordinator have training in administration. The minimum standards for an approved teacher of the gifted are certification, pass appropriate state approved assessments, and meet standards as set by the Arkansas State Board of Education through the Arkansas Department of Education, Professional Licensure Department, for add-on endorsement in gifted education. Persons holding the position of administrator/coordinator of gifted programs will also meet state licensure requirements. Specific courses are not stipulated; however, the following areas should be included: Identification and programming for the gifted; Methods and materials for the gifted; Curriculum development for the gifted; Counseling and guidance of the gifted; Testing and evaluation; Creativity; Supervised practicum; Independent study; and/or Seminar or special topics course in gifted education. Any teacher holding gifted and talented certification is an approved teacher of gifted and talented students. . . . In addition to time spent in direct services to gifted students, teachers and administrators/coordinators in gifted programs have a variety of duties that will promote integration of the gifted program with the regular education program. Time must be provided for: Working with classroom teachers, counselors, administrators, and other personnel; Locating resources; Arranging mentorships and other out-of-school learning experiences; Supervising independent studies and mentorships; Involvement in the identification process; Conducting community awareness activities; Conducting staff development activities; Program documentation; and/or Development of appropriate curriculum. A minimum of five periods a week, or the equivalent, is strongly recommended. Ark. Rules and Regs., *supra* note 31, at § 6.00.

³⁶ **Data Collection** - Records of placement decisions and data on all nominated students are kept on file for a minimum of five years or for as long as needed for educational decisions. Ark. Rules and

Regs., *supra* note 31, at § 7.09. The results are compiled into an annual report. This report is provided to the State Department of Education, Office of Gifted and Talented, the local school board, school faculty and administration, parent groups and other appropriate audiences to seek formative feedback, resources, developmental assistance, and demonstrate reasonable accountability. Participation in the gifted program must be noted on students' transcripts and permanent records. A list of standards and evidence verifying compliance is provided within the regulations. Ark. Rules and Regs., *supra* note 31, at § 10.00.

³⁷ **Program Evaluation** - Each school district shall report annually to the Department of Education, at a prescribed due date, the extent to which it is providing educational opportunities specifically designed to meet the educational needs of gifted and talented children. ARK. CODE ANN. § 6-42-109. The evaluation process provides accurate, timely, and relevant information to decision-makers for improving program options offered gifted students. Ark. Rules and Regs., *supra* note 31, at § 10.01. The plan for evaluation is based on program objectives. Ark. Rules and Regs., *supra* note 31, at § 10.02. All components of the gifted/talented program are evaluated annually: identification, staff development, program options, curriculum, community involvement, program expenditures, and evaluation. Ark. Rules and Regs., *supra* note 31, at § 10.03. Data for evaluation are obtained from a variety of instruments, procedures, and information sources. Ark. Rules and Regs., *supra* note 31, at § 10.04. Evaluation findings are compiled, analyzed, and communicated to Arkansas Department of Education, Office of Gifted and Talented and appropriate audiences. Ark. Rules and Regs., *supra* note 31, at § 10.05. Student progress is assessed, with attention to mastery of content, higher-level thinking skills, creativity, and affective growth. Ark. Rules and Regs., *supra* note 31, at § 10.06. Participation in the gifted program is noted on student transcripts and permanent records. Ark. Rules and Regs., *supra* note 31, at § 10.07. Arkansas Standards for Accreditation require that each school use procedures to evaluate the effectiveness of educational opportunities provided for gifted and talented students. Evaluation, as it is applied to the program for the gifted, involves both a determination of the program's effectiveness and assessment of student growth. The purpose is to provide accurate, timely, and relevant information to decision-makers for improving program options offered gifted students. The plan for evaluation is based on program objectives and is reviewed annually to determine its effectiveness in providing appropriate information. This ensures that program changes or modifications reflect relevant data. There are two purposes of evaluation: to provide information so that modifications and adjustments can be made in a program as it develops and to examine overall program effectiveness. The evaluation plan must contain procedures for assessment in both these areas. Only if the evaluation is carefully planned is it probable that really useful information can be obtained. To make reasonable judgments about the effectiveness of various facets of the program, all components should be included in the overall evaluation plan - identification, staff development, program options, curriculum, community involvement, program expenditures, and the evaluation process itself. A variety of procedures including questionnaires, surveys, charts, graphs, statistical analysis, anecdotal data, etc., should be used because different components of the program call for different techniques. Neither outcomes of the program nor attitudes of any stakeholders should be ignored. Input should come from students, teachers, administrators, parents, school board members, other community members, and statistical analysis of enrollment and achievement data. Program evaluation should also reflect an assessment of how the gifted program contributes to and articulates with the overall district improvement plan. Evaluation of student growth must be based on appropriate and specific criteria and should include self-appraisal and criterion-referenced and/or standardized instruments. It must be kept in mind that programs for the gifted deal with a unique population. Gifted students' progress cannot be fully assessed by standardized tests, which have been normed on a heterogeneous group because these tests will not present a true picture of student growth in gifted students. In fact, if a student has scored at the top of the scale on a test, the phenomenon of "regression toward the mean" may result in a lower score on the retest. In choosing methods to measure student progress, care should be taken to ensure that the methods chosen: are in agreement with program objectives; involve the student in self-evaluation; consider process as well as product; and are appropriate and valid assessments of the population being tested. Ark. Rules and Regs., *supra* note 31, at § 10.00.

³⁸ **Procedural Safeguards** - Parents and community members are informed annually of the program opportunities for gifted and talented students and have the opportunity to ask questions and make

suggestions. Ark. Rules and Regs., *supra* note 31, at § 4.02. Written identification and placement procedures include parental involvement. Parents grant permission for individual testing. Parents are informed of the criteria for placement in a program for the gifted. Parents give written permission for child's participation in gifted program. Parents may appeal a placement with which they disagree. Ark. Rules and Regs., *supra* note 31, at § 7.08. Identification of gifted and talented students is an ongoing process extending from school entry through grade twelve. Opportunities are provided for students to be considered for placement in gifted/talented programs throughout their school experience. A review of students' placement in the gifted/talented program is made at least annually. Written policies for exit from a program are developed and implemented. Ark. Rules and Regs., *supra* note 31, at § 7.09.

³⁹ **Due Process Hearing** - 005 18 CARR 002 leaves the definition of the due process rights to the local school districts. However, it does say that parents have the right to appeal a placement with which they disagree.

⁴⁰ **Other** - There is established an Advisory Council for the Education of Gifted and Talented Children, which shall advise and consult with the Director of the Department of Education and the Administrator of the Office for the Education of Gifted and Talented Children and which shall engage in other activities as set forth in this section. ARK. CODE ANN. § 6-42-104.

⁴¹ **Other** - The Department of Education is authorized to establish annual summer residential and day programs to provide enriched educational offerings for junior high and high school students who have demonstrated exceptional abilities in a specific subject area. *Id.* § 6-42-108.

⁴² **Other** - There is hereby established the Arkansas School for Mathematics and Sciences, which shall be a residential school for eleventh and twelfth grade students. The purposes of the school shall be to educate the gifted and talented math and science students of the state and to develop curricula and materials to improve instruction in mathematics and sciences for all students in the state. The school's curriculum, faculty, and admissions policy shall reflect those purposes. *Id.* § 6-42-201.

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⁴³ **Funding** - Notwithstanding any other provision of law, and in lieu of any inflation or cost-of-living adjustment otherwise authorized for any of the programs enumerated in subdivision (b), state funding for the programs enumerated in subdivision (b) shall be increased annually by the product of the following: The sum of 1.0 plus the percentage change determined under subdivision (b) of § 42238.1 or the sum of 1.0 plus the percentage of increase, from the prior fiscal year to the current fiscal year, in each of the workload factors described in subdivision (b). The programs for which annual state funding increases are determined under this section, and the factors used to measure workload for each of those programs include gifted and talented education programs, as measured by enrollment in kindergarten and grades 1 to 12, inclusive. CAL. EDUC. CODE § 42238.15. The State Board of Education shall maintain regulations governing establishment of allowable indirect cost expenditures that may be funded by gifted and talented program funds. *Id.* § 52203. The Superintendent of Public Instruction shall apportion funds pursuant to this chapter to each district for which an application to offer programs pursuant to this chapter has been approved by the State Board of Education according to this chapter and regulations adopted by the board. *Id.* § 52205. The Superintendent of Public Instruction shall, beginning in the 2001-02 school year, apportion funds to school districts pursuant to the provisions of this section. *Id.* § 52211. State aid received by the district for categorical education programs from the General Fund for the current fiscal year, as specified in clauses (i) and (ii), including funds appropriated for categorical programs by the act that adds this article to the Education Code, as estimated by the superintendent at the time of the second principal apportionment for the current fiscal year. The categorical education programs referenced in paragraph (B) shall include gifted and talented education. *Id.* § 54761. The approved indirect cost rate or 3 percent of the state apportionment for the district's gifted and talented program, whichever is the lesser, shall be the maximum amount allowable as indirect costs funded through gifted and talented program monies. CAL. CODE REGS. tit. 5, § 3870.

⁴⁴ **Standards** - The Legislature finds and declares that it is in the public interest to support unique opportunities for high-achieving and underachieving pupils in the public elementary and secondary schools of California who are identified as gifted and talented. The Legislature further declares its intent that special efforts be made to ensure that pupils from economically disadvantaged and varying cultural backgrounds be provided with full participation in these unique opportunities. CAL. EDUC. CODE § 52200. Each applicant school district shall submit an application for approval for a proposed program for gifted and talented pupils to the State Board of Education. *Id.* § 52212.

⁴⁵ **Technical Assistance** - The Superintendent of Public Instruction shall assist school district governing boards, upon their request, to design, implement, and evaluate programs funded under this chapter. *Id.* § 52205.

⁴⁶ **Identification** - It is also the intent of the Legislature to provide for the identification of gifted and talented pupils by individual school districts in a variety of ways so long as this does not serve to diminish the quality of programs for individual pupils. *Id.* § 52200. Gifted and talented pupil," as used in this chapter, means a pupil enrolled in a public elementary or secondary school of this state who is identified as possessing demonstrated or potential abilities that give evidence of high performance capability as defined pursuant to § 52202. "Highly gifted pupil" means a gifted and talented pupil who has achieved a measured intelligence quotient of 150 or more points on an assessment of intelligence administered by qualified personnel or has demonstrated extraordinary aptitude and achievement in language arts, mathematics, science, or other academic subjects, as evaluated and confirmed by both the pupil's teacher and principal. Highly gifted pupils shall generally constitute not more than 1 percent of the pupil population. *Id.* § 52201. The demonstrated or potential abilities that give evidence of high performance capability shall be defined by each school district governing board in accordance with regulations established by the State Board of Education. Each district shall use one or more of the following categories in defining the capability: intellectual, creative, specific academic, or leadership ability; high achievement; performing and visual arts talent; or any other criterion that meets the standards set forth by the State Board of Education pursuant to § 52203. Each governing board shall also consider identifying as gifted or talented any pupil who has transferred from a district in which he or she was identified as a gifted and talented pupil. *Id.* § 52202. The State Board of Education shall maintain regulations governing procedures that school district governing boards shall use in identifying gifted and talented pupils who are eligible for the program and in providing programs pursuant to this chapter. *Id.* § 52203. Each applicant school district shall designate, in its application to the State Board of Education, a person with responsibility for the development, identification procedure, and implementation of the local program for gifted and talented pupils, fiscal management, and the collection of auditable records for the independent evaluation. *Id.* § 52212. The school district shall have the responsibility for the development of a method for the identification of pupils as gifted and talented. The method of identification shall be included in the application and shall conform to these general principles: Standards shall ensure the identification of pupils who possess a capacity for excellence far beyond that of their chronological peers. Methods shall be designed to seek out and identify those pupils whose extraordinary capacities require special services and programs. Provision shall be made for examining a pupil's range of capacities. Methods and techniques of identification shall generate information as to a pupil's capacities and needs. There shall be equal opportunity to be identified in the categories served. Methods shall be designed to seek out and identify gifted and talented pupils from varying linguistic, economic, and cultural backgrounds. CAL. CODE REGS. tit. 5, § 3820. Each district shall use one or more of these categories in identifying pupils as gifted and talented. In all categories, identification of a pupil's extraordinary capability shall be in relation to the pupil's chronological peers. Intellectual Ability: A pupil demonstrates extraordinary or potential for extraordinary intellectual development. Creative Ability: A pupil characteristically: perceives unusual relationships among aspects of the pupil's environment and among ideas; overcomes obstacles to thinking and doing; produces unique solutions to problems. Specific Academic Ability: A pupil functions at highly advanced academic levels in particular subject areas. Leadership Ability: A pupil displays the characteristic behaviors necessary for extraordinary leadership. High Achievement: A pupil consistently produces advanced ideas and products and/or attains exceptionally high scores on achievement tests. Visual and Performing Arts Talent: A pupil originates,

performs, produces, or responds at extraordinarily high levels in the arts. Any other category which meets the standards set forth in these regulations. *Id.* tit. 5, § 3822. Prior to identification, pertinent evidence as to a pupil's capacity for excellence far beyond that of chronological peers shall be compiled. Appropriate data to be collected by the school district may include: school, class, and individual pupil records; individual tests (including summary and evaluation by credentialed school psychologist); group tests; interviews and questionnaires (teacher, parent, and others). The range of data shall be broad enough to reveal gifts and talents across cultural, economic, and linguistic groups. Evidence of a pupil's capability may also be derived from pupil products, comments from peers, opinions of professional persons. Studies of the factors contributing to a pupil's underachievement and studies of a pupil's underachievement resulting from handicapping or disadvantaged conditions shall be considered. The pertinent evidence shall reflect consideration of the economic, linguistic, and cultural characteristics of the pupil's background. *Id.* tit. 5, § 3823. The final determination of eligibility of a pupil, as provided in § 3820, for gifted and talented programs shall rest with the administrative head of the school district or a designated employee of the district in accordance with procedures adopted by the local governing board. This school employee shall base a decision upon the evaluation of the pertinent evidence by the school principal or a designee of the school principal, a classroom teacher familiar with the school work of the pupil, and, when appropriate, a credentialed school psychologist. To determine the full range of a pupil's capability, a person recognized as an expert in the gifted and talented category under consideration, and/or an individual who has in-depth understanding of the pupil's linguistic or cultural group shall participate in the evaluation of the evidence unless there is no doubt as to the pupil's eligibility. These individuals may review screening, identification, and placement data in serial order provided that these individuals shall meet to resolve differences in assessment and recommendations. This shall not preclude the use of an identification and placement committee. *Id.* tit. 5, § 3824.

⁴⁷ **Programming** - It is the intent of the Legislature to improve the quality of existing programs for gifted and talented pupils and to provide for experimentation in the delivery of the programs, including a variety of programmatic approaches and cost levels. CAL. EDUC. CODE § 52200. The State Board of Education shall maintain regulations governing definitions of special day classes, part-time grouping, enrichment activities, cluster grouping, independent study, acceleration, postsecondary education opportunities and other programs that the State Board of Education deems appropriate. *Id.* § 52203. The Superintendent of Public Instruction shall encourage the development of locally designed, innovative programs for gifted and talented pupils. *Id.* § 52205. The governing boards of school districts that elect to provide programs pursuant to this chapter may establish programs for gifted and talented pupils consisting of special day classes, part-time groupings, and cluster groupings, consistent with the regulations of the State Board of Education. These programs shall be planned and organized as an integrated, differentiated learning experience within the regular school day, and may be augmented or supplemented with other differentiated activities related to the core curriculum using such strategies as independent study, acceleration, postsecondary education, and enrichment. Each participating governing board shall determine the most appropriate curricular components for participating pupils within its district. For all programs for gifted and talented pupils, including programs for pupils with high creative capabilities and talents in the performing and visual arts, each participating governing board shall concentrate part of its curriculum on providing participating pupils with an academic component and, where appropriate, with instruction in basic skills. *Id.* § 52206. The governing board of any school district that provides a program for gifted and talented pupils pursuant to this chapter may conduct programs, seminars, and classes for gifted and talented pupils within or without the boundaries of the school district and, for that purpose, employ instructors, supervisors, and other personnel and provide necessary equipment and supplies. *Id.* § 52209. The schoolsite council shall develop a school plan which shall include curricula, instructional strategies and materials responsive to the individual needs and learning styles of each pupil and instructional and auxiliary services to meet the special needs of non-English-speaking or limited-English-speaking pupils, including instruction in a language these pupils understand; educationally disadvantaged pupils; gifted and talented pupils; and pupils with exceptional needs. *Id.* § 52853. For school-based motivation and maintenance programs, the schoolsite council shall develop a school plan for increasing the retention rate of the school for all pupils with special emphasis on the needs of high-risk pupils. For schools establishing school-based motivation and maintenance programs, the plan shall include instructional and auxiliary services to meet

the special needs of pupils identified as being at high risk of not succeeding in the regular school program or dropping out of school, non-English-speaking or limited-English-speaking pupils, including instruction in a language these pupils understand; educationally disadvantaged pupils; gifted and talented pupils; and pupils with exceptional needs. *Id.* § 54726. The following general standards apply to all types of gifted and talented programs: unique opportunities for high-achieving and under-achieving pupils who are identified as gifted and talented shall be provided. Districts shall make provisions for ensuring participation of pupils in the upper range of intellectual ability. Districts shall make provisions for ensuring full participation of pupils from disadvantaged and varying cultural backgrounds. The quality of existing programs for gifted and talented pupils shall be maintained and/or improved. Experimentation with a variety of programmatic approaches and cost levels shall be encouraged. Written consent of a parent, guardian, or other person having actual custody and control of the pupil shall be on file with the district prior to the pupil's participation in the program. The district program shall meet the specific needs and requirements, as specified in Education Code § 52200(c), of gifted and talented pupils. Academic components shall be included in all program offerings. The district program shall reflect the assessed needs of its identified pupils. All identified gifted and talented pupils shall have an opportunity to participate in the gifted and talented program. The district shall develop a written plan for the district program which shall be available for public inspection. The written plan shall describe the appropriately differentiated curricula for identified gifted and talented pupils as well as specify the methods used to examine the appropriateness of the identified pupil's total educational experience including articulation with other specially funded programs which serve gifted and talented pupils. The plan shall include: The purposes of the program, including the general goals and specific objectives which pupils are expected to achieve; The rationale for the district's method of identification of gifted and talented pupils; Where appropriate, procedure for the consideration of the identification and placement of a pupil who was identified as gifted or talented in the district from which the pupil transferred; The services to be rendered and the activities to be included for pupils participating in special day classes, receiving special services, or participating in special activities for an amount of time as specified in Education Code § 52206; Plan for evaluating the various components of the program. Evaluation shall include an annual review of pupil progress and of the administration of the program; Procedures for modifying the district gifted and talented program on the basis of the annual review; A staff development plan based upon a needs assessment which includes specification of requisite competencies of teachers and supervisory personnel; Procedures for ensuring continuous parent participation in recommending policy for planning, evaluating, and implementing the district program; A procedure to inform parents of a pupil's participation or nonparticipation in the gifted and talented program; An objective related budget. CAL. CODE REGS. tit. 5, § 3831. All program options shall be in compliance with applicable state and federal regulations. Programs may consist of: A "Special Day Class" for gifted and talented pupils consists of one or more classes (as defined in Education Code § 51016) totaling a minimum school day where each of the one or more classes meets the following requirements: It is composed of pupils identified as gifted and talented. It is especially designed to meet the specific academic needs of gifted and talented pupils for enriched or advanced instruction and is appropriately differentiated from other classes in the same subjects in the school. It is taught by a teacher who has specific preparation, experience, personal attributes, and competencies in the teaching of gifted children. Part-time Grouping: Pupils attend classes as defined in Education Code § 51016 or seminars which are organized to provide advanced or enriched subject matter for a part of the school day. These classes are composed of identified gifted and talented pupils. Enrichment Activities: Pupils remain in their regular classrooms but participate in supplemental educational activities planned to augment their regular educational programs. In these supplemental educational activities, the pupils use advanced materials and/or receive special opportunities from persons other than the regular classroom teacher. Cluster Grouping: Pupils are grouped within a regular classroom setting and receive appropriately differentiated activities from the regular classroom teacher. Independent Study: Pupils are provided with additional instructional opportunities through either special tutors or mentors, or through enrollment in correspondence courses specified in Education Code § 51740 and § 1633 of this title. These opportunities shall be supervised by a certificated person employed by the pupil's school district. Acceleration: Pupils are placed in grades or classes more advanced than those of their chronological age group and receive special counseling and/or instruction outside of the regular classroom in order to facilitate their advanced work. Postsecondary Education Opportunities: High school pupils for a part of the day attend classes

conducted by college or community college or participate in College Entrance Examination Board Advanced Placement programs. When needed, the high school shall provide books and supplies. Services for Underachieving Gifted and Talented Pupils: Pupils receive services designed to assist them in developing basic skills needed to overcome, as soon as possible, their underachievement and to enable them to achieve in their academic classes at levels commensurate with their individual abilities. This shall not preclude their participation in other program options. Services for Linguistically Diverse, Culturally Divergent and/or Economically Disadvantaged Gifted and Talented Pupils: Pupils receive services designed to assist them to develop their potential to achieve at the high levels commensurate with their abilities. This shall not preclude their participation in other program options. Other: Pupils participate regularly, on a planned basis, in a special counseling or instructional activity or seminars carried on during or outside of the regular school day for the purpose of benefiting from additional educational opportunities not provided in the regular classroom in which the pupils are enrolled. Other services or activities approved 90 days in advance by the Superintendent of Public Instruction. CAL. CODE REGS. tit. 5, § 3840.

⁴⁸ **Teacher Training** - The Superintendent of Public Instruction shall assist districts in the development and implementation of staff development programs related to gifted and talented pupils. CAL. EDUC. CODE § 52205. The schoolsite council shall develop a school plan which shall include staff development program for teachers, other school personnel, paraprofessionals, and volunteers, including those participating in special programs. *Id.* § 52853. There is hereby established the Pilot Project for Categorical Education Program Flexibility under which a school district selected to participate in the pilot project shall have flexibility as described in this chapter in the expenditure of the funding the school district receives for the categorical education programs listed in the school improvement and staff development cluster consisting of Gifted and Talented Pupils as set forth in Chapter 8 (commencing with § 52200) of Part 28. *Id.* § 63050. The minimum requirements for the professional clear Gifted Specialist Instruction Credential for applicants who complete a professional preparation program in California shall include (1) through (3): possession of a valid California teaching credential as defined in Education Code § 44203(e); completion of a post baccalaureate professional preparation program accredited by the committee on Accreditation for the Gifted Specialist Instruction Credential, including successful completion of supervised student teaching appropriate to the specialization area; and the recommendation from a regionally accredited institution of higher education that has a program accredited by the Committee on Accreditation in the professional clear credential sought. The minimum requirements for the professional clear Gifted Specialist Instruction Credential for applicants who complete a professional preparation program outside California shall include (1) and (2). Applicants may apply directly to the Commission for the professional clear Gifted Specialist Instruction Credential under this section: possession of a valid California teaching credential as defined in Education Code § 44203(e); and completion of a post baccalaureate professional preparation program comparable to a program accredited by the Committee on Accreditation for the Gifted Specialist Instruction Credential, including successful completion of supervised student teaching appropriate to the specialization area but are taken outside California. The program must be from a regionally accredited institution of higher education and approved by the appropriate state agency where the course work was completed. The professional clear Gifted Specialist Instruction Credential issued on the basis of the completion of all requirements shall be dated per Title 5 § 80553. The Gifted Specialist Instruction Credential authorizes the holder to develop and coordinate curriculum, develop programs and deliver staff development for agriculture education programs coordinated by school districts or county offices of education. CAL. CODE REGS. tit. 5, § 80069.1.

⁴⁹ **Data Collection** - Each school district participating in the pilot project shall separately report to the State Department of Education assessment data for English language learners, pupils who qualify for compensatory education, gifted pupils, pupils by gender, and all numerically significant ethnic and socio-economically disadvantaged subgroups within schools. CAL. EDUC. CODE §§ 63053 and 52212.

⁵⁰ **Program Evaluation** - The schoolsite council shall develop a school plan which shall include ongoing evaluation of the educational program of the school. CAL. EDUC. CODE § 52853. Each time a school district submits an application for renewal of its GATE authorization, the school district shall submit a program assessment in accordance with criteria adopted by the state board. *Id.* § 52212. The State

Department of Education shall prepare, or contract for the preparation of, evaluations of the pilot projects established pursuant to this chapter. Among other matters, these evaluations shall be designed to assess the effect of the pilot projects, if any, on pupil achievement, including the achievement of those groups of pupils for whom assessment data is separately reported pursuant to subdivision (b). Preliminary and final evaluations shall be submitted pursuant to subdivision (c). It is the intent of the Legislature that funds be provided in appropriate budget acts to conduct the evaluations required by this section and that further direction for conduct of the evaluations may be provided through instructions attached to those appropriations. The Superintendent of Public Instruction shall convene a group consisting of a representative of the Secretary for Education and representatives from the State Department of Education, Office of the Legislative Analyst, and the Department of Finance, to advise the State Department of Education regarding the evaluation of the pilot projects established by this chapter. After the initial two-year period, the oversight group convened pursuant to subdivision (e) shall review the academic progress of pupils and make a recommendation to the State Board of Education regarding a district's continued participation in the pilot project. *Id.* § 63053.

⁵¹ **Individualized Programming** - The Legislature is committed to the belief that programs for gifted and talented pupils should include differentiated opportunities for learning commensurate with the gifted and talented pupil's particular abilities and talents. *Id.* § 52200. The schoolsite council shall develop a school plan which shall include curricula, instructional strategies and materials responsive to the individual needs and learning styles of each pupil. *Id.* § 52853. 52853.

⁵² **Procedural Safeguards** - The local program shall include a procedure to inform parents of a pupil's participation or nonparticipation in the gifted and talented program. CAL. CODE REGS. tit. 5, § 3831.

⁵³ **Other** - The Superintendent of Pupil Instruction shall encourage the development of procedures that assure the ongoing participation of parents of gifted and talented pupils in the planning and evaluation of programs funded pursuant to this chapter. CAL. EDUC. CODE § 52205.

⁵⁴ **Other** - It is the intent of the Legislature that the California State Summer School for the Arts be established to provide a training ground for future artists who may wish to study and practice the arts, or to pursue careers in the major performing arts companies and the commercial and fine arts institutions in California. *Id.* § 8950.

⁵⁵ **Other** - The governing board of any elementary, high school, or unified school district or any county superintendent of schools may maintain classes on Saturday or Sunday, or both. The classes may include, but are not limited to, continuation classes, special day classes for mentally gifted minors, makeup classes for unexcused absences occurring during the week, and the programs of a regional occupational center or regional occupational program. *Id.* § 37223.

⁵⁶ **Other** - If the governing board denies a request for a special part-time enrollment at a community college for a pupil who is identified as highly gifted, the board shall record its findings and the reasons for denial of the request in writing within 60 days. *Id.* § 76001.

⁵⁷ **Other** - The governing board of any school district that provides a program for gifted and talented pupils pursuant to this chapter may transport or arrange for transportation of pupils to or from educational institutions where regularly scheduled programs and classes are being conducted. *Id.* § 52209.

⁵⁸ **Other** - It is the intent of the Legislature, therefore, that certain state funding that currently is provided to school districts be made available to provide financial assistance to economically disadvantaged pupils in the payment of advanced placement examination fees. It is further the intent of the Legislature that a competitive grant program also be established for the purpose of awarding grants to economically disadvantaged pupils to cover the costs of advanced placement examination fees, thereby creating a second source of financial assistance for economically disadvantaged pupils taking advanced placement examinations. *Id.* §§ 52240-47.

COLORADO

⁵⁹ **Funding** - No management plan shall be implemented by an administrative unit unless adequate funding is provided for such implementation. Funding for the gifted shall be for appropriately certified, endorsed, or licensed staff, for activities related to serving gifted children, and for educational equipment and materials. COLO. REV. STAT. § 22-20-104.5. The plan shall propose a budget for gifted and talented education which reflects the cost of implementing the plan. The budget shall include a combination of funding committed by the administrative unit and funding requested from the Department. Funding committed by the administrative unit shall be equal to or greater than the amount requested from the Department. Funds requested from the Department may be used for: salaries for certified, endorsed, or licensed personnel working with gifted and talented students; staff development and training relating to gifted and talented education; activities associated with gifted and talented education; supplies and materials used in instructional programming for gifted and talented education; equipment necessary for the education of gifted and talented students, not to exceed twenty-five percent of the total amount requested from the Department. 1 COLO. CODE REGS. § 301-8.02.

⁶⁰ **Standards** - An administrative unit shall serve every child with a disability but may provide voluntary programs for the gifted. COLO. REV. STAT. § 22-20-103(3.4). The general assembly, recognizing the obligation of the state of Colorado to provide educational opportunities to students which will challenge them and enable them to lead fulfilling and productive lives, declares that the purpose of this article is to provide educational opportunities for students who are gifted and talented. The general assembly also recognizes that the needs of gifted and talented students are not often met in the regular classroom and thereby declares that the purpose of this article is to foster the development of gifted and talented educational services by authorizing the department of education to purchase educational services from private organizations, or to assist in the provision of educational services by private organizations. *Id.* § 22-26-101. The board shall promulgate rules and regulations governing the provisions of this article. Such rules and regulations shall include, but are not limited to: Goals and objectives of the approved gifted and talented educational program; Requirements to be met in the operation of an approved gifted and talented educational program; Guidelines and criteria for selecting gifted and talented students; Application procedures for gifted and talented students; Guidelines and criteria for selecting teachers, students preparing to enter teaching, and instructors in teacher education who apply to teach or to participate in an approved gifted and talented educational program; Standards of need for gifted and talented students who apply for tuition assistance and transportation assistance; Procedures for providing transportation assistance for teachers, students preparing to enter teaching, and instructors in teacher education in approved gifted and talented educational programs. *Id.* § 22-26-104.

⁶¹ **Technical Assistance** - Institutions of higher education which are located within the state are encouraged to work with the administrative units, the state board, and the department to provide staff development and in-service opportunities to support such management plans specified in subsection (1) of this section. *Id.* § 22-20-104.5.

⁶² **Identification** - The general assembly hereby finds and declares that traditional assessment methods currently used do not adequately identify some gifted children, including those who are economically and culturally disadvantaged and those with disabilities; and that the state board, the department, and every administrative unit are encouraged to give the highest priority to the identification of such gifted children and to the development of educational programs which include such gifted children. *Id.* § 22-20-102.5. "Gifted children" means those persons between the ages of five and twenty-one whose abilities, talents, and potential for accomplishments are so outstanding that they require special provisions to meet their educational needs. *Id.* § 22-20-103. "Gifted and talented student" means a secondary school student who possesses one or more of the following qualities or attributes: is intellectually gifted; is outstanding in school achievement; or is outstanding in particular areas of human endeavor, including the arts and humanities. *Id.* § 22-26-102. "Gifted and talented children" means those persons between the ages of five and twenty-one whose abilities, talents, and potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational needs. Children under five who fit this definition may also be served. Gifted and talented children hereinafter are referred

to as students. Gifted and talented students are capable of high performance, exceptional production, or exceptional learning behavior by virtue of any or a combination of these areas: general or specific intellectual ability, specific academic aptitude, creative or productive thinking, leadership and human relations abilities, visual arts, performing arts, spatial or musical abilities, or psychomotor abilities. 1 COLO. CODE REGS. § 301-8.01. The plan shall include a written definition that is the same as or substantially similar to the definition of "gifted and talented student" specified in § 8.01(1). This definition shall provide the basis for all other elements described in the plan. The plan shall define the procedure used by the administrative unit for identifying students who fit the definition specified in § 8.02(1)(a) and for identifying the educational needs of these students. Such identification procedures shall include, but not necessarily be limited to, the means by which parents are made aware of gifted education and the identification process available in the district and schools; and efforts the district will make to identify gifted and talented students from traditionally under-served populations of students, including minority students, economically disadvantaged students, culturally different students, students with Limited English Proficiency, and students with disabilities. 1 COLO. CODE REGS. § 301-8.02.

⁶³ **Programming** - Administrative units may develop and implement a management plan for excellence in education which shall include the education of gifted children. Any plan developed and implemented pursuant to the provisions of this section shall satisfy any criteria for accreditation which have been established by the state board. COLO. REV. STAT. § 22-20-104.5. In order to be eligible for funding under these Rules, an administrative unit shall submit a plan for educating gifted and talented students to the Department on an annual basis. Filing of the plan shall constitute application for funding. Plans must be filed by May 31 of the fiscal year prior to the funding year. The Department will review all plans for completeness and thoroughness. A plan shall be deemed complete if it contains all elements specified in § 8.02(1)(a) through 8.02(1)(f) of these Rules. A plan shall be deemed thorough if it meets the criteria described in the elements outlined in 8.02(1)(a) through 8.02(1)(f) of these Rules. The plan shall describe the programming services, options, and strategies that will most commonly be implemented by the administrative unit and schools to appropriately address the educational needs of gifted and talented students. Such services, options, and strategies should include, but not necessarily be limited to, appropriate advanced/accelerated adaptations to the regular curriculum, advanced enrichment, learning-related affective needs programming, and career and future education guidance and counseling. 1 COLO. CODE REGS. § 301-8.02.

⁶⁴ **Teacher Training** - The plan shall describe the personnel who provide direct and/or indirect instructional and programming services for gifted and talented students. These personnel should possess appropriate knowledge and competencies in the special education of gifted and talented students. The plan shall also indicate the means by which the administrative unit supports the acquisition and/or improvement of the knowledge and competencies of these and other personnel through appropriate staff development relating to the education of gifted and talented students. 1 COLO. CODE REGS. § 301-8.02.

⁶⁵ **Data Collection** - Any administrative unit receiving funding under the provision of these Rules shall submit to the Department by September 30 of each year a year-end report including: a statement of financial income and expenditures; the number of students served through gifted and talented student programming; the percent of students in the district who have been identified as gifted and talented through a formal identification procedure; the types of programming strategies utilized most commonly at each school level to address the needs of gifted and talented students; and the methods used to determine commensurate educational growth for gifted students given the programming strategies applied. *Id.* § 301-8.03.

⁶⁶ **Program Evaluation** - The plan shall describe methods to be used for assessing and evaluating gifted and talented students' academic and/or affective growth, gain, and/or progress as a result of programming utilized; and the methods for reporting such results to parents. 1 COLO. CODE REGS. § 301-8.02.

⁶⁷ **Other** - Any secondary school student enrolled in any public school in Colorado may apply, through his local school district, to the department to attend an approved gifted and talented educational program which is provided by the department through contract. Such students may also apply for tuition assistance and for assistance to defray transportation expenses. Students shall be selected pursuant to criteria established by rule and regulation as provided in § 22-26-104. COLO. REV. STAT. § 22-26-107.

CONNECTICUT

⁶⁸ **Identification** - An "exceptional child" means a child who deviates either intellectually, physically or emotionally so markedly from normally expected growth and development patterns that he or she is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services. "Extraordinary learning ability" and "outstanding creative talent" shall be defined by regulation by the commissioner, subject to the approval of the State Board of Education, after consideration by said commissioner of the opinions of appropriate specialists and of the normal range of ability and rate of progress of children in the Connecticut public schools. CONN. GENN. STAT. § 10-76a. "Extraordinary learning ability" means a child identified by the planning and placement team as gifted and talented on the basis of either performance on relevant standardized measuring instruments, or demonstrated or potential achievement or intellectual creativity, or both. The term shall refer to the top five per cent of children so identified. "Gifted and talented" means a child identified by the planning and placement team as possessing demonstrated or potential abilities that give evidence of very superior intellectual, creative or specific academic capability and needing differentiated instruction or services beyond those being provided in the regular school program in order to realize their intellectual, creative or specific academic potential. The term shall include children with extraordinary learning ability and children with outstanding talent in the creative arts as defined by these regulations. "Outstanding talent in the creative arts" means a child identified by the planning and placement team as gifted and talented on the basis of demonstrated or potential achievement in music, the visual arts or the performing arts. The term shall refer to the top five per cent of children so identified. CONN. AGENCIES REGS. § 10-76a-2.

⁶⁹ **Programming** - Each board of education shall be required only to provide identification, referral and evaluation services for gifted and talented children. The provision of all other special education and related services to gifted and talented children shall be at the option of each board of education. CONN. AGENCIES REGS. § 10-76d-1.

⁷⁰ **Teacher Training** - The applicant for a teaching position shall be required to complete a course of study in special education comprised of not fewer than 36 clock hours, which shall include study in understanding the growth and development of exceptional children, including handicapped and gifted and talented children and children who may require special education, and methods for identifying, planning for and working effectively with special needs children in the regular classroom. *Id.* § 10-145d-412.

DELAWARE

⁷¹ **Funding** - "Unit for academic excellence" is defined for funding purposes as 1 unit for each 250 full-time equivalent students in a school district, grades K through 12. The unit for academic excellence may be used to provide educational services such as programs for gifted and talented pupils. DEL. CODE ANN. tit. 14, § 1716(c).

⁷² **Identification** - "Gifted or talented person" means a person in the chronological age group 4 through 20 years inclusive, who by virtue of certain outstanding abilities is capable of a high performance in an identified field. Such an individual, identified by professionally qualified persons, may require differentiated educational programs or services beyond those normally provided by the regular school program in order to realize his or her full contribution to self and society. A person capable of high performance as herein defined includes one with demonstrated achievement and/or potential ability in any of the following areas, singularly or in combination: General intellectual ability; Specific academic aptitude; Creative or productive thinking; Leadership ability; Visual and performing arts ability; Psychomotor ability. *Id.* tit. 14, § 3101.

⁷³ **Programming** - The extent of programs and facilities provided for persons determined to be gifted or talented shall be in accordance with the rules and regulations of the Department as approved by the State Board of Education. *Id.* tit. 14, § 3126.

⁷⁴ **Other** - The Governor shall appoint an advisory council to act in an advisory capacity to the Department of Education, the State Board of Education and other state agencies on the needs of exceptional citizens. The General Assembly shall provide for the maintenance of the council. *Id.* tit. 14, § 3111.

⁷⁵ Adopted in April 2005, Delaware has a new regulation specifying the evaluation requirements for earlier a gifted child to kindergarten earlier than the age of five years old: (1.1) At the request of any parent, legal guardian or person acting as a caregiver pursuant to 14 DEL. CODE § 202(f), the district or charter school shall conduct an evaluation of any such potentially gifted child by a school psychologist or other professionally qualified person, in conjunction with other appropriate personnel, to determine if the child possesses outstanding mental/cognitive abilities and to determine if the child can demonstrate the social, emotional, and physical maturity, normally expected for successful participation in kindergarten. A discussion shall be held to determine the parent, guardian or relative caregiver's reason for requesting the child's early admission to kindergarten prior to the legal age. (1.1.1) The evaluation shall be conducted at no cost to the parent, guardian or relative caregiver. (1.2) In order to qualify for early enrollment, the child must achieve a measured score at least 1.5 standard deviations above the mean score for the assessment instrument used to determine the child's mental/cognitive abilities. In addition, the evaluation must indicate that the child possesses the social, emotional and physical maturity to successfully participate in kindergarten. (1.3) Following the completion of the evaluation, a representative of the school district or charter school who is knowledgeable of the evaluation process and any assessments used during the evaluation shall talk with the parent, guardian or relative caregiver to discuss the evaluation results.

FLORIDA

⁷⁶ **Funding** - There is hereby created a grant program for education for the gifted which shall be administered by the Commissioner of Education in cooperation and consultation with appropriate organizations and associations concerned with education for the gifted and pursuant to rules adopted by the Commissioner of Education. FLA. STAT. ch. 236.1225.

⁷⁷ **Identification** - Develop procedures for identifying gifted students. *Id.* ch. 187.201(1)(b)(16)(d). One who has superior intellectual development and is capable of high performance. A student is eligible for special instructional programs for the gifted if the student meets the criteria under paragraph (2)(a) or (b) of this rule. The student demonstrates: need for a special program, a majority of characteristics of gifted students according to a standard scale or checklist, and superior intellectual development as measured by an intelligence quotient of two (2) standard deviations or more above the mean on an individually administered standardized test of intelligence. The student is a member of an under-represented group and meets the criteria specified in an approved school district plan for increasing the participation of under-represented groups in programs for gifted students. For the purpose of this rule, under-represented groups are defined as groups: whose racial/ethnic backgrounds are other than white non-Hispanic, Asian/Pacific Islander, or who are limited English proficient, or who are from a low socio-economic status family. The minimum evaluations for determining eligibility are the following: Need for a special instructional program, characteristics of the gifted, intellectual development, and may include those evaluation procedures specified in an approved district plan to increase the participation of students from under-represented groups in programs for the gifted. The Department of Education is authorized through 1999 to approve school district plans for increasing the participation of students from under-represented groups in special instructional programs for the gifted, provided these plans include the following: a district goal to increase the percent of students from under-represented groups in programs for the gifted and the current status of the district in regard to that goal; screening and referral procedures which will be used to increase the number of these students referred for evaluation; criteria for determining eligibility based on the student's demonstrated ability or potential in specific areas of leadership, motivation, academic performance, and creativity; student evaluation procedures, including the identification of the measurement instruments to be used; Instructional program modifications or

adaptations to ensure successful and continued participation of students from under-represented groups in the existing instructional program for gifted students; an evaluation design which addresses evaluation of progress toward the district's goal for increasing participation by students from under-represented groups. FLA. ADMIN. CODE ANN. r. 6A-6.03019.

⁷⁸ **Programming** - In order to be approved, a program proposal must include clearly stated goals and objectives expressed, to the maximum extent possible, in measurable terms. FLA. STAT. ch. 236.1225.

⁷⁹ **Teacher Training** - Specialization Requirements for the Gifted Endorsement - Academic Class Beginning July 1, 1992. A bachelor's or higher degree with certification in an academic class coverage, and fifteen (15) semester hours in gifted education to include three (3) semester hours in each area specified below: nature and needs of gifted students to include student characteristics; cognitive, social, and emotional needs; and history and current research; curriculum and instructional strategies for teaching gifted students to include modification of curriculum content, instructional process, student products, and learning environment; guidance and counseling of gifted students to include motivation, self- image, interpersonal skills, and career options for gifted students; educating special populations of gifted students such as minorities, underachievers, handicapped, economically disadvantaged, and highly gifted to include student characteristics and programmatic adaptations; and Theory and development of creativity to include elements of creativity such as fluency, flexibility, originality, and elaboration. FLA. ADMIN. CODE ANN. r. 6A-4.01791.

⁸⁰ **Data Collection** - Student achievement data shall be reported for all students in a school as specified by § 229.57, Florida Statutes. Each year, reports of achievement data for all students shall be prepared for each school, the district, and the state. For the purpose of assigning school performance grades, each school's aggregate achievement data shall be based on the scores of all students enrolled in standard curriculum courses including the scores of students who are speech impaired, gifted, hospital homebound, and Limited English Proficient (LEP) students who have been in an English for Speakers of Other Languages (ESOL) program for more than two (2) years. *Id.* r. 6A-1.09981.

⁸¹ **Program Evaluation** - In order to be approved, a program proposal must include provisions for evaluation of the program and for its integration into the general curriculum and financial program of the school district or districts at the end of the funded period. FLA. STAT. ch. 236.1225.

⁸² **Individualized Programming** - Districts shall be responsible for developing educational plans for students who are gifted. Each district's Special Programs and Procedures for Exceptional Students document shall specify the contents of the plans, timelines, and required participants for development and review. These procedures shall ensure parental participation. FLA. ADMIN. CODE ANN. r. 6A-6.03028. Additionally, Florida's regulations incorporate IDEA requirements, including IEPs, for gifted students under the more general rubric of "exceptional students." FLA. ADMIN. CODE ANN. r. 6A-6.03311. For the definition of exceptional students, see FLA. STAT. ch. 236.1003.01.

⁸³ **Procedural Safeguards** - The requirements for exceptional students, which includes gifted students along with those with disabilities, includes IDEA procedural safeguards. *Id.*

⁸⁴ **Due Process Hearing** - Except for attorney's fees, gifted students have the same hearing rights as students with disabilities. *Id.*

⁸⁵ **Complaint Procedure** - *Id.*

GEORGIA

⁸⁶ **Standards** - Local school systems shall, subject to any limitations specified in this Code section, provide special education programs for all eligible, including gifted, students with special needs who are residents of their local school systems, either by establishing and maintaining such educational facilities and employing such professional workers as are needed by these students or by contracting with

other local school systems, regional educational service agencies, or other qualified public or private institutions for such services. (Gifted children are included in special education by statute.) GA. CODE ANN. § 20-2-152.

⁸⁷ **Identification** - The criteria adopted by the state board to determine the eligibility of students for state funded special education programs for the intellectually gifted, Category VI pursuant to paragraph (6) of subsection (d) of this Code section, shall authorize local boards of education to use the criteria used on July 1, 1993, as amended by state board or state department regulation from time to time; and multiple eligibility criteria which include evidence of student work product or performance; data from teacher, parent, or peer observation; and evidence of student performance on nationally normed standardized tests of mental ability, achievement, and creativity. *Id.* § 20-2-152. Gifted student - a student who demonstrates a high degree of intellectual, and/or creative ability(ies), exhibits an exceptionally high degree of motivation, and/or excels in specific academic fields and who needs special instruction and/or special ancillary services to achieve at levels commensurate with his or her abilities. A student may be referred for consideration for gifted educational services by teachers, counselors, administrators, parents or guardians, peers, self and other individuals with knowledge of the student's abilities. Automatic Referral. Students who score at specified levels on a norm referenced test as described below shall be considered automatically, as defined in Appendix A of the Georgia Department of Education Resource Manual for Gifted Education Services, for further assessment to determine eligibility for gifted program services. Local boards of education shall establish the criterion score needed on these norm-referenced tests for automatic consideration for further assessment. Local boards of education shall ensure that any tests or procedures used in the referral process and to determine eligibility for gifted education services meet standards of validity and reliability for the purpose of identifying gifted students, and shall be non-discriminatory with respect to race, religion, national origin, sex, disabilities or economic background. To be eligible for gifted education services, a student must either (a) score at the 99th percentile (for grades K-2) or the 96th percentile (for grades 3-12) on the composite or full scale score of a standardized test of mental ability and meet one of the achievement criteria described below, or (b) qualify through a multiple-criteria assessment process by meeting the criteria in any three of the following four areas: mental ability (intelligence), achievement, creativity and motivation. To be eligible for gifted education services, a student must meet the criterion score on a nationally normed test and either has observational data collected on his or her performance or produce a superior product as described below. Information shall be collected in each of the four data categories for all students who are referred for gifted program evaluation. Any data used in one area to establish a student's eligibility shall not be used in any other data category. Any test score used to establish eligibility shall be current within two-calendar years. 1. Mental Ability. Students shall score the 96th percentile on a composite or full-scale score or appropriate component score, as defined in Appendix A of the Georgia Department of Education Resource Manual for Gifted Education Services, on a standardized test of mental ability. Mental ability tests shall be the most current editions of published tests that measure intelligence or cognitive ability, have been reviewed for bias and normed on a nationally representative sample that included minority representation within a 10-year period (group tests) prior to administration. These tests shall yield percentile rankings by age(s). Mental ability tests that were designed to be administered individually must be administered by a qualified psychological examiner. (See Rule 160-4-7-.11 Qualified Psychological Examiner). 2. Achievement. Students shall (a) score \geq the 90th percentile on the total battery, total math or total reading section(s) of a standardized achievement tests; or (b) have produced a superior student-generated product or performance, where the superior performance is one that can be translated into a numerical score \geq 90 on a scale of 1-100 as evaluated by a panel of three or more qualified evaluators. Standardized achievement tests shall be the most current editions of tests that measure reading skills, including comprehension, and shall give a total reading score and/or a total mathematics score based upon a combination of scores in math concepts and applications. These tests shall have been reviewed for bias and normed on a nationally representative sample that included minority representation within a 10-year period prior to administration. These tests shall yield percentile rankings by age(s) or grade(s). Performances and products shall be judged by a panel of three or more qualified evaluators and must have been produced within the two years prior to evaluation. 3. Creativity. Students shall score \geq the 90th percentile on the total battery score of a standardized test of creative thinking, or receive a score \geq the 90th percentile on a standardized creativity characteristics rating scale, or receive from

a panel of three or more qualified evaluators a score ≥ 90 on a scale of 1-100 on a structured observation/evaluation of creative products and/or performances. Standardized tests of creative thinking shall be the most current editions of tests that provide scores of fluency, originality, and elaboration. Minimum requirements also include: outside empirical support for the test; long-term follow-up studies; and comparison measures against other recognized measures of creativity. These tests shall have been reviewed for bias and on a nationally representative sample that included minority representation. These tests shall yield percentile rankings by age(s) or grade(s). Rating scales used to evaluate creativity shall relate to the construct of creativity and differentiate levels such that judgments equivalent to the 90th percentile are possible. As evidence of creativity, students or individuals on behalf of students may submit products or evidence of outstanding performances completed during the two calendar years prior to evaluation. The products/performances submitted shall be reviewed by a panel of three or more qualified evaluators as part of a comprehensive portfolio of creative productivity. 4. Motivation. Students shall (a) receive a score \geq the 90th percentile on a standardized motivational characteristics rating scale or (b) receive from a panel of three or more qualified evaluators a score ≥ 90 on a scale of 1-100 on a structured observation/evaluation of student-generated products and/or performances, or have a grade point average (GPA) of at least 3.5 on a 4.0 scale (as defined in Appendix A of the Georgia Department of Education Resource Manual for Gifted Education Services), where a 4.0=A and 3.0=B, using an average of grades from the regular school program over the previous two school years if the student is in grades 3-12. Rating scales used to evaluate student motivation shall relate to the construct of motivation and differentiate levels such that judgments equivalent to the 90th percentile are possible. As evidence of motivation, students or individuals on behalf of students may submit products or evidence of outstanding performances made during the two calendar years prior to evaluation. The products/performances submitted shall be reviewed by a panel of three or more qualified evaluators as part of a comprehensive portfolio which demonstrates a high degree of motivation and consistent productivity. GPAs of students are determined by calculating the grades earned during the two years prior to evaluation in the subjects of mathematics, science, language arts, social studies, and foreign language, if such language study is included in the student's records. Assessment data which were gathered and analyzed by a source outside the student's school or school system must be considered as part of the nomination and evaluation process. However, these outside data shall not be substituted for data the school generates during the testing/evaluation process and may never be the sole source of assessment data. Systems shall never rely on them exclusively for determination of eligibility for gifted program services. Instead, outside test data may be used as part of a comprehensive profile of test and non-test evidence of advanced instructional needs. If any system elects to use outside test data to help establish students' eligibility, the local board of education shall collect and maintain statistical data which will allow the Department of Education to evaluate the impact of this practice on the identification of gifted students from all ethnic and socioeconomic groups. Continued Participation. Local boards of education shall review the progress of each student receiving gifted education services each year. Any student who receives gifted education services shall continue to receive services, provided the student demonstrates satisfactory performance in regular and gifted education classes, as described in the local board's Continuation Policy. Local boards of education shall provide to any student who fails to maintain satisfactory performance in regular and gifted education classes a probationary period in which the student shall continue to receive gifted education services while attempting to achieve satisfactory performance status. The length of this probationary period shall be determined by the local board of education. Students who fail to demonstrate satisfactory performance in both regular and gifted education classes during the probationary period and for whom gifted services are no longer appropriate shall have a final review before cessation of services occurs. A student may resume receiving gifted education services upon meeting the criteria adopted by the local board of education for the continuation of gifted services. Reciprocity. Any student who meets the state eligibility criteria for gifted education services shall be considered eligible to receive gifted education services in any school system within the state. However, a student transferring from one school system to another within the state shall meet the criteria for continuation of gifted services established by the local board of education of the receiving school system. There is no mandated reciprocity between states. GA. COMP. R. & REGS. r. 160-4-2-.38.

⁸⁸ **Programming** - Local boards of education shall develop curricula for gifted students that incorporate the State Board of Education-approved student competencies and Quality Core Curriculum.

Curriculum objectives shall focus on developing cognitive, learning, research and reference, and metacognitive skills at each grade grouping, using principles of differentiation, in one or more of the following content areas: mathematics, science, language arts, social studies, foreign language, fine arts and vocation/technical education. Local boards of education shall submit to the Georgia Department of Education a description of the differentiated curricula used for instruction of gifted students. The local system shall review and revise (if revisions are needed) its curricula for gifted students at least annually. An updated copy of the local program description shall be submitted to the Department of Education whenever changes are made. Students identified as gifted and whose participation has received parental consent shall receive at least five segments per week (or the yearly equivalent) of gifted education services, using one of the approved models described in Appendix A of the Georgia Department of Education Resource Manual for Gifted Education Services. *Id.* r. 160-4-2-.38.

⁸⁹ **Data Collection** - Local boards of education shall collect and maintain statistical data on the number of students referred for evaluation of eligibility for gifted education services, the number of students determined eligible for services, and the number of students actually served during the school year. These data shall be kept by grade level, gender, and ethnic group of the students. *Id.* r. 160-4-2-.38.

⁹⁰ **Program Evaluation** - The Georgia Department of Education shall evaluate gifted program effectiveness every three years, to the maximum extent possible, this evaluation shall include the following program components: the Student Search, Nomination, and Referral Process; Student Assessment; Program Design; Curriculum and Instruction; Professional Development; and Family-Community Involvement. *Id.* r. 160-4-2-.38.

⁹¹ **Procedural Safeguards** - The local board of education shall notify parents or guardians in writing of the following: 1) The gifted education program operated by the local school system, referral procedures and eligibility requirements; 2) Initial consideration of a student for gifted education services; 3) The student's eligibility status after an evaluation at which time the parents or guardians shall be afforded an opportunity for a conference to discuss student eligibility criteria and placement; 4) The type of service to be provided annually, the teaching methods to be used and the time allotted for the student to receive gifted services. Parents or guardians shall also be informed of the objectives designed for students to meet and the manner in which evaluation of the mastery of these objectives will be conducted. The performance standards the student shall meet for the continuation of gifted services (See § 3, Continued Participation). The length of the probationary period in which the student is in jeopardy of losing gifted services. The notice shall specify the criteria the student shall meet to continue receiving gifted education services. The termination of gifted education services in the event that the student fails to meet the continuation criteria. The notice shall contain a statement that the student shall become eligible to receive gifted education services upon meeting the criteria adopted by the local board of education regarding the continuation of services. Local school systems shall obtain written consent for testing from parents or guardians of students who are being considered for gifted education services. Written consent from parents or guardians is also necessary before students determined to be eligible for gifted education services can receive these services. *Id.* r. 160-4-2-.38.

⁹² **Due Process Hearing** - The parents or guardians shall be afforded an opportunity for a conference to discuss student eligibility criteria and placement. *Id.*

⁹³ **Other** - Student-teacher ratio in gifted classes is to be no greater than 12:1. GA. CODE ANN. § 20-2-161.

⁹⁴ **Other** - The State Board of Education is authorized to inaugurate an honors program for students in the public and private high schools of this state who have manifested exceptional abilities or unique potentials or who have made exceptional academic achievements. This program shall be conducted during summer months between normal school-year terms at institutions of higher learning or other appropriate centers within this state with facilities adequate to provide challenging opportunities for advanced study and accomplishments by such students. The State Board of Education is authorized to

inaugurate and operate a residential high school program for highly gifted and talented youth of this state. *Id.* § 20-2-306.

⁹⁵ **Other** - The Academic Decathlon is a program that promotes student achievement in secondary schools by providing opportunities for average and academically talented students to compete statewide for academic awards and recognition. GA. COMP. R. & REGS. r. 160-1-4-.103.

HAWAII

⁹⁶ **Identification** - "Gifted and talented children" means students residing in the State who are of compulsory school age and are enrolled in, and attending, a public school, and whose superior performance or potential indicates exceptional ability or talent. This ability or talent may occur singly in or in combination with any of the following areas: intellectual, creative or specific academic abilities, leadership capabilities, psychomotor abilities, or abilities in the performing or visual arts. HAW. REV. STAT § 302A-101.

⁹⁷ **Programming** - The department may provide a statewide flexible system of educational placement and programs within the public school system that the department determines is appropriate for meeting the unique educational needs of gifted and talented children. The nature and scope of the department's educational placement and programs shall be based on, but not be limited to, the following factors: The availability of financial and physical resources within the department; The nature of the child's gift or talent; and Whether the child's educational placement and program should focus on, or be limited to, a particular area of gift or talent, or whether the educational placement and program should address other areas that may be beneficial to the development of the child as a whole. *Id.* § 302A-444.

IDAHO

⁹⁸ **Technical Assistance** - The district shall designate a certificated staff person to be responsible for development, supervision, and implementation of the gifted and talented program. IDAHO ADMIN. CODE § 08.02.03.456.

⁹⁹ **Identification** - "Gifted/talented children" mean those students who are identified as possessing demonstrated or potential abilities that give evidence of high performing capabilities in intellectual, creative, specific academic or leadership areas, or ability in the performing or visual arts and who require services or activities not ordinarily provided by the school in order to fully develop such capabilities. IDAHO CODE § 33-2001. The district's process for identifying gifted and talented students shall include the following steps: The district shall screen all potentially gifted and talented students to ensure they have an opportunity to be considered; and The district shall assess those students meeting the screening criteria and gather additional information concerning their specific aptitudes and educational needs; and The district shall match student needs with appropriate program options. Placement decisions shall not be determined by a single criterion (for instance, test scores, other measurement, teacher recommendation, or nomination). The district's identification process shall use multiple indicators of giftedness with information obtained through the following methods and sources: procedures for obtaining information about students shall include formal assessment methods, such as group and individual tests of achievement, general ability, specific aptitudes and creativity; procedures for obtaining information about students shall also include informal assessment methods, such as checklists, rating scales, pupil product evaluations, observations, nominations, biographical data, questionnaires, interviews and grades; information about students shall be obtained from multiple sources, such as teachers, counselors, peers, parents, community members, subject area experts, and the students themselves. *Id.* § 08.02.03.456.

¹⁰⁰ **Programming** - Each public school district is responsible for and shall provide for the special instructional needs of gifted/talented children enrolled therein. Public school districts in the state shall provide instruction and training for children between the ages of five (5) years and eighteen (18) years who are gifted/talented as defined in this chapter and by the state board of education. The state board of education shall, through its department of education, determine eligibility criteria and assist school districts in developing a variety of flexible approaches for instruction and training that may include administrative

accommodations, curriculum modification and special programs. IDAHO CODE § 33-2003. Each school district shall develop and write a plan for its gifted and talented program. The plan shall be submitted to the Department no later than October 15, 2001. The plan shall be updated and submitted every three (3) years thereafter and shall include: philosophy statement; definition of giftedness; program goals; program options; identification procedures; and program evaluation. *Id.* 08.02.03.456.

¹⁰¹ **Data Collection** - The report shall include, but not be limited to, data concerning the number of persons served, both handicapped and gifted, the districts which operate programs and the nature of the program, the money distributed pursuant to the provisions of the exceptional education support program, and estimated number of persons, both handicapped and gifted, requiring but not receiving services. IDAHO CODE § 33-1007.

¹⁰² **Other** - The purpose of this act is to establish a state scholarship program for the most talented Idaho secondary school graduates or the equivalent, consisting of category A students with outstanding academic qualifications and category B students with a cumulative grade point average for grades nine (9) through twelve (12) of 3.0 or better or achieving an ACT score of 20 or better or who become eligible after the student's first semester or who meet any other criteria as may be established by the state board of education and the board of regents of the university of Idaho, who will enroll in undergraduate nonreligious academic and professional-technical programs in eligible postsecondary institutions in the state. *Id.* § 33-4305.

¹⁰³ **Other** - The purpose of this chapter is to establish a state scholarship program for talented "at-risk" persons who will enroll in undergraduate academic and professional-technical programs in postsecondary institutions in the state. *Id.* § 33-4603.

ILLINOIS

Funding - Repealing the previous statutory provisions, including the inclusion of gifted education in the general block grant, Illinois adopted new legislation, which is effective for the 2006-07 school year, but it is contingent on an appropriation for the program that is not currently available. E-mails from Carol McCue, Principal Consultant, and Darren Reisberg, Deputy General Counsel, Illinois State Board of Education (Sept. 2, 2005, 13:20:27 EST and Sept. 5, 2005 15:40:35 EST)(on file with author). Effective, September 1, 2006, districts must meet the new requirements of § 14A-30 to qualify for approval for such funding. *Id.* In addition, the new legislation provides that subject to the availability of categorical grant funding or other funding appropriated for such purposes, the State Board of Education shall make grants available to fund educational programs for gifted and talented children. A request-for-proposal process shall be used in awarding grants for services and materials, with carry over to the next fiscal year, under this Section. A proposal may be submitted to the State Board of Education by a school district, 2 or more cooperating school districts, a county, 2 or more cooperating counties, or a regional office of education. The proposals shall include a statement of the qualifications and duties of the personnel required in the field of diagnostic, counseling, and consultative services and the educational materials necessary. Upon receipt, the State Board of Education shall evaluate the proposals in accordance with criteria developed by the State Board of Education that [are] consistent with this Article and shall award grants to the extent funding is available. Educational programs for gifted and talented children may be offered during the regular school term and may include optional summer programs. As a condition for State funding, a grantee must comply with the requirements of this Article. *Id.* §14A-45. Additionally, again subject to the availability of funds, the State Board of Education shall have the authority to enter into and monitor contracts with school districts, regional offices of education, colleges, universities, and professional organizations for the conduct of experimental projects and institutes, including summer institutes, in the field of education of gifted and talented children as defined in §14A-20. These projects and institutes shall be established in accordance with rules adopted by the State Board of Education. Prior to entering into a contract, the State Board of Education shall evaluate the proposal as to the soundness of the design of the project or institute, the probability of obtaining productive outcomes, the adequacy of resources to conduct the proposed project or institute, and the relationship of the project or institute to other projects and institutes already completed or

in progress. The contents of these projects and institutes must be designed based on standards adopted by professional organizations for gifted and talented children. *Id.* §14A-50.

¹⁰⁵ **Standards** - The purpose of this Article is to provide encouragement, assistance, and guidance to school districts in the development and improvement of educational programs for gifted and talented children as defined in § 14A-15. The specific standards are defined in § 14A-30 (and are excerpted below in the relevant categories).

¹⁰⁶ **Technical Assistance** - Subject to the availability of funds for these purposes, the State Board of Education may perform a variety of additional administrative functions with respect to the education of gifted and talented children, including, but not limited to, supervision, quality assurance, compliance monitoring, and oversight of local programs, analysis of performance outcome data submitted by local educational agencies, the establishment of personnel standards, and a program of personnel development for teachers and administrative personnel in the education of gifted and talented children. *Id.* § 14A-35.

¹⁰⁷ **Identification** - "Gifted and talented children" means children and youth with outstanding talent who perform or show the potential for performing at remarkably high levels of accomplishment when compared with other children and youth of their age, experience, and environment. A child shall be considered gifted and talented in any area of aptitude, and, specifically, in language arts and mathematics, by scoring in the top 5% locally in that area of aptitude. *Id.* § 14A-20. No program shall condition participation upon race, religion, sex, disability, or any factor other than the identification of the child as gifted or talented. *Id.* § 14A-25. The standards include: (1) the use of a minimum of 3 assessment measures used to identify gifted and talented children in each area in which a program for gifted and talented children is established, which may include without limitation scores on standardized achievement tests, observation checklists, portfolios, and currently-used district assessments; (2) a priority emphasis on language arts and mathematics; (3) an identification method that uses the definition of gifted and talented children as defined in §14A-20; (4) assessment instruments sensitive to the inclusion of underrepresented groups, including low-income students, minority students, and English language learners; (5) a process of identification of gifted and talented children that is of equal rigor in each area of aptitude addressed by the program; (6) the use of identification procedures that appropriately correspond with the planned programs, curricula, and services; and (7) a fair and equitable decision-making process. *Id.* § 14A-30.

¹⁰⁸ **Programming** - The specified standards for funding approval include: a description of how gifted and talented children will be grouped and instructed in order to maximize the educational benefits the children derive from participation in the program, including curriculum modifications and options that accelerate and add depth and complexity to the curriculum content; an explanation of how the program emphasizes higher-level skills attainment, including problem-solving, critical thinking, creative thinking, and research skills, as embedded within relevant content areas; a methodology for measuring academic growth for gifted and talented children and a procedure for communicating a child's progress to his or her parents or guardian, including, but not limited to, a report card; the collection of data on growth in learning for children in a program for gifted and talented children and the reporting of the data to the State Board of Education; and the designation of a supervisor responsible for overseeing the educational program for gifted and talented children. *Id.* § 14A-30.

¹⁰⁹ **Teacher Training** - The specified standards for funding approval also include the following: a showing that the certified teachers who are assigned to teach gifted and talented children understand the characteristics and educational needs of children and are able to differentiate the curriculum and apply instructional methods to meet the needs of the children; and plans for the continuation of professional development for staff assigned to the program serving gifted and talented children. 105 ILL. COMP. STAT. 5/§ 14A-30.

¹¹⁰ **Program Evaluation** - See "Other" *infra* note 113.

¹¹¹ **Procedural Safeguards** - The applicable standards for funding approval include: procedures for annually informing the community at-large, including parents, about the program and the methods used for the identification of gifted and talented children; and procedures for notifying parents or guardians of a child of a decision affecting that child's participation in a program. *Id.* § 14A-30.

¹¹² **Due Process Hearing** - Another applicable standard is that the written funding application must include the availability of a fair and impartial appeal process within the school, school district, or cooperative of school districts operating a program for parents or guardians whose children are aggrieved by a decision of the school, school district, or cooperative of school districts regarding eligibility for participation in a program. *Id.* § 14A-30.

¹¹³ **Other** - The State Board of Education must designate a staff person who shall be in charge of educational programs for gifted and talented children. This staff person shall, at a minimum, (i) be responsible for developing an approval process for educational programs for gifted and talented children by no later than September 1, 2006, (ii) receive and maintain the written descriptions of all programs for gifted and talented children in the State, (iii) collect and maintain the annual growth in learning data submitted by a school, school district, or cooperative of school districts, (iv) identify potential funding sources for the education of gifted and talented children, and (v) serve as the main contact person at the State Board of Education for program supervisors and other school officials, parents, and other stakeholders regarding the education of gifted and talented children. *Id.* § 14A-35.

¹¹⁴ **Other** - The new legislation also requires the State Board of Education to establish an advisory council on gifted and talented education, including the specified membership, activities, and authority. *Id.* § 14A-40.

¹¹⁵ **Other** - [The following provision is part of the Chicago Community Schools Study Commission Act, not the Illinois School Code:] The Commission shall study the matter of the creation of separate autonomous school districts within the City of Chicago for all regular school purposes to be operated in accord with Articles 1 through 33 of the School Code and the restructuring of the Chicago Board of Education so as to provide education for certain limited designated purposes such as alternative, vocational, special, exceptional, gifted and magnet quality education.

INDIANA

¹¹⁶ **Funding** - Requires state department to offer grants to districts for program for high-ability students. To qualify for such grants, the district plan must (1) provide for multiple means of identifying high-ability students, including procedures for students whom may not be identified through traditional means due to economic disadvantage, cultural background, underachievement or disabilities; (2) set forth appropriate education experiences in core curriculum areas for high ability students in kindergarten through grade 12; and (3) align with the 3-year strategic and continuous school improvement and achievement plan (which, in turn, must address the learning needs of all, including exceptional, learners in the school). IND. CODE § 20-10.1-5.1-3.

¹¹⁷ **Technical Assistance** - The department shall establish a state resources program using existing state resources that supports school corporations in the development of local programs for high ability students; enables educational opportunities that encourage high ability students to reach the highest possible level at every stage of the students' development; and provides state integrated services that include, but are not limited to information and materials resource centers, professional development plan and programs, research and development services, technical assistance that includes student assessment, program assessment, program development and implementation. *Id.* § 20-10.1-5.1-3.

¹¹⁸ **Identification** - "Exceptional learners" include both student with a disability and those with high ability. "High ability student" means a student who performs at, or shows the potential for performing at, an outstanding level of accomplishment in at least one domain when compared to other students of the same age, experience, or environment; and is characterized by exceptional gifts, talents, motivation, or

interests. *Id.* § 20-10.1-5.1-2. "Domain" includes the following areas of aptitude and talent: general intellectual, general creative, specific academic, technical and practical arts, visual and performing arts, and interpersonal. *Id.* § 20-10.1-5.1-1. For an additional pertinent provision, which encourages multiple means to avoid under-identification, see *supra* note 116.

¹¹⁹ **Programming** - A governing body may develop and periodically update a local plan to provide appropriate educational experiences to high ability students in the school corporation in kindergarten through grade 12. The plan must include the establishment of a broad-based planning committee that meets periodically to review the LEA plan for high ability students. The committee must have representatives from diverse groups representing the school and community. It must also include student assessment, professional development, development and implementation of a local program for high ability students, and evaluation of the local program for high ability students. The governing body may also provide a local program for high ability students in accordance with the plan that the governing body develops under subdivision (1) for the high ability students in the school corporation in kindergarten through grade 12. *Id.* § 20-10.1-5.1-4. The school corporation shall develop and periodically update a level of services program to provide educational opportunities to encourage high ability students to reach the highest possible level at every stage of development. The differentiated program for high ability students must include the following: a multifaceted student assessment plan, including the following: performance-based assessment, potential-based assessment, other forms of assessment, a curriculum and instructional strategies plan, a counseling and guidance plan, a systematic program assessment plan, a professional development plan, educational experiences offered outside the school day may be used to supplement, but not to supplant, the levels of services provided for high ability students offered during the school day. The governing body shall create a broad-based planning committee to design and monitor the continuous development and implementation of the levels of services program for high ability students. The program must be approved by the governing body. The plans described in subsection (c) must be available for public inspection and filed with the department. 511 IND. ADMIN. CODE tit. 511, r. 6-9.1-2.

¹²⁰ **Teacher training** - requires state resources program to include support for educators taking professional development leading to endorsement or licensure in gifted and talented education.

¹²¹ **Data Collection** - Beginning with the report published in 2002, the report must include the number and percentage of students in the gifted or talented programs, advanced placement, including for advanced placement tests, the number and percentage of students scoring three, four, and five; and participating. For the Scholastic Aptitude Test test scores for all students taking the test; test scores for students completing the academic honors diploma program; and the number and percentage of students participating. Course completion, including the number and percentage of students completing the academic honors diploma. IND. CODE § 20-1-21-9.

¹²² **Other** - The governor's scholars academy is established for the purposes of administering and operating a public, residential, coeducational school to be held in the summer for high school students in Indiana who are high ability students as described in IC 20-10.1-5.1. *Id.* § 20-8.1-10-4.

IOWA

¹²³ **Funding** - The budget of an approved gifted and talented children program for a school district shall be funded annually on a basis of one-fourth or more from the district cost of the school district. The remaining portion of the budget shall be funded by the thirty-eight dollar increase in allowable growth for the school budget year multiplied by a district's budget enrollment. The thirty-eight dollar increase for the school budget year shall increase in subsequent years by each year's state percent of growth. School districts shall annually report the amount expended for a gifted and talented program to the department of education. The proportion of a school district's budget corresponding to the thirty-eight dollar increase in allowable growth for the school budget year added to the amount in subsection 1 shall be utilized exclusively for a school district's gifted and talented program. If any portion of the gifted and talented program budget remains unexpended at the end of the budget year, the remainder shall be carried over to the subsequent budget year and added to the gifted and talented program budget for that year. IOWA CODE

§ 257.46. When programs are jointly provided by two or more local education agencies or by a local education agency in cooperation with another educational agency, the budget shall specify how each cooperating local education agency will determine the portion of the program costs to be provided by each local education agency and shall provide a budget that specifies the contribution of each local education agency. Funds generated through the process described in Iowa Code § 257.31 will be for expenditures directly related to providing the gifted and talented program described in the program plan. The following limits shall apply to the budget of the gifted and talented program: Excess costs of the gifted and talented program shall not exceed 40 percent of the district cost per pupil. The cost of supplies and materials shall not exceed 4 percent of the district cost per pupil. In determining the minimum one-fourth to be funded from the district cost, no more than 15 percent of the total gifted and talented program costs may be indirect expenses. IOWA ADMIN. CODE r. 281-59.5(257).

¹²⁴ **Standards** - The rules adopted by the state board pursuant to § 256.17, Code Supplement 1987, to establish new standards shall satisfy the requirements of this section to adopt rules to implement the educational program contained in this section. The educational program shall include programs that meet the needs of gifted and talented pupils. Iowa Code § 256.11. The board of directors of a school district shall submit applications for approval for the programs to the department not later than November 1 preceding the fiscal year during which the program will be offered. The board shall also submit a copy of the program plans to the gifted and talented children advisory council, if an advisory council has been established. IOWA CODE § 257.45.

¹²⁵ **Technical Assistance** - The department shall employ a consultant for gifted and talented children programs. *Id.* § 257.42. The area education agencies in which the school districts having approved gifted and talented children programs are located shall cooperate with the school district in the identification and placement of gifted and talented children and may assist school districts in the establishment of such programs. *Id.* § 257.47; *see also id.* § 273.2.

¹²⁶ **Identification** - "Gifted and talented children" are those identified as possessing outstanding abilities who are capable of high performance. Gifted and talented children are children who require appropriate instruction and educational services commensurate with their abilities and needs beyond those provided by the regular school program. Gifted and talented children include those children with demonstrated achievement or potential ability, or both, in any of the following areas or in combination: General intellectual ability, Creative thinking, Leadership ability, Visual and performing arts ability, and Specific ability aptitude. *Id.* § 257.44. The program plans submitted by school districts shall be part of the school improvement plan submitted pursuant to § 256.7, subsection 21, paragraph "a," and shall include program goals, objectives, and activities to meet the needs of gifted and talented children, student identification criteria and procedures, staff in-service education design, staff utilization plans, evaluation criteria and procedures and performance measures, program budget, qualifications required of personnel administering the program, and other factors the department requires. *Id.* § 257.43. Students will be placed in a gifted and talented program in accordance with systematic and uniform identification procedures which will be characterized by the following: Identification will be for the purpose of determining the appropriateness of placement in a gifted and talented program or the receipt of special educational services rather than for categorically labeling a student. The decision to provide a student with a gifted and talented program will be based on a comprehensive appraisal of the student, consideration of the nature of the available gifted and talented program and an assessment of actual and potential opportunities within the student's regular school program. Multiple criteria shall be used in identifying a student, with no single criteria eliminating a student from participation. Criteria will combine subjective and objective data, including data with direct relevance to program goals, objectives and activities. In the event that the number of eligible students exceeds the available openings, participants shall be selected according to the extent to which they can benefit from the program. IOWA ADMIN. CODE r. 281-59.5(257).

¹²⁷ **Programming** - Boards of school districts, individually or jointly with the boards of other school districts, shall annually submit program plans for gifted and talented children programs and budget costs to the department of education and to the applicable gifted and talented children advisory council, if

an advisory council has been established, as provided in this chapter. The parent or guardian of a pupil may request that a gifted and talented children program be established for pupils who qualify as gifted and talented children under § 257.44, including demonstrated achievement or potential ability in a single subject area." IOWA CODE § 257.42. The plan shall describe the rationale for the gifted and talented program, describe the target population, identify the goals and objectives of the planned programs and designate the role of staff to meet these goals and objectives, specify provisions for the ongoing identification, assessment, evaluation and placement of pupils in appropriate programs, describe provisions for the orderly development of sequential programs including curriculum, instructional resources, administrative service, staff utilization and personnel training, describe provisions, if any, for cooperative arrangements, describe the design for program evaluation, and include a program budget. IOWA ADMIN. CODE r. 28-59.4(257). Gifted and talented programs may be made available to eligible students by a local school district, as a cooperative effort between local school districts and through cooperative arrangements between local school districts and other educational agencies. It is the responsibility of the school districts electing to provide such programs to ensure that they meet the requirements of state statute and these rules. *Id.* r. 281-59.1(257). Each school district shall incorporate gifted and talented programming into its comprehensive school improvement plan as required by Iowa Code § 257.43. The comprehensive school improvement plan shall include the following gifted and talented program provisions: valid and systematic procedures, including multiple selection criteria for identifying gifted and talented students from the total student population; goals and performance measures; a qualitatively differentiated program to meet the students' cognitive and affective needs; staffing provisions; an in-service design; a budget; and qualifications of personnel administering the program. Each school district shall review and evaluate its gifted and talented programming. This subrule does not apply to accredited nonpublic schools. *Id.* r. 281-12.5(256). The following items shall constitute a program plan which must be filed with the department to qualify for additional allowable growth to provide appropriate programs for gifted and talented students under provisions of Iowa Code § 257.34. The plan shall: describe the rationale for the gifted and talented program. Describe the target population. Identify the goals and objectives of the planned programs and designate the role of staff to meet these goals and objectives; specify provisions for the ongoing identification, assessment, evaluation and placement of pupils in appropriate programs; describe provisions for the orderly development of sequential programs including curriculum, instructional resources, administrative service, staff utilization and personnel training; describe provisions, if any, for cooperative arrangements; describe the design for program evaluation; include a program budget; and describe the procedure for providing each student with a written personalized plan for gifted and talented education. IOWA ADMIN. CODE r. 281-59.4(257). Gifted and talented program goals and objectives shall be established for the following: curriculum and instructional strategies; student outcomes; program management and administration; and program development. The program of instruction shall consist of content and teaching strategies that reflect the accelerative pace, intellectual processes and creative abilities that characterize gifted and talented students. A linkage between the selection of students, the anticipated student outcomes and the special instructional programs shall be evident. Learning activities shall provide for the development of skills which are beyond the scope of the regular classroom, introduce advanced concepts and contents, and offer students a greater latitude of inquiry than would be possible without the specialized instructional program. Specialized instructional activities shall be those not ordinarily found in the regular school program and may include, but shall not be limited to: A special curriculum supplementing the regular curriculum, using a high level of cognitive and affective concepts and processes. Flexible instructional arrangements such as special classes, seminars, resource rooms, independent study, student internships, mentorships, research field trips, and research centers. Students shall be involved in a program for a sufficient portion of the regularly scheduled school time to ensure that projected student outcomes are likely to be achieved. IOWA ADMIN. CODE r. 281-59.5(257).

¹²⁸ **Teacher Training** - The state board shall adopt rules requiring all higher education institutions providing practitioner preparation to include in the professional education program, preparation that contributes to the education of students with disabilities and students who are gifted and talented. Preparation required under this paragraph must be successfully completed before graduation from the practitioner preparation program. IOWA CODE § 256.16 9. Periodic in-service sessions will be offered for all classroom teachers to maintain and update understandings and skills about individualizing programs for

identified gifted and talented students. A staff development plan for personnel responsible for gifted and talented programs shall be provided. This plan shall be based upon the assessed needs of the gifted and talented instructional and supervisory personnel. Instructional personnel providing programs for gifted and talented students should have preservice or in-service preparation in gifted and talented education that is commensurate with the extent of their involvement in the gifted and talented program. IOWA ADMIN. CODE r. 281-59.5(257).

¹²⁹ **Program Evaluation** - The department may request that the staff of the auditor of state conduct an independent program audit to verify that the gifted and talented programs conform to a district's program plans. IOWA CODE § 257.42; *see also id.* § 257.42. The local education agency shall give attention to the following in its evaluation design: Evaluation of gifted and talented programs shall be for the purpose of measuring program effects and providing information for program improvement. Evaluation should be conducted for each program level where objectives have been established. Both cognitive and affective components of student development should be evaluated. Evaluation findings should report results based on actual accomplishments by the gifted and talented students or their teachers which are a direct result of the project, program, or activity. IOWA ADMIN. CODE r. 281-59.5(257).

¹³⁰ **Individualized Programming** - The plan shall describe the procedure for providing each student with a written personalized plan for gifted and talented education. IOWA ADMIN. CODE r. 281-59.4(257). The services provided for each student placed in a gifted and talented program shall be contained in a written, personalized gifted and talented plan. The plan shall include: relevant background data, assessment of present needs and projections for future needs; a chronology of all gifted and talented services rendered; nature and extent of present services. If a district's program plan provides for indirect services to a gifted and talented student, such as consultative services for a regular classroom teacher, the personalized student plan must document the specific type and extent of supportive assistance provided the classroom teacher on behalf of adapting the regular school program to better address the student's needs. Each identified student's progress shall be reviewed at least annually to consider modifications in program or student placement. Personalized education plans must be put in writing for each gifted and talented student and reviewed at least annually. *Id.* r. 281-59.5(257).

¹³¹ **Other** - At the written request of one or more boards of school districts, in an area education agency, the area education agency board shall establish one or more gifted and talented children advisory councils and shall appoint members for four-year staggered terms. IOWA CODE §§ 257.48-.49.

¹³² **Other** - A student who wishes to be excused from the physical education requirement must be seeking to be excused in order to enroll in academic courses not otherwise available to the student, or be enrolled or participating in programs that meet the needs of gifted and talented pupils. *Id.* § 256.11.

¹³³ **Other** - The state board of regents shall establish and maintain at Iowa City the international center for talented and gifted education. The international center shall provide programs to assist classroom teachers to teach gifted and talented students in regular classrooms, provide programs to enhance the learning experiences of gifted and talented students, serve as a center for national and international symposiums and policy forums for enhancing the teaching of gifted and talented students, and undertake other appropriate activities to enhance the programs of the center, including, but not limited to, coordinating and working with the world council for gifted and talented children, incorporated. *Id.* § 263.8A. The treasurer shall transfer moneys in the interest for Iowa schools fund on a quarterly basis as follows: . . . forty-five percent of the moneys deposited in the Iowa Schools fund to the credit of the international center endowment fund of the international center for gifted and talented education established in § 263.8A. *Id.* § 257B.1B.

¹³⁴ **Other** - It is the policy of this state to promote rigorous academic and to provide a wider variety of options to high school pupils by enabling ninth and tenth grade pupils who have been identified as gifted and talented, and eleventh and twelfth grade pupils, to enroll part-time in nonsectarian courses in eligible postsecondary institutions of higher learning in this state. *Id.* § 261C.2.

KANSAS

¹³⁵ **Funding** - In each school year, in accordance with appropriations for special education and related services provided under this act, each school district which has provided special education and related services in compliance with the provisions of this act shall be entitled to receive: (A) reimbursement for actual travel allowances paid to special teachers at not to exceed the rate specified under K.S.A. 75-3203, and amendments thereto, for each mile actually traveled during the school year in connection with duties in providing special education or related services for exceptional children; such reimbursement shall be computed by the state board by ascertaining the actual travel allowances paid to special teachers by the school district for the school year and shall be in an amount equal to 80% of such actual travel allowances; (B) reimbursement in an amount equal to 80% of the actual travel expenses incurred for providing transportation for exceptional children to special education or related services; such reimbursement shall not be paid if such child has been counted in determining the transportation weighting of the district under the provisions of the school district finance and quality performance act; (C) reimbursement in an amount equal to 80% of the actual expenses incurred for the maintenance of an exceptional child at some place other than the residence of such child for the purpose of providing special education or related services; such reimbursement shall not exceed \$ 600 per exceptional child per school year; and (D) except for those school districts entitled to receive reimbursement under subsection (B) or (C), after subtracting the amounts of reimbursement under paragraphs (A), (B) and (C) of this subsection (A) from the total amount appropriated for special education and related services under this act, an amount which bears the same proportion to the remaining amount appropriated as the number of full-time equivalent special teachers who are qualified to provide special education or related services to exceptional children and are employed by the school district for approved special education or related services bears to the total number of such qualified full-time equivalent special teachers employed by all school districts for approved special education or related services. KAN. STAT. ANN. 72-978.

¹³⁶ **Identification** - "Gifted children" means exceptional children who are determined to be within the gifted category of exceptionality as such category is defined by the state board. "Exceptional children" means persons who are children with disabilities or gifted children and are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of KAN. STAT. ANN. 72-1111, and amendments thereto. *Id.* § 72-962.

¹³⁷ **Programming** - Same provisions as for students with disabilities.

¹³⁸ **Individualized Programming** - "Individualized education program" or "IEP" means a written statement for each exceptional child that is developed, reviewed, and revised in accordance with the provisions of KAN. STAT. ANN. 2001 Supp. 72-987, and amendments thereto. *Id.* § 72-962; KAN. ADMIN. REGS. 91-40-1(c). At the beginning of each school year, each agency shall have an individualized education program in effect for each exceptional child. KAN. STAT. ANN. § 787(a)(1). Each gifted child shall be permitted to test out of, or work at an individual rate, and receive credit for required or prerequisite courses, or both, at all grade levels, if so specified in that child's individualized education program. Each gifted child may receive credit for college study at the college or high school level, or both. If a gifted child chooses to receive college credit, however, the student shall be responsible for the college tuition costs. KAN. ADMIN. REGS. 91-40-3. The IEP for each exceptional child shall include: a statement of the child's present levels of educational performance, including: how the child's disability or giftedness affects the child's involvement and progress in the general curriculum; or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; a statement of measurable annual goals, including benchmarks or short-term objectives, related to: meeting the child's needs that result from the child's disability or giftedness, to enable the child to be involved in and progress in the general or advanced curriculum; and meeting each of the child's other educational needs that result from the child's disability or giftedness; a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child: to advance appropriately toward attaining the annual goals; to be involved and progress in the general curriculum in accordance

with provision (1) and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other exceptional and nonexceptional children in the activities described in this paragraph; an explanation of the extent, if any, to which the child will not participate with nonexceptional children in the regular class and in the activities described in provision (3); a statement of any individual modifications in the administration of state or district-wide assessments of student achievement that are needed in order for the child to participate in such assessment; and if the IEP team determines that the child will not participate in a particular state or district-wide assessment of student achievement or part of such an assessment, a statement of why that assessment is not appropriate for the child and how the child will be assessed; the projected date for the beginning of the services and modifications described in provision (3), and the anticipated frequency, location, and duration of those services and modifications; beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's course of study, such as participation in advanced-placement courses or a vocational education program; beginning at age 16 or younger, if determined appropriate by the IEP team, a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and beginning at least one year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights, if any, that will transfer to the child on reaching the age of majority as provided in K.S.A. 2001 Supp. 72-989; a statement of how the child's progress toward the annual goals will be measured; and how the child's parents will be regularly informed, by such means as periodic report cards, at least as often as parents of nonexceptional children are informed of their children's progress, of their child's progress toward the annual goals; and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. In developing each child's IEP, the IEP team shall consider the strengths of the child and the concerns of the parents for enhancing the education of their child; the results of the initial evaluation or most recent evaluation of the child; in the case of a child whose behavior impedes the child's learning or that of others, strategies, including positive behavioral interventions and supports to address that behavior; in the case of a child with limited English proficiency, the language needs of the child as such needs relate to the child's IEP; in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child; the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and whether the child requires assistive technology devices and services. The regular education teacher of the child, as a member of the IEP team, to the extent appropriate, shall participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with this section; and the review and revision of the child's IEP under subsection (e). Each agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and revises the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate; the results of any reevaluation conducted under this section; information about the child provided to, or by, the parents, as described in subsection (g) of KAN. STAT. ANN. 2001 Supp. 72-986, and amendments thereto; the child's anticipated needs; or other matters. KAN. STAT. ANN. § 72-987.

¹³⁹ **Procedural Safeguards** - Same (based on definition of exceptional children in § 72-962) as for students with disabilities. *Id.* §§ 72-988 and 990. The exception is that the IDEA-based discipline procedural protections, such as a manifestation determination, and the IDEA-based "least restrictive environment" mandate do not apply to gifted-alone students. *See, e.g., id.* §§ 72-976(a), 72-990 and 72-991.

¹⁴⁰ **Due process hearing** - Same. *Id.* § 72-988. Confusingly, the statute provides prevailing parents of exceptional children with attorney's fees "as provided in the federal law." *Id.*

¹⁴¹ **Complaint Procedure** - Any person may file a written signed complaint alleging that an agency has violated a state or federal special education law or regulation. . . . KAN. ADMIN. REGS. 91-40-51. The regulation does not specifically refer to the targeted group (e.g., exceptional child, gifted student, or child with a disability), but state officials interpret the reference to "state . . . special education law or regulation" as triggering this right for gifted children, because the state special education legislation and regulations cover (with the minor exceptions specified *supra* notes 139-40) gifted students. E-mail from Mark Ward, Education Program Consultant, Kansas State Department of Education (June 2, 2005, 12:01:23 EST)(on file with author).

¹⁴² **Other** - There is established a state advisory council for special education. The advisory council established under this section shall be representative of the state population and be comprised of persons involved in, or concerned with, the education of exceptional children, including parents of exceptional children, at least one of whom shall be the parent of a gifted child. KAN. STAT. ANN. § 72-964.

¹⁴³ **Other** - A Kansas honors scholarship may be awarded to any Kansas honor student enrolled in an honors or gifted program at any institution of postsecondary education. A Kansas honor student may be awarded a Kansas honors scholarship for not more than two honors or gifted programs. *Id.* § 72-9702-05.

KENTUCKY

¹⁴⁴ **Funding** - State funds for gifted education shall be used specifically for direct services to students who are gifted and talented. Direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board in 704 KAR 20:280. Seventy-five (75) percent of a district's gifted education allocation shall be used to employ properly certified personnel to provide direct instructional services. (2) A local district budget decision impacting state funds for gifted education after the annual submission of the local district education plan shall be coordinated through the district gifted education coordinator. If the change will cause a major or significant adjustment to the district gifted education budget, the change shall be submitted to the Kentucky Department of Education for approval as an amendment. A district receiving state gifted education funding shall designate a gifted education coordinator to: oversee the district gifted education operation; serve as liaison between the district and the state; ensure internal compliance with state statutes and administrative regulations; and administer and revise the gifted education program budget. State funding to a district shall be contingent upon: employing properly certified personnel to administer and teach in the program; the annual submission of a local district gifted education year-end report; a summative evaluation of the program and student progress; and complying with this administrative regulation. 704 KY. ADMIN. REGS. 3:285.

¹⁴⁵ **Identification** - "Gifted and talented student" means a pupil identified as possessing demonstrated or potential ability to perform at an exceptionally high level in general intellectual aptitude, specific academic aptitude, creative or divergent thinking, psychosocial or leadership skills, or in the visual or performing arts. KY. REV. STAT. ANN. § 157.200. A district shall adopt policies and procedures which shall provide for identification and diagnosis of strengths, gifted behaviors and talents through: informal selection and diagnosis in the primary program; formal identification and continuous diagnosis of a student in grades four (4) through twelve (12); and provision of multiple service delivery options in primary through grade twelve (12). A local school district shall establish a procedure that identifies students displaying gifted and talented behaviors and characteristics as defined in KRS 157.200 and § 1 of this administrative regulation and allows for determination of eligibility for services based on the student's individual needs, interests and abilities. This procedure shall include a combination of informal measures, formal measures and objective-based eligibility criteria. Determination of appropriateness of level and type of services provided to a student shall be subject to continuous assessment. A local school district shall provide a system for diagnostic screening and identification of strengths, gifted behaviors and talents which provides equal access for racial and ethnic minority children, disadvantaged children, and children with

disabilities. District identification and diagnosis procedures for appropriate services shall be based upon a balanced multiple criteria approach, continuous and multiple long-term assessment, and early identification and diagnosis of strengths, gifted behaviors and talents. 704 KY. ADMIN. REGS. 3:285. In the primary program, formal, normed measures may be used for diagnosing the level of instructional service needed by a student and for evaluation of student progress. Data from formal, normed measures shall not be used for the purpose of eliminating eligibility for services to a child in the primary program but may be used to discover and include eligible students overlooked by informal assessment. A single assessment instrument or measure shall not be the basis for denying services once a child has been informally selected and placed in the talent pool. For children in the primary program, the procedure for selecting a high potential learner for participation in the primary talent pool shall include use of a minimum of three (3) of the following recognized or acceptable assessment options to assess the degree of demonstrated gifted characteristics and behaviors and to determine level of need and most appropriate service interventions: a collection of evidence (e.g., primary portfolios) demonstrating student performance; inventory checklists of behaviors specific to gifted categories; diagnostic data; continuous progress data; anecdotal records; available formal test data; Parent interview or questionnaire; primary review committee recommendation; petition system; and other valid and reliable documentation. Exit from the primary program shall be based on criteria established by 703 KAR 4:040. For a student in grades four (4) through twelve (12), a local school district's procedure for identifying and diagnosing gifted and talented behaviors, and the level of services needed, shall include: a valid and reliable combination of measures to identify strengths, gifted behaviors and talents which indicate a need and eligibility for service options; at least three (3) of the following recognized or acceptable assessment options for identification and diagnosis: a collection of evidence from portfolios demonstrating student performance; inventory checklists of behaviors specific to gifted categories; continuous progress data; anecdotal records; peer nominations; formal testing data specific to gifted categories; parent interview or questionnaire; primary review committee recommendation for those entering the fourth grade; self-nomination or petition system; student awards or critiques of performance or products specific to gifted categories; and other valid and reliable documentation. To qualify as a gifted and talented student in grades four (4) through twelve (12), the following criteria shall be met in one (1) of these gifted and talented categories: general intellectual ability shall be determined by a student score within the ninth stanine on a full scale comprehensive test of intellectual ability. If a student scores low on formal group measures of intellectual ability, yet other documentation shows potential, the district shall administer an individual mental ability test. Evidence of general intellectual ability also may include: high performance on additional individual or group intellectual assessment; Observation of applied advanced reasoning ability; or checklist inventories of behaviors specific to underachieving or disadvantaged gifted learners. Specific academic aptitude shall be determined by composite scores in the ninth stanine on one (1) or more subject test scores of an achievement test. If a student scores low on a formal group measure of academic strength, yet other documentation shows potential, the district shall administer another standardized normed achievement test. Evidence of specific academic aptitude also may include: high performance on an additional individual or group test of academic aptitude; student awards or critiques of performances; off-level testing; portfolio of high academic performances; or student progress data. Creativity shall be determined through the use of informal or formal assessment measures of a child's capacity for originality of thought, fluency, elaboration, and flexibility of thought. Documented evidence of creative thinking ability also may include: creative writing samples; high scores on tests of creative ability (e.g., Williams or Torrance, etc.); behavioral checklists or observations specific to creative behavior; or observation of original ideas, products or problem-solving. Leadership or psychosocial abilities shall be determined by a variety of informal measures and the documentation of the willingness of a student to assume leadership roles in class, in a student organization, and in a community activity. Evidence of psychosocial or leadership ability also may include: sociograms (i.e., questionnaires designed to assess leadership characteristics); peer recommendations; behavioral checklists or observations specific to leadership behavior; portfolio entries which display leadership qualities; or offices held by student in extracurricular activities and class government. Visual and performing arts talent shall be determined through evidence of performance which may include auditions, letters of recommendations, or product or portfolio assessment by specialists or professional artists. Evidence of visual or performing arts also may include: awards or critiques of performance; or portfolio of visual or performing arts ability. Identification of gifted characteristics, behaviors and talent shall be based on the following process: 1) data gathering - a

district shall develop a system for searching the entire school population on a continuous basis for likely candidates for services using both informal and available formal, normed, standardized measures, including measures of nonverbal ability; 2) data analysis - a district shall develop a system for analyzing student data for the purposes of a comparison of the students under consideration for identification to local or national norms, including those required in this administrative regulation, and to district-established criteria of eligibility for each category of giftedness; 3) committee for determination of eligibility and services - a school district or school shall assemble a selection and placement committee which shall have four (4) purposes: to provide feedback on the adequacy of the district's identification and diagnostic procedure; to ensure that a variety of views are heard during the selection and placement process; to determine which students meet identification criteria and which services, at what level, shall be included in each identified student's gifted and talented student services plan; and to help provide communication and support in the schools and community; 4) provision of services - a district shall implement articulated services from primary through grade twelve (12) which provide multiple delivery options matched to diagnosed behaviors, strengths and characteristics of individual students; and 5) petition and appeal for services - a district shall provide a petition system as a safeguard for a student who may have been missed in the identification and diagnosis procedure. Exceptions and special considerations for eligibility - school personnel shall take into consideration environmental, cultural, and disabling conditions which may mask a child's true abilities that lead to exclusion of otherwise eligible students, such as a student who qualifies as: an exceptional child as defined in KRS 157.200; disadvantaged; or underachieving. 704 KY. ADMIN. REGS. 3:285.

¹⁴⁶ **Programming** - A student diagnosed as possessing gifted characteristics, behaviors or talent shall be provided articulated, primary through grade twelve (12) services which: Are qualitatively differentiated to meet his individual needs; result in educational experiences commensurate with his interests, needs and abilities; and facilitate the high level attainment of goals established in KRS 158.6451. For a student in a primary program, services shall be provided within the framework of primary program requirements and shall allow for continuous progress through a differentiated curriculum and flexible grouping and regrouping based on the individual needs, interests, and abilities of the student. Emphasis on educating gifted students in the general primary classroom, shall not preclude the continued, appropriate use of resource services, acceleration options, or the specialized service options contained in subsection (5) of this section. A recommendation for a service shall be made on an individual basis. Grouping for instructional purposes and multiple services delivery options shall be utilized in a local district gifted education plan. Student grouping formats shall include grouping for instructional purposes based on student interests, abilities, and needs, including social and emotional. There shall be multiple service delivery options with no single service option existing alone, districtwide, at a grade level. These service delivery options shall be differentiated to a degree as to be consistent with KRS 157.200(1). Both grouping for instructional purposes and multiple service delivery options may include: Various acceleration options (e.g., early exit from primary, grade skipping, content and curriculum in one (1) or more subjects from a higher grade level); advanced placement and honors courses; collaborative teaching and consultation services; special counseling services; differentiated study experiences for individuals and cluster groups in the regular classroom; distance learning; enrichment services during the school day (not extracurricular); Independent study; mentorships; resource services delivered in a pull-out classroom or other appropriate instructional setting; seminars; travel study options; or special schools or self-contained classrooms, grades four (4) through twelve (12) only. With the exception of an academic competition or optional extracurricular offering, services shall be provided during the regular school hours. A comprehensive framework or course of study for children and youth who are diagnosed as possessing gifted characteristics, behaviors and talent shall be based on a district or school's curricula required to meet the goals established in KRS 158.6451. A school shall differentiate, replace, supplement, or modify curricula to facilitate high level attainment of the learning goals established in KRS 158.6451 and to assist students identified and diagnosed as gifted and talented to further develop their individual interest, needs and abilities. 704 KY. ADMIN. REGS. 3:285.

¹⁴⁷ **Teacher Training** - All persons employed as teachers for gifted education shall hold an appropriate certificate endorsement for gifted education, except that all teachers having certificates initially

issued for a duration period on or before July 1, 1984, or proper renewals thereof, shall remain eligible thereafter for assignment as teachers for gifted education, for the grade levels of the base certificate, provided any such assignment was valid under the original certificate at the time it was issued. KY. REV. STAT. ANN. § 161.052. A local school district shall ensure that direct services to students identified as demonstrating gifted and talented behaviors and characteristics shall be provided by professionally qualified and certified personnel as required by the Education Professional Standards Board. A teacher shall be appropriately endorsed in gifted education in accordance with 704 KAR 20:280 if the teacher works: directly with identified gifted pupils in addition to the regularly assigned teacher; or For at least one-half (1/2) of the regular school day in a classroom made up only of properly identified gifted students. All other personnel working with gifted students shall be prepared through appropriate professional development to address the individual needs, interests, and abilities of the students. 704 KY. ADMIN. REGS. 3:285.

¹⁴⁸ **Program Evaluation** - District policies and procedures shall ensure that a program evaluation process shall be conducted on an annual basis and shall address: overall student progress; student, parent, and faculty attitudes toward the program; community involvement; cost effectiveness; the incorporation of gifted education into the regular school program; overall quality of instruction and program personnel credentials; and future program directions and modifications. Data collected in the annual program evaluation shall be utilized in the school and district instructional planning process. Beginning with the 2001-2002 school year, local district policies and procedures shall ensure that the school personnel report to a parent or guardian the progress of his child related to the gifted and talented student services plan at least once each semester. 704 KY. ADMIN. REGS. 3:285.

¹⁴⁹ **Individualized Programming** - Each exceptional student as defined in KRS 157.200 shall have an individual education plan that shall serve as the centerpiece of the student's educational career and the communication vehicle between the parents and school personnel. The plan shall enable the parents and school personnel to decide the student's educational needs, the services needed to achieve those needs, and the anticipated results. The plan shall be used as a document to monitor the student's progress. School personnel shall provide the parents with reports of the progress toward the student's annual goals at least as often as report cards go to nondisabled students. KY. REV. STAT. ANN. § 157.196.

¹⁵⁰ **Procedural Safeguards** - A local school district shall implement a procedure to obtain parental or guardian permission prior to the administration of an individual test, given as a follow-up to a test routinely administered to all students, used in formal identification and prior to official identification and placement. Beginning with the 2001-2002 school year, a local school district shall implement a procedure to obtain information related to the interests, needs, and abilities of an identified student from his parent or guardian for use in determining appropriate services. A parent or guardian of an identified student shall be notified annually of services included in his child's gifted and talented student services plan and specific procedures to follow in requesting a change in services. 704 KY. ADMIN. REGS. 3:285.

¹⁵¹ **Due Process Hearing** - A school district shall establish a grievance procedure through which a parent, guardian or student may resolve a concern regarding the appropriate and adequate provision of talent pool services or services addressed in a formally identified student's gifted and talented student services plan. This district-wide grievance procedure shall address: how, and by whom, the grievance procedure is initiated; the process for determining the need to evaluate or reevaluate the child for appropriate services; the criteria for determining if placement of the child needs revision; procedures for ensuring that appropriate services are provided to all identified students consistent with KRS 157.200 and 157.230; and procedures for ensuring the participation of the parent or guardian, a regular education teacher of the student, a gifted education teacher or coordinator, administrator, and a counselor in addressing a grievance. *Id.* 3:285.

¹⁵² **Other** - The State Advisory Council for Gifted and Talented Education is hereby created and attached to the Kentucky Department of Education. The council's purpose is to make recommendations

regarding the provisions of services for gifted and talented students in Kentucky's education system. KY. REV. STAT. ANN. § 158.648.

¹⁵³ **Other** - In March 2005, Kentucky passed a new law amending KY. REV. STAT. ANN. § 158.796 to revise the management of the Governor's Scholars Program and to clarify that the purpose of this enrichment program for academically-gifted students is "to enhance the next generation of civic and economic leaders and create models of educational excellence."

LOUISIANA

¹⁵⁴ **Funding** - Louisiana includes gifted/talented (G/T) under the umbrella of exceptional education for funding and other purposes, although it does not establish funding levels specifically for G/T.

¹⁵⁵ **Standards** - Louisiana's Bulletin 1706 Subpart B, issued in August 2000, provides the regulations for G/T students.

¹⁵⁶ **Technical Assistance** - The treatment of G/T students is undifferentiated in said regulations from students with disabilities. *Id.*

¹⁵⁷ **Identification** - The regulations provide a parallel procedure for finding and identifying G/T students but without specific criteria or other such differentiated details. *Id.*

¹⁵⁸ **Programming** - The regulations provide undifferentiated treatment from students with disabilities. *Id.*

¹⁵⁹ **Teacher training** - *Id.*

¹⁶⁰ **Data Collection** - *Id.*

¹⁶¹ **Program Evaluation** - *Id.*

¹⁶² **Individualized Programming** - *Id.* Additionally, Louisiana's IEP Handbook for Gifted/Talented Students, revised 2001, provides supplementary information regarding the Individualized Education Program (IEP), the basis for educational programming for G/T students in Louisiana. Although not formally binding in itself, the handbook describes the IEP process and the legal procedures mandated by Revised Statute 17:1941, *et seq.*, and its regulations. It serves as a training vehicle for interested parties in the effort to improve the quality of Gifted/Talented IEPs in Louisiana. LA. ADMIN. CODE tit. 27, § 2283 states that LA. REV. STAT. ANN. § 17:1941 *et seq.* clearly indicate that while the local educational agency must locate and identify all students who meet the criteria for gifted/talented, the LEA is not responsible for providing [a free appropriate public education] to gifted/talented students whose parents have voluntarily enrolled the student in a private school. Thus, the coverage of gifted/talented students is the same as those of students with disabilities.

¹⁶³ **Procedural Safeguards** - The Department of Education or the local educational agency that receives assistance under this Chapter shall establish and maintain procedures in accordance with this Section to ensure that children with exceptionalities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies. Safeguards to guarantee the rights of parents and children with exceptionalities shall include an opportunity for the parents of a child with an exceptionality to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child, procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the state, including the assignment of an individual (who shall not be an employee of the state educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to

act as a surrogate for the parents, written prior notice to the parents of the child whenever such agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, procedures designed to ensure that the notice required by Paragraph (3) of this Subsection is in the native language of the parents, unless it clearly is not feasible to do so, an opportunity for mediation in accordance with established procedures, an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child, procedures that require the parent of a child with an exceptionality, or the attorney representing the child, to provide notice, which shall remain confidential, whenever a complaint is filed under Paragraph (6) of this Subsection, procedures that require the state educational agency to develop a model form to assist parents in filing a complaint in accordance with Paragraph (7) of this Subsection.

¹⁶⁴ **Due Process Hearing** - Procedures applicable to a hearing concerning a dispute relative to the provision of special education and related services to children with exceptionalities shall include requirements that: any person, agency, or other party requesting such a hearing shall do so within one year after the occurrence of the event or of the facts upon which any hearing request is founded. There shall be no interruption or suspension whatsoever of this prescriptive period. Any person, agency, or other party aggrieved by a decision or finding of a hearing officer may appeal such decision or finding to the state level review panel established by rules of the State Board of Elementary and Secondary Education provided that such appeal is filed within fifteen days after notification of the decision or finding is received by the aggrieved person, agency, or party. Any person, agency, or other party aggrieved by a decision or finding of the state level review panel may appeal such decision or finding to a state or federal court of competent jurisdiction, provided that such appeal is filed within 90 days after notification of the decision or finding of the state level review panel is received by the aggrieved person, agency, or party. LA. REV. STAT. ANN. § 17:1952 (West 2001). Unusually, the regulations appear to provide for attorney's fees for parents of G/T students who prevail at due process hearings (by requiring districts to inform them that they may be able to recover" such fees if they prevail). Bulletin 1706, Subpart B, § 1507(c)(4). *See Louisiana's Rights of Gifted/Talented Children in Public Schools and the Mediation Services for Students with Exceptionalities* for further information regarding mediation and due process rights.

¹⁶⁵ **Complaint Procedure** - same as that applicable to students with disabilities. *Id.*

¹⁶⁶ **Other** - Each city and parish school board, by rule, may provide, for a child younger than the age prescribed by Paragraph (1) of this Subsection to enter kindergarten; provided that such child has been evaluated and identified as gifted in accordance with the regulations of the state Department of Education for such evaluation. Notwithstanding the provisions of LA. REV. STAT. ANN. §§ 17:222(A) or (C), any child admitted to kindergarten pursuant to this Paragraph shall be eligible to enter first grade upon successful completion of kindergarten; provided all other applicable entrance requirements have been fulfilled. LA. REV. STAT. ANN. § 17:151.3.

¹⁶⁷ **Other** - It is the intent of the legislature to establish an independent, residential school for certain high school students with the express purpose of providing a more challenging educational experience for the gifted and talented children of this state and of developing such children to their full potential. *Id.* § 17:1961.

¹⁶⁸ **Other** - The legislature hereby recognizes that the Governor's Program for Gifted Children has operated without explicit statutory mandate as an independent, residential summer program for certain elementary, middle, and high school students with the express purpose of providing a more challenging and enriching educational, artistic, and civic experience for the gifted children of this state and of developing such children to their full potential, while instilling in them an appreciation for higher virtues such as civic duty, justice, truth, beauty, and the good. It is the intent of the legislature to continue such program and to establish it by law as more specifically provided in this Part. *Id.* §§ 17:1989 *et seq.*

MAINE

¹⁶⁹ **Funding** - The department may, from funds available to it, grant funds to a school administrative unit to undertake gifted education programs. A grant will be made based on requirements of the department (replacing, as of 2003, the previous legislation, which provided for a 2:1 matching requirement). ME. REV. STAT. ANN. tit. 20, § 8102.

¹⁷⁰ **Standards** - The Legislature recognizes that gifted and talented students, who comprise approximately 3% to 5% of Maine's students, require differentiated education programs that are aligned with the system of learning results as established in § 6209, beyond those normally provided by the regular school program in order to realize their educational potential and contribution to themselves and to society. *Id.* tit. 20, § 8101. This rule establishes the standards and procedures governing the establishment, implementation, and approval of educational programs for gifted and talented children in each school administrative unit, including needs assessment, identification of students, and program planning, development, delivery and review. Its intent is to provide a framework to assure the establishment of programs in the elementary and secondary schools of each school administrative unit in an appropriate and timely manner. CODE ME. R. 05-071, § 104.01.

¹⁷¹ **Technical Assistance** - The commissioner may provide technical assistance to a school administrative unit for planning for gifted and talented education programs. ME. REV. STAT. ANN. tit. 20, § 8102(4). The commissioner may provide technical assistance to a school administrative unit for planning for gifted and talented education programs. *Id.* tit. 20, § 8104(3).

¹⁷² **Identification** - The commissioner shall adopt or amend rules for the identification of gifted and talented students and for gifted and talented education programs. *Id.* tit. 20, § 8102. The commissioner shall establish rules to implement this section, including the identification of students, needs and resource assessment, and program planning, development and delivery. *Id.* tit. 20, § 8104(2). "Gifted and talented children" shall mean those children in grades K-12 who excel, or have the potential to excel, beyond their age peers, in the regular school program, to the extent that they need and can benefit from programs for the gifted and talented. Gifted and talented children shall receive specialized instruction through these programs if they have exceptional ability, aptitude, skill, or creativity in one or more of the following categories: General Intellectual Ability as shown by demonstrated significant achievement or potential for significant accomplishment above their age peers in all academic areas, Specific Academic Aptitude as shown by demonstrated significant achievement or potential for significant accomplishment above their age peers in one or more academic area(s), Artistic Ability as shown by demonstrated significant achievement or potential for significant accomplishment above their age peers in the literary, performing, and/or visual arts. NOTE: Children with exceptional General Intellectual Ability and/or exceptional Specific Academic Aptitude usually comprise five percent of the school population. Students with exceptional Artistic Ability usually comprise five percent of the school population. Children in the top two percent of the school population may be considered highly gifted. CODE ME. R. 05-071, § 104.02. The superintendent, under policies adopted by the school board, shall establish a process for the identification of children for the gifted and talented program for each school in the school administrative unit. Each school unit shall conduct an initial screening and, thereafter, an annual review of the K-12 school population to ensure that all children have an equal opportunity to be considered for selection and placement in the gifted and talented program. Instruments and procedures used in the identification process shall be as non-discriminatory as possible with respect to race, cultural or economic background, religion, national origin, sex, or handicapping condition. CODE ME. R. 05-071, § 104.06. Screening procedures shall be appropriate to the developmental characteristics of elementary and secondary school children and to the abilities or aptitudes being identified. Each school unit shall establish a procedure that uses a minimum of three assessment methods for each of the three categories in which gifted and talented children are identified. Information derived from any one of the selected screening methods may qualify a child for further consideration. For General Intellectual Ability: The screening procedure shall include objective and subjective assessment methods selected from the following: 1) objective - individual intelligence, achievement, or aptitude tests; group intelligence, achievement, or aptitude tests; and for grades K-2, other appropriate methods that have received prior approval from the Commissioner; 2) subjective - teacher

referral based on an appropriate screening checklist; referral by parents, peers, or members of the community; self-referral; pupil products, performance, or record of past performance; and other appropriate methods that have received prior approval from the Commissioner. For Specific Academic Aptitude: The screening procedure shall include objective and subjective assessment methods, selected from the following: 1) objective - Individual achievement, or aptitude tests; group achievement, or aptitude tests; and for grades K-2, other appropriate methods that have received prior approval from the Commissioner; 2) subjective - Teacher referral based on an appropriate screening checklist; referral by parents, peers, or members of the community; self-referral; pupil products, performance, or records of past performance; and other appropriate methods that have received prior approval from the Commissioner. For Artistic Ability: The screening procedure shall include three measures chosen from the following: pupil products, such as auditions, portfolios, works-in-progress, performance; pupil interview; teacher referral; referrals by professional artist(s) based on analysis of pupil work; Self-referral; referral by parents, peers, members of the community; other appropriate measures that have received prior approval from the Commissioner. CODE ME. R. 05-071, § 104.07. Annually, a team of at least three qualified professionals shall select children for placement in the gifted and talented program. The team shall include, but not be limited to, the following staff: An administrator, A teacher, Another individual, who may be a school employee or another person, who would aid the selection procedure, e.g., an artist for selection of students with artistic ability; a guidance counselor. The responsibilities of this selection team are as follows: Review the information collected on children who have met the screening criteria. Collect additional information when appropriate. Select children for placement in the gifted and talented program based upon an in-depth assessment of the collected information. Oversee the annual review of the selection process. Assure that the selection process is equitable. CODE ME. R. 05-071, § 104.08. Selected children shall be appropriately placed in a gifted and talented program. The superintendent, under policies adopted by the school board, shall establish procedures to accomplish the following: Assure collaboration between the regular classroom teacher and gifted and talented program staff to develop the program that will be provided for selected children. Notify the superintendent of the children selected for the program. Provide the superintendent a description of the program(s) that will be provided. Notify parents of the eligibility of their child for participation in the program, provide them with a description of the program and obtain written parental permission to place the child in the program. Maintain records on each child's participation in the gifted and talented program. Conduct an annual review of each child's program to evaluate appropriateness of placement and instruction. CODE ME. R. 05-071, § 104.09.

¹⁷³ **Programming** - Elementary and secondary schools may provide special instruction for gifted and talented students. ME. REV. STAT. ANN. 20, § 4703. A school administrative unit requesting funds to undertake a gifted and talented education program shall develop a proposed program of identification and education in accordance with guidelines established by the commissioner. ME. REV. STAT. ANN. tit. 20, § 8102. Each school administrative unit must, commencing with the 1987-88 school year, establish a plan for phasing in gifted and talented educational programs. Each school administrative unit shall, commencing with the 2004-2005 school year, fully implement its plan for phasing in gifted and talented educational programs. Beginning with the 2004-2005 school year, a school administrative unit may apply to the commissioner for a one-year waiver of this requirement if full implementation of this requirement presents an undue burden. ME. REV. STAT. ANN. tit. 20, § 8104. Each school administrative unit shall, commencing with the 1987-1988 school year, establish a plan for the implementation of gifted and talented educational programs for grades kindergarten through twelve by 1991-1992 in the schools operated by the unit. CODE ME. R. 05-071, § 104.03. Gifted and talented programs in the State are to be based on the following educational principles: Gifted and talented children need to move at their own rate, regardless of chronological age or grade placement; therefore, academic subjects, including the fine arts, shall be taught to them in a manner that allows them to learn at their appropriate instructional level and at their own pace. Gifted and talented children need diversity in their educational experiences; therefore, diverse and appropriate learning experiences shall be offered through a variety of program models, instructional strategies and materials. Gifted and talented children need to be challenged to develop their abilities and potential; therefore, specialized curricula that are advanced, conceptually complex and carefully differentiated from regular curricula shall be provided in lieu of the regular curricula. Gifted and talented children's needs vary as they progress through the elementary and secondary grades; therefore, instructional

settings shall be appropriate to their changing needs. Highly gifted and talented children may need further modifications to their educational programs; therefore, appropriate adjustments or alternatives to their gifted and talented programs must be made. CODE ME. R. 05-071, § 104.04. Each school administrative unit shall plan for and implement a comprehensive gifted and talented program, K through 12, by the start of 1991-1992 school year. The plan to phase in the gifted and talented educational program shall be submitted to the department by October 31, 1987, with annual updates due on September 30th of subsequent years. Specialized instruction shall be provided to elementary and secondary students who have been identified as gifted and talented in accordance with the requirements of Title 20-A, Chapter 104, and Chapter 311 of the department rules. CODE ME. R. 05-071, § 127.05.

¹⁷⁴ **Teacher Training** - Personnel employed in the school unit's gifted and talented program shall be properly certified and possess such other skills as are appropriate and necessary for the particular assignments within the program. Personnel with overall administrative responsibility for the program shall be certified administrators. Professional staff with teaching, coordinating or consulting responsibilities for the program shall be certified teachers or administrators. Other personnel who assist with program activities or who work directly with gifted and talented children may be individuals classified as auxiliary personnel who have received prior approval from the Commissioner.... These may include persons sponsored by the Maine Arts Commission in the visiting artist program. Personnel shall participate in gifted and talented education training experiences appropriate to their program responsibilities and as required and approved by the Department, including, but not limited to, the Department-sponsored Gifted and Talented Summer Training Institute. *Id.* R. 05-071, § 104.11.

¹⁷⁵ **Program Evaluation** - For the purpose of determining compliance with this rule, the Department will conduct periodic reviews of the gifted and talented program(s) in each school administrative unit. At least once in each five-year period, the Department shall conduct a review of the gifted and talented program(s) in the schools of each school administrative unit as a part of the comprehensive review of all schools in the unit. The findings resulting from this review, the program approval application submitted annually by the school unit, and the results of the local, annual, self-evaluation shall be the basis for determining whether the unit, and/or any school within it, is in compliance with gifted and talented program approval standards. These reviews shall be scheduled as part of and pursuant to Chapters 125 and 127 of the Department's rules. The Department may conduct a review as a part of the regularly scheduled Special Education Program Review. The Commissioner may conduct such other reviews of the gifted and talented program in the schools in a school administrative unit as may be appropriate. This may include a review as part of an inspection at any time, pursuant to Title 20-A, § 258-A in order to determine whether the unit is in compliance with gifted and talented program standards. The Commissioner may schedule a comprehensive review as soon as practicable or conduct a more limited review for this purpose. *Id.* R. 05-071, § 104.17.

¹⁷⁶ **Procedural Safeguards** - The superintendent, under policies adopted by the school board, shall establish a procedure to review the identification of children for the gifted and talented program. Requests for such review may be made to the superintendent for these purposes: To reconsider the eligibility of a child to be selected for inclusion in the gifted and talented program. To review the appropriate placement of a child within the program. For removal of a child from the program. *Id.* R. 05-071, § 104.10.

¹⁷⁷ **Due Process Hearing** - *Id.*

¹⁷⁸ **Other** - Personnel who are not employed as full- or part-time employees of the school unit but who render instructional or consulting services may work in the capacity of independent contractors. *Id.* R. 05-071, § 104.11.

¹⁷⁹ **Other** - Department-sponsored Gifted and Talented Summer Training Institute. *Id.* R. 05-071, § 104.11.

MARYLAND

¹⁸⁰ **Funding** - The purpose of the Excellence in Education Incentive Grant Program is to award grants to eligible county boards for the development of innovative instructional programs and services for gifted and talented students. MD. CODE ANN., EDUC. § 8-2A-01; MD. REGS. CODE tit. 13A, § 02.06.03.

¹⁸¹ **Standards** - A gifted and talented student needs different services beyond those normally provided by the regular school program in order to develop the student's potential. Gifted and talented students are to be found in youth from all cultural groups, across all economic strata, and in all areas of human endeavor. MD. CODE ANN., EDUC. § 8-202.

¹⁸² **Identification** - "Gifted and talented student" means an elementary or secondary student who is identified by professionally qualified individuals as (1) having outstanding talent and performing, or showing the potential for performing, at remarkably high levels of accomplishment when compared with other students of a similar age, experience, or environment; (2) exhibiting high performance capability in intellectual, creative, or artistic areas; (3) possessing an unusual leadership capacity; or (4) excelling in specific academic fields. MD. CODE ANN., EDUC. § 8-201; MD. REGS. CODE tit. 13A., § 02.06.03.

¹⁸³ **Programming** - The State Board shall encourage each county board to develop and implement programs for gifted and talented students. MD. CODE ANN., EDUC. § 8-203.

¹⁸⁴ **Program Evaluation** - The State Board shall: Adopt regulations establishing criteria for: (ii) the evaluation of effective programs and services for gifted and talented students; and conduct periodic monitoring of the delivery of programs and services for gifted and talented students in local school systems that receive the grants. *Id.* § 8-2A-03.

MASSACHUSETTS

¹⁸⁵ **Technical Assistance** - The board shall provide technical assistance, curriculum, materials, consultants, support services and other services to schools and school districts, to encourage programs for gifted and talented students. MASS. ANN. LAWS ch. 69, § 1B.

¹⁸⁶ **Programming** - Each school district shall file a description of the following instructional procedures and programs with the department every year: . . . programs for gifted and talented students. MASS. ANN. LAWS ch. 69, § 1I.

MICHIGAN

¹⁸⁷ **Funding** - This section provides the exact amounts of funding available to districts providing gifted and talented education. MICH. COMP. LAWS § 388.1657.

¹⁸⁸ **Identification** - The "gifted and/or academically talented" means elementary and/or secondary school students who may be considered to be intellectually gifted, outstanding in school achievement, and/or those who have outstanding abilities in particular areas of human endeavor, including the arts and humanities. *Id.* § 388.1092.

¹⁸⁹ **Programming** - In order to be eligible for funding under this subsection, the district or consortium of districts shall submit each year a current 3-year plan for operating a comprehensive program for gifted and talented pupils. *Id.* § 388.1657.

¹⁹⁰ **Other** - The advisory commission on education of the gifted and/or academically talented is created in the department of education. *Id.* §§ 388.1093-94.

MINNESOTA

¹⁹¹ **Funding** - A district that was a member of an education district organized pursuant to § 123A.15 on July 1, 1999, must place a portion of its general education revenue in a reserve account for

instructional services from entities formed for cooperative services. Services may include . . . gifted and talented instruction. The amount reserved is equal to \$50 per pupil unit times the actual number of pupil units in the district. MINN. STAT. § 123A.27. Gifted and talented revenue for each district equals \$4 times the district's adjusted marginal cost pupil units for fiscal year 2006 and \$9 for fiscal year 2007 and later. A school district must reserve gifted and talented revenue and, consistent with § 120B.15, must spend the revenue only to: (1) identify gifted and talented students; (2) provide education programs for gifted and talented students; or (3) provide staff development to prepare teachers to best meet the unique needs of gifted and talented students. This section is effective for revenue for fiscal year 2006 and later. *Id.* § 126C.10.

¹⁹² **Identification** - Effective with the 2005-06 school year, new legislation provides that districts "may identify [gifted and talented] students and more specifically that "school districts may adopt guidelines for assessing and identifying students for participation in gifted and talented programs. The guidelines should include the use of: (1) multiple and objective criteria; and (2) assessments and procedures that are valid and reliable, fair, and based on current theory and research. *Id.* § 120B.15.

¹⁹³ **Programming** - School districts may . . . locally develop programs, provide staff development, and evaluate programs to provide gifted and talented students with challenging educational programs. *Id.* § 120B.15.

¹⁹⁴ **Teacher Training** - The plan must include ongoing staff development activities that contribute toward continuous improvement in achievement of the following goals: . . . effectively meet the needs of a diverse student population, including at-risk children, children with disabilities, and gifted children, within the regular classroom and other settings. *Id.* § 122A.60.

MISSISSIPPI

¹⁹⁵ **Funding** - The programs shall be funded as a part of the exceptional child programs in accordance with § 37-19-5(3) [repealed and replaced in 2002 with 37-151-1 *et seq.*]. In addition to other funds provided for in this chapter, there shall be added to the allotment for each school district for each teacher employed in a State Department of Education approved program for exceptional children as defined in § 37-23-3, Mississippi Code of 1972, the value of one hundred percent (100%) of the adequate education program salary schedule prescribed in § 37-19-7, Mississippi Code of 1972, based on the type of certificate and number of years' teaching experience held by each approved special education teacher plus one hundred percent (100%) of the applicable employer's rate for Social Security and State Retirement, except that only seventy percent (70%) of the value will be added for the program for three- and four-year old exceptional children. MISS. CODE ANN. § 37-151-81.

¹⁹⁶ **Standards** - Consequently, it is the purpose of §§ 37-23-171 through 37-23-181 to provide for a uniform system of education for gifted children in the public schools of Mississippi, to provide for a nondiscriminatory process of identification of these children, to provide for periodic evaluation of the program and its benefit to the gifted children, and to insure that gifted children are identified and offered an appropriate education. Further, it is the intent of the Legislature that local districts be given as much flexibility as possible in the operation of their programs and that there be parental involvement in the development and conduct of their programs. MISS. CODE ANN. § 37-23-173. The board shall specifically promulgate rules, regulations and guidelines which establish model programs of gifted education and also establish minimum criteria for gifted education programs. MISS. CODE ANN. § 37-23-179. The regulations, available from the Mississippi Department of Education, are: REGULATIONS FOR GIFTED EDUCATION PROGRAMS (revised July 19, 1994).

¹⁹⁷ **Identification** - "Gifted children" shall mean children who are found to have an exceptionally high degree of intellect, and/or academic, creative or artistic ability. MISS. CODE ANN § 37-23-175. For the regulations specifying the criteria and procedures for each of these four subgroups, see *supra* note 196.

¹⁹⁸ **Programming** - The board shall specifically promulgate rules, regulations and guidelines which establish model programs of gifted education and also establish minimum criteria for gifted education programs. MISS. CODE ANN § 37-23-179. "Gifted education" shall mean programs for instruction of intellectually gifted children within Grades 2 through 12 and programs for instruction of academically gifted children within Grades 9 through 12 and programs for instruction of creative or artistically gifted children within Grades 2 through 12 of the public elementary and secondary schools of this state. Such programs shall be designed to meet the individual needs of gifted children and shall be in addition to and different from the regular program of instruction provided by the district. MISS. CODE ANN § 37-23-175. All local school districts shall have programs of gifted education for intellectually gifted students in Grades 2, 3, 4, 5 and 6, subject to the approval of the State Board of Education. MISS. CODE ANN § 37-23-179. The state education department has issued "suggested outcomes" for gifted education programs in grades 2-8 and 9-12, respectively. www.mde.k12.ms.us/public/htm.

¹⁹⁹ **Individual Program** - The regulations, *supra* note 196, require that each gifted student have "either an Individualized Educational Plan on file or the district must have an Instructional Management Plan on file."

²⁰⁰ **Other** - There is hereby created the Mississippi School for Mathematics and Science which shall be a residential school for eleventh and twelfth grade high school students. The purpose of the school shall be to educate the gifted and talented students of the state, and its curriculum and admissions policies shall reflect such purpose. MISS. CODE ANN § 37-139-3.

²⁰¹ **Other** - There is created the Mississippi School of the Arts, which shall be a residential school for eleventh and twelfth grade high school students located on the campus of Whitworth College in Brookhaven, Mississippi. The purpose of the school shall be to provide a more challenging educational experience for artistically talented and gifted students of the state to develop their full potential, including the teaching of humanities, creative writing, literature, theater, music, dance and visual arts, and the school's curriculum and admissions policies shall reflect that purpose. *Id.* § 37-140-3.

MISSOURI

²⁰² **Funding** - Ninety percent of one percent of moneys appropriated to the department of elementary and secondary education otherwise distributed to the public schools of the state, exclusive of categorical add-ons, shall be distributed by the commissioner of education to address statewide areas of critical need for learning and development. The moneys described in this subsection may be distributed by the commissioner of education to colleges, universities, private associations, professional education associations, statewide associations organized for the benefit of members of boards of education, public elementary and secondary schools, and other associations and organizations that provide professional development opportunities for teachers, administrators, and boards of education for the purpose of addressing statewide areas of critical need, provided that subdivisions (1) and (2) of this subsection shall constitute priority uses for such moneys. "Statewide areas of critical need for learning and development" shall include: Ensuring that all children, especially children at risk, children with special needs, and gifted students are successful in school. 160.530 MO. REV. STAT. For approved programs for gifted children, districts shall receive state aid under § 163.031, MO. REV. STAT., not to exceed seventy-five percent of the cost of instructional personnel and special materials listed in project applications and approved by the department of elementary and secondary education. 162.975 MO. REV. STAT. The categorical add-on for the district shall be the sum of seventy-five percent of the district gifted education approved or allowable cost entitlement as determined pursuant to § 162.975, MO. REV. STAT., multiplied by the proration factor. 163.031 MO. REV. STAT. The per pupil expenditure of funds for the cost of education shall be equalized to the greatest extent possible, with appropriate variation allowable in order to accommodate the special remedial needs of children who test below grade level and the needs of gifted children. 162.666 MO. REV. STAT.

²⁰³ **Standards** - Where a sufficient number of children are determined to be gifted and their development requires programs or services beyond the level of those ordinarily provided in regular public

school programs, districts may establish special programs for such gifted children. The state board of education shall determine standards for such programs. Approval of such programs shall be made by the state department of elementary and secondary education based upon project applications submitted by July fifteenth of each year. 162.720 MO. REV. STAT.

²⁰⁴ **Identification** - "Gifted children", children who exhibit precocious development of mental capacity and learning potential as determined by competent professional evaluation to the extent that continued educational growth and stimulation could best be served by an academic environment beyond that offered through a standard grade level curriculum. 162.675 MO. REV. STAT. Applications for state reimbursement, to be approvable, must demonstrate that the applicant has established a systematic process for identification and selection of gifted students. This process shall use multiple criteria for identification and selection such as, but not limited to, objective measures and competent professional evaluation. MO. CODE REGS. ANN. tit. 5, § 50-200.010.

²⁰⁵ **Data Collection** - The department of elementary and secondary education shall develop a standard form for the school accountability report card which may be used by school districts. The information reported shall include, but not be limited to . . . gifted or enrichment programs, and advanced placement programs. 160.522 MO. REV. STAT.

²⁰⁶ **Other** - Schools for gifted children with accelerated academic programs shall be established and evenly distributed across the district. The district shall have the right to transport children to and from schools for the gifted. Children who attend schools for the gifted shall have the right to attend such school which is located closest to such child's home and shall have the right to transfer to or attend any other school for the gifted within the district. 162.666 MO. REV. STAT.

MONTANA

²⁰⁷ **Funding** - A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. MONT. CODE ANN., § 20-7-903.

²⁰⁸ **Standards** - The board of public education shall adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904 MONT. CODE ANN. § 20-2-121. A school district may identify gifted and talented children and devise programs to serve them. *Id.* § 20-7-902. The conduct of programs to serve gifted and talented children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. *Id.* § 20-7-903.

²⁰⁹ **Identification** - "Gifted and talented children" means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors. *Id.* § 20-7-901.

²¹⁰ **Programming** - A school district may identify gifted and talented children and devise programs to serve them. In identifying gifted and talented children, the school district shall consult with professionally qualified persons and the parents of children being evaluated; consider a child's demonstrated or potential gifts or talents; and use comprehensive and appropriate assessment methods including objective measures and professional assessment measures. *Id.* § 20-7-902.

NEBRASKA

²¹¹ **Funding** - Department of Education shall distribute funds to districts with approved programs. NEB. REV. STAT. § 79-1108.02; NEB. ADMIN. CODE CH. 92-3, § 007.

²¹² **Standards** - Accelerated or differentiated programs designed to meet the needs of high ability learners shall meet standards of quality established by the department. NEB. REV. STAT. §§ 79-1107(1), - 1108.

²¹³ **Technical Assistance** - The State Department of Education may employ a full-time consultant to encourage, advise and consult with each school in the development and implementation of plans and shall monitor implementation. NEB. REV. STAT. § 79-1105.

²¹⁴ **Identification** - Each school district shall identify high ability learners. *Id.* § 79-1108. Schools must develop a system to identify high ability learners that includes multiple assessment measures; equal access to opportunities; and identify talents not readily apparent. NEB. ADMIN. CODE ch. 92-3, § 004.01. Learners with high abilities means students who gives evidence of high performance capability in such areas as intellectual, creative or artistic capacity or in specific academic fields and who requires accelerated or differentiated programs in order to develop these capabilities fully. NEB. REV. STAT. § 79-1107(3).

²¹⁵ **Programming** - Each school district may provide accelerated or differentiated educational programs for high ability learners. NEB. REV. STAT. § 79-1108. District plans for delivering accelerated or differentiated curricular programs shall include: district philosophy; district's operational definition of high ability learners; goals and objectives of program; procedures for identification; description of services; overall program evaluation process; staff development, training and support; and a management outline. NEB. ADMIN. CODE ch. 92-3, § 003.

²¹⁶ **Teacher Training** - Teachers who provide instruction should be able to design and implement experiences that utilize different curricular and instructional methods and be able to assess work and progress of high ability learners. Teachers can receive this knowledge through college level courses or in-service training. Teachers and administrators whose primary responsibility is working with high ability learners should have, or be working towards, an endorsement in gifted education. *Id.* ch. 92-3, § 006.

²¹⁷ **Data Collection** - School districts shall annually provide the department their criteria for identification, the number of students identified, and the number of students participating in approved programs. School districts shall maintain a list of identified students and how they compare to the various criteria. NEB. REV. STAT § 79-1108.01; NEB. ADMIN. CODE ch. 92-3, §§ 004.05 and 007.07.

²¹⁸ **Program Evaluation** - Every school district shall establish procedures for both formative and summative evaluations of district-wide plan. The evaluation process shall allow for input from parents, educators, students and community members and include quality indicators. The yearly review should include program strengths and weaknesses in such areas as program design, student needs, learning environment, curriculum, student identification, personnel qualifications, resources, staff development and cost effectiveness. The local plan should be revised according to the results. NEB. ADMIN. CODE ch. 92-3, § 008.

²¹⁹ **Individualized Programming** - Within 30 days of the start of the school year, the administration shall make a list of all identified students available to classroom teachers. *Id.* ch. 92-3, § 004.04. Districts serving high ability learners shall use instructional curriculum patterns that include differentiated curriculum, curriculum acceleration, curriculum enrichment, compacted curriculum, student grouping, mentoring/shadowing. Districts should provide for affective as well as cognitive growth. *Id.* ch. 92-3, § 005.

²²⁰ **Procedural Safeguards** - Within 30 days of the start of the school year, the district shall notify the parents or guardians of identified students and provide them with information on possible educational strategies and a list of outside resources. *Id.* ch. 92-3, § 004.06. School district must make its plan for identifying high ability learners and delivering programs available to the public. *Id.* ch. 92-3, § 003.03.

²²¹ **Complaint Procedure** - Identification process shall include provisions for parents/guardians to appeal any decision regarding identification or non-identification to the school board. *Id.* ch. 92-3, § 004.03.

²²² **Other** - Educational Service Units may identify and provide accelerated programs for school districts. NEB. REV. STAT. § 79-1108; NEB. ADMIN. CODE ch. 92-3, § 003.

NEVADA

²²³ **Funding** - The legislature guarantees that the basic support guarantee establishes financial resources sufficient to ensure a reasonably equal educational opportunity to gifted and talented pupils residing in Nevada. NEV. REV. STAT. § 388.450. No apportionment of state money shall be made for the instruction of gifted and talented pupils until the superintendent of public instruction approves the program as meeting the standards prescribed by the state board. *Id.* § 388.520.

²²⁴ **Standards** - The state board shall prescribe minimum standards for the special education of gifted and talented pupils. *Id.* § 388.520.

²²⁵ **Identification** - Gifted and talented means a person under the age of 18 who demonstrates such outstanding academic skills or aptitudes that he cannot progress effectively in a regular school program and therefore needs special instruction or special services. NEV. REV. STAT § 388.440. Gifted and talented means a person who possesses or demonstrates outstanding ability in one or more of the following: general intelligence; an aptitude in a specific area; creative thinking; productive thinking; leadership; the visual arts; or the performing arts. NEV. ADMIN. CODE § 388.043. A pupil who is gifted and talented is eligible for special services and programs of instruction if a team concludes that the pupil has: general intellectual ability or academic aptitude in a specific area that is demonstrated by a score at the 98th percentile; or an area of talent, including but not limited to, creative thinking, productive thinking, leadership, ability in the visual arts or ability in the performing arts, as determined by the local public agency of the pupil. NEV. ADMIN. CODE § 388.435.

²²⁶ **Programming** - Each school district shall make specific provisions as necessary for the education of gifted and talented pupils. NEV. REV. STAT § 388.450. Gifted and talented pupils may be instructed in special ungraded schools or within special programs established for instruction of such pupils. NEV. REV. STAT § 388.500. Gifted and talented pupils must participate in not less than 150 minutes of differentiated educational activities each week during the school year. NEV. ADMIN. CODE § 388.435.

²²⁷ **Teacher Training** - A teacher of the gifted and talented must meet specific requirements for teaching in a gifted and talented program unless he/she receives written approval from the department. NEV. ADMIN. CODE §§ 388.165; 388.394, and 388.396.

²²⁸ **Procedural Safeguards** - Before a student is placed in special program, a consultation must be held with his parent or guardian. *Id.* § 388.470. Parents may request an independent evaluation of the pupil if the parent disagrees with an evaluation obtained by the department or public agency. *Id.* § 388.450.

²²⁹ **Due Process Hearing** - If a parent does not agree with the identification, evaluation or educational placement of the pupil, he/she may request private mediation. *Id.* § 388.305.

²³⁰ **Complaint Procedure** - Parents may file a complaint with the state superintendent if the public agency has violated the regulations. *Id.* § 388.318.

NEW JERSEY

²³¹ For a synthesis of a sample of cases in light of the applicable regulations and statute, see Perry Zirkel, *The Law on Gifted Education in New Jersey*, 24 EDUC. VIEWPOINTS 17 (2003).

²³² **Technical Assistance** - The state shall establish a system of educational centers for research to develop, test and install ideas and procedures to solve educational problems, including gifted education. N.J. STAT. § 18A:6-71. The department of education shall provide districts with curriculum frameworks that suggest a variety of activities and strategies that may assist in the development of local curricula aligned with the Core Curriculum Content Standards. N.J. ADMIN. CODE § 6A:8-3.1.

²³³ **Identification** - Gifted and talented students means those exceptionally able students who possess or demonstrate high levels of ability, in one or more content areas, when compared to their chronological peers in the local district and who require modifications of their educational program if they are to achieve in accordance with their capabilities. N.J. ADMIN. CODE § 6A:8-1.3. District boards of education shall be responsible for identifying gifted and talented students. *Id.* § 6A:8-3.1. Districts shall make provisions for an ongoing identification process and review their identification process annually. *Id.* § 6A:8-3.1.

²³⁴ **Programming** - District boards of education shall ensure appropriate instructional adaptations are designed and delivered for students who are gifted and talented. *Id.* § 6A:8-3.1. District boards of education shall develop appropriate curricular and instructional modifications used for gifted and talented students indicating content, process, products, and learning environment. *Id.* § 6A:8-3.1.

²³⁵ **Teacher Training** - District boards of education shall actively assist and support teachers' professional development and/or in-service. *Id.* § 6A:8-3.1.

²³⁶ **Program Evaluation** - Districts shall annually review provisions for identification process and appropriate educational challenges. *Id.* § 6A:8-3.1.

²³⁷ **Individualized Programming** - Districts shall provide gifted and talented students with appropriate instructional adaptations and services. *Id.* § 6A:8-3.

²³⁸ **Due Process Hearing** - The state has a generic procedure for impartial hearings before administrative law judges for student and other cases under the state's education law. N.J.S.A. 18A:6-9; N.J. ADMIN. CODE § 6A:3-1.1.

²³⁹ **Other** - In 2002, the legislature established a commission charged with recommending "the most effective and efficient method to implement programs for gifted children in New Jersey public schools." See www.njleg.state.nj.us/2000/Bills/S2500/2429.

NEW MEXICO

²⁴⁰ **Funding** - The state shall provide funds for approved programs serving students who meet established criteria. N.M. STAT. ANN. § 22-13-6; N.M. ADMIN. CODE 6.31.2.12.

²⁴¹ **Standards** - The state board shall adopt standards pertaining to the determination of who is a gifted child. N.M. STAT. ANN. § 22-13-6.1; N.M. ADMIN. CODE 6.31.2.6.

²⁴² **Identification** - The state board shall provide for the evaluation of selected school-age children by multidisciplinary teams of individuals from each child's local school district. In determining whether a child is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the child's: creativity or divergent-thinking ability; critical-thinking or problem-solving ability; intelligence and achievement. N.M. STAT. ANN. § 22-13-6.1. Gifted child means a school-age person whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking is so outstanding that a properly constituted IEP team decides special education services are required to meet the child's educational needs. N.M. ADMIN. CODE 6.31.2.12. The identification of a student as gifted shall include documentation and analysis of data from multiple sources including: standardized measures collections of work, audio/visual tapes, judgment of work by qualified individuals, interviews, and observations. *Id.* 6.31.2.12.

²⁴³ **Program** - The objective of these rules is to ensure that all gifted children have available a free appropriate public education which includes related services to meet their unique needs. *Id.* 6.31.2.6.

²⁴⁴ **Program Evaluation** - Each school offering a gifted education program shall create an advisory committee of parents, community members, students and school staff members. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery. *Id.* § 22-13-6.1; N.M. ADMIN. CODE 6.31.2.12.

²⁴⁵ **Individualized Programming** - Each public agency shall develop, implement and revise an individualized education program (IEP) for each gifted child served in that agency. N.M. ADMIN. CODE 6.31.2.11.

²⁴⁶ **Procedural Safeguards** - Each public agency shall provide the parent with advance written notice for IEP meetings. A copy of procedural safeguards available to the parents must be given to the parent, upon initial referral for evaluation; upon each notification of an IEP meeting; upon reevaluation of a child; and upon receipt of a request for due process. *Id.* 6.31.2.13.

²⁴⁷ **Due Process Hearing** - A parent may initiate an impartial due process hearing if the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of, or services to, a child who may need gifted services. *Id.* 6.31.2.13. Each public agency is strongly encouraged to retain the services of an impartial facilitator, mediator or other appropriate third party to resolve disagreements at the agency level when appropriate. *Id.* 6.31.2.13.

²⁴⁸ **Complaint Procedure** - The state department of education shall accept and investigate complaints regarding the educational services for gifted children and issue a written decision. *Id.* 6.31.2.13.

NEW YORK

²⁴⁹ **Funding** - Upon acceptance by a local school district of the apportionments made under § thirty-six hundred two of this chapter such district shall use such funding in accordance with guidelines to be established by the commissioner for services to gifted pupils. N.Y. EDUC. LAW § 4452.

²⁵⁰ **Standards** - Subject to the availability of funds, the state education department is hereby authorized and empowered to assist districts in meeting the educational needs of gifted pupils through the following: (1) provide information to school districts concerning development of programs, curriculum resources, instructional procedures and strategies to identify and encourage gifted pupils; (2) provide technical assistance and inservice education for teachers and administrators; (3) maintain a record of programs available, and make this record available for public inspection; (4) develop, maintain, and distribute a handbook for parents of gifted pupils. *Id.* § 4451. Such services shall include but not be limited to identification, instructional programs, planning, inservice education and program evaluation. A board of education may contract with another district or board of cooperative educational services to provide the program and/or services with the approval of the commissioner under guidelines established by the commissioner. The commissioner shall establish procedures for evaluation of the quality and educational effectiveness of programs for gifted pupils. *Id.* § 4452.

²⁵¹ **Technical Assistance** - See **Standards** *supra* note 250.

²⁵² **Identification** - The term "gifted pupils" shall mean those pupils who show evidence of high performance capability and exceptional potential in areas such as general intellectual ability, special academic aptitude and outstanding ability in visual and performing arts. Such definition shall include those pupils who require educational programs or services beyond those normally provided by the regular school program in order to realize their full potential. Prior to payment of state funds for education of gifted pupils, a school district shall submit to the commissioner a summary plan for the identification and education of gifted pupils. The plan shall be in form and content as prescribed by the commissioner. N.Y.

EDUC. LAW § 4452. Each board of education or trustees of each school district shall provide for the screening of every new entrant to school to determine which pupils are or may be gifted. Such screening shall include, but not be limited to: a physical examination pursuant to the provisions of sections nine hundred one, nine hundred three and nine hundred four of this chapter, including proof of immunization as required by section twenty-one hundred sixty-four of the public health law and a language development assessment. If such screening indicates a possibly gifted child, the name and finding shall be reported to the superintendent of schools of such district and to the parent or legal guardian of such child. Such notification shall not be construed as an entitlement for services for any such child identified as possibly gifted. N.Y. EDUC. LAW § 3208. The identification of pupils for participation in gifted programs funded under this chapter shall commence through the referral of a parent, teacher, or administrator. *Id.* § 4452.

²⁵³ **Programming** - The governing board of any school district and any community school district is hereby empowered to determine the circumstances wherein instruction shall be given to meet the special needs of gifted pupils as provided in this chapter. *Id.* § 3204(2-b). Annual Program Plan for Libraries and Learning Resources and Educational Innovation and Support: Gifted. Objectives. To identify, develop and implement innovative programs and practices that are geared toward fostering the educational growth and development of gifted and talented children. Activities. Grants will be offered for: development of innovative programs for the gifted and talented which reflect any or all of the following: special procedures and instruments to identify gifted program strategies to meet the needs of gifted, specialized institutes for the gifted to bring them into direct contact with outstanding people, special programs for gifted to work in such areas as research, technology, journalism, government, etc.; development of a pilot regional resource center(s) that provides inservice education, consultant service, development and production of print and non-print materials, research, and a wide variety of appropriate optional learning environments. Grant types: Developer, validation, demonstration/replication (multi- year, continuation). Affected population: Elementary and secondary gifted and talented students. N.Y. COMP. CODES R. & REGS. tit. 8, § 2302.30.

²⁵⁴ **Teacher Training** - New York recently amended its regulations to clarify and strengthen the education requirements for the extension in gifted education to classroom teaching certificates. Tit. 8 NYCRR 52.21(b)(4)(v), 80-4.1(a)(2), and 80-4.3(d).

²⁵⁵ **Procedural Safeguards** - Upon referral of a pupil for participation in a gifted program funded under this chapter, the school district shall so inform the parent or guardian of such pupil's referral and shall seek their approval to administer diagnostic tests or other evaluation mechanisms related to the program objectives of the district in order to determine eligibility for participation in such gifted program. Failing to receive approval, the child shall not be tested, evaluated or participate in the program. In no case shall the parent, guardian or pupil be charged a fee for the administration of such diagnostic tests or other evaluation mechanisms. The parent or guardian of a pupil designated as gifted shall be informed by the local school authorities of the pupil's placement in such gifted program funded under this chapter. N.Y. EDUC. LAW § 4452.

²⁵⁶ **Other** - Subject to the availability of funds, the commissioner may establish within the department an advisory council on the education of gifted pupils. Such council shall assist and advise the commissioner and his designees with respect to policies and procedures relating to the education of gifted pupils and programs associated therewith. *Id.* § 4453.

NORTH CAROLINA

²⁵⁷ **Standards** - The General Assembly believes the public schools should challenge all students to aim for academic excellence and that academically or intellectually gifted students perform or show the potential to perform at substantially high levels of accomplishment when compared with others of their age, experience, or environment. Academically or intellectually gifted students exhibit high performance capability in intellectual areas, specific academic fields, or in both intellectual areas and specific academic fields. Academically or intellectually gifted students require differentiated educational services beyond those ordinarily provided by the regular educational program. Outstanding abilities are present in students

from all cultural groups, across all economic strata, and in all areas of human endeavor. N.C. GEN. STAT. § 115C-150.5. In order to implement this Article, the State Board of Education shall develop and disseminate guidelines for developing local plans under G.S. 115C-150.7(a). These guidelines should address identification procedures, differentiated curriculum, integrated services, staff development, program evaluation methods, and any other information the State Board considers necessary or appropriate. *Id.* § 115C-150.6.

²⁵⁸ **Technical Assistance** - In order to implement this Article, the State Board of Education shall provide ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under G.S. 115C-150.7. *Id.* § 115C-150.6.

²⁵⁹ **Identification** - Each local board of education shall develop a local plan designed to identify and establish a procedure for providing appropriate educational services to each academically or intellectually gifted student. The board shall include parents, the school community, representatives of the community, and others in the development of this plan. The plan may be developed by or in conjunction with other committees. Each plan shall include screening, identification, and placement procedures that allow for the identification of specific educational needs and for the assignment of academically or intellectually gifted students to appropriate services. *Id.* § 115C-150.7a & b(1).

²⁶⁰ **Programming** - Each local plan shall include a clear statement of the program to be offered that includes different types of services provided in a variety of settings to meet the diversity of identified academically or intellectually gifted students. *Id.* § 115C-150.7b(2).

²⁶¹ **Teacher Training** - Each local plan shall include professional development clearly matched to the goals and objectives of the plan, the needs of the staff providing services to academically or intellectually gifted students, the services offered, and the curricular modifications. *Id.* § 115C-150.7b(4).

²⁶² **Program Evaluation** - Each local plan shall include measurable objectives for the various services that align with core curriculum and a method to evaluate the plan and the services offered. The evaluation shall focus on improved student performance. *Id.* § 115C-150.7b(3).

²⁶³ **Individualized Programming** - The LEA shall prepare Group Education Programs (GEPs) for academically gifted students. The GEP describes a differentiated instructional program for students who share similar academic characteristics and program needs. The LEA may individualize the program to accommodate individual students' needs and any additional needs of a student not already addressed and a description of further necessary modifications. N.C. ADMIN. CODE tit. 16, r. 6H.0107.

²⁶⁴ **Procedural Safeguards** - Each local plan shall include a plan to involve the school community, parents, and representatives of the local community in the ongoing implementation of the local plan, monitoring of the local plan, and integration of educational services for academically or intellectually gifted students into the total school program. This should include a public information component. N.C. GEN. STAT. § 115C-150.7b(5).

²⁶⁵ **Due Process Hearing** - Each local plan shall include a procedure to resolve disagreements between parents or guardians and the local school administrative unit when a child is not identified as an academically or intellectually gifted student or concerning the appropriateness of services offered to the academically or intellectually gifted student. *Id.* § 115C-150.7b(7). In the event that the procedure developed under G.S. 115C-150.7(b)(7) fails to resolve a disagreement, the parent or guardian may file a petition for a contested case hearing under Article 3 of Chapter 150B of the General Statutes (the state's APA, which provides for an ALJ). The scope of review shall be limited to (i) whether the local school administrative unit improperly failed to identify the child as an academically or intellectually gifted student, or (ii) whether the local plan developed under G.S. 115C-150.7 has been implemented appropriately with regard to the child. Following the hearing, the administrative law judge shall make a decision that contains findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General

Statutes, the decision of the administrative law judge becomes final, is binding on the parties, and is not subject to further review under Article 4 of Chapter 150B of the General Statutes. *Id.* § 115C-150.8.

NORTH DAKOTA

²⁶⁶ **Identification** - "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program. N.D. CENT. CODE § 15.1-32-01.

²⁶⁷ **Programming** - A school district may provide special education to students who are gifted. *Id.* § 15.1-32-10.

²⁶⁸ **Teacher Training** - A teacher of gifted and talented students must hold the North Dakota special education professional credential in gifted and talented. N.D. ADMIN. CODE § 67-11-11-01.

OHIO

²⁶⁹ **Technical Assistance** - The department shall provide technical assistance to any district found in noncompliance under division (B) of this section. The department may reduce funds received by the district under Chapter 3317 of the Revised Code by any amount if the district continues to be noncompliant. OHIO REV. CODE ANN. § 3324.05.

²⁷⁰ **Identification** - "Gifted" means students who perform or show potential for performing at remarkably high levels of accomplishment when compared to others of their age, experience, or environment and who are identified under division (A), (B), (C), or (D) of § 3324.03 of the Revised Code. *Id.* § 3324.01. The department of education shall construct lists of existing assessment instruments it approves for use by school districts, and may include on the lists and make available to school districts additional assessment instruments developed by the department. Wherever possible, the department shall approve assessment instruments that utilize nationally recognized standards for scoring or are nationally normed. The lists of instruments shall include: initial screening instruments for use in selecting potentially gifted students for further assessment, instruments for identifying gifted students under § 3324.03 of the Revised Code. The department, under Chapter 119 of the Revised Code, shall also adopt rules for the administration of any tests or assessment instruments it approves on the list required by division (A) of this section and for establishing the scores or performance levels required under § 3324.03 of the Revised Code. The department shall ensure that the approved list of assessment instruments under this section includes instruments that allow for appropriate screening and identification of gifted minority and disadvantaged students, children with disabilities, and students for whom English is a second language. Districts shall select screening and identification instruments from the approved lists for inclusion in their district policies. The department shall make initial lists of approved assessment instruments and the rules for the administration of the instruments available by September 1, 1999. *Id.* § 3324.02. The board of education of each school district shall identify gifted students in grades kindergarten through twelve as follows: A student shall be identified as exhibiting "superior cognitive ability" if the student did either of the following within the preceding twenty-four months: 1) scored two standard deviations above the mean, minus the standard error of measurement, on an approved individual standardized intelligence test administered by a licensed school psychologist or licensed psychologist; [or] 2) accomplished any one of the following: scored at least two standard deviations above the mean, minus the standard error of measurement, on an approved standardized group intelligence test; performed at or above the ninety-fifth percentile on an approved individual or group standardized basic or composite battery of a nationally normed achievement test; attained an approved score on one or more above-grade level standardized, nationally normed approved tests. A student shall be identified as exhibiting "specific academic ability" superior to that of children of similar age in a specific academic ability field if within the preceding twenty-four months the student performs at or above the ninety-fifth percentile at the national level on an approved individual or group standardized achievement test of specific academic ability in that field. A student may be identified as gifted in more than one specific academic ability field. A student shall be identified as exhibiting "creative thinking ability" superior to children of a similar age, if within the previous twenty-four months, the student scored one standard deviation above the mean, minus the standard error of measurement, on an

approved individual or group intelligence test and also did either of the following: attained a sufficient score, as established by the department of education, on an approved individual or group test of creative ability; [or] exhibited sufficient performance, as established by the department of education, on an approved checklist of creative behaviors. A student shall be identified as exhibiting "visual or performing arts ability" superior to that of children of similar age if the student has done both of the following: demonstrated through a display of work, an audition, or other performance or exhibition, superior ability in a visual or performing arts area; [and] exhibited sufficient performance, as established by the department of education, on an approved checklist of behaviors related to a specific arts area. *Id.* § 3324.03. The board of education of each school district shall adopt a plan by January 1, 2000, for identifying gifted students. The plan shall be submitted to the department of education for approval. The department shall approve the plan within sixty days if it contains all of the following: A description of the assessment instruments from the list adopted by the department that the district will use to screen and identify gifted students; Acceptable scheduling procedures for screening and for administering assessment instruments for identifying gifted students. These procedures shall provide: at least two opportunities a year for assessment in the case of students requesting assessment or recommended for assessment by teachers, parents, or other students; assurance of inclusion in screening and assessment procedures for minority and disadvantaged students, children with disabilities, and students for whom English is a second language; assurance that any student transferring into the district will be assessed within ninety days of the transfer at the request of a parent; procedures for notification of parents within thirty days about the results of any screening procedure or assessment instrument and the provision of an opportunity for parents to appeal any decision about the results of any screening procedure or assessment, the scheduling of children for assessment, or the placement of a student in any program or for receipt of services; a commitment that the district will accept scores on assessment instruments provided by other school districts or trained personnel outside the school district, provided the assessment instruments are on the list approved by the department of education under § 3324.02 of the Revised Code. The district's plan may provide for the district to contract with any qualified public or private service provider to provide screening or assessment services under the plan. The department shall assist any district whose plan it disapproves under this section to amend the plan so that it meets the requirements of this section. *Id.* § 3324.04. OHIO ADMIN. CODE § 3301-51-15.

²⁷¹ **Programming** - The board of education of each school district shall develop a plan for the service of gifted students enrolled in the district that are identified under § 3324.03 of the Revised Code. Services specified in the plan developed by each board may include such options as the following: a differentiated curriculum; cluster grouping; mentorships; accelerated course work; the post-secondary enrollment option program under Chapter 3365 of the Revised Code; advanced placement; honors classes; magnet schools; self-contained classrooms; independent study; and other options identified in rules adopted by the department of education. Each board shall file the plan developed under division (A) of this section with the department of education by December 15, 2000. The department shall review and analyze each plan to determine if it is adequate and to make funding estimates. Unless otherwise required by law, rule, or as a condition for receipt of funds, school boards may implement the plans developed under division (A) of this section, but shall not be required to do so until further action by the general assembly or the state superintendent of public instruction. OHIO REV. CODE ANN. § 3324.07.

²⁷² **Data Collection** - Each school district shall submit an annual report to the department of education specifying the number of students in each of grades kindergarten through twelfth screened, the number assessed, and the number identified as gifted in each category specified in § 3324.03 of the Revised Code. The department of education shall audit each school district's identification numbers at least once every three years and may select any district at random or upon complaint or suspicion of noncompliance for a further audit to determine compliance with §§ 3324.03 to 3324.06 of the Revised Code. *Id.* § 3324.05.

²⁷³ **Procedural Safeguards** - The board of education of each school district shall adopt a statement of its policy for the screening and identification of gifted students and shall distribute the policy statement to parents. The policy statement shall specify: The criteria and methods the district uses to screen students and to select students for further assessment who perform or show potential for performing at remarkably

high levels of accomplishment in one of the gifted areas specified in § 3324.03 of the Revised Code; the sources of assessment data the district uses to select students for further testing and an explanation for parents of the multiple assessment instruments required to identify gifted students under § 3324.03 of the Revised Code; An explanation for parents of the methods the district uses to ensure equal access to screening and further assessment by all district students, including minority or disadvantaged students, children with disabilities, and students for whom English is a second language; Provisions to ensure equal opportunity for all district students identified as gifted to receive any services offered by the district; Provisions for students to withdraw from gifted programs or services, for reassessment of students, and for assessment of students transferring into the district; A copy of the district's policy adopted under this section shall accompany the district's plan submitted to the department of education under § 3324.04 of the Revised Code. *Id.* § 3324.06.

²⁷⁴ **Due Process Hearing** - The required local policy shall also include methods for resolving disagreements between parents and the district concerning identification and placement decisions. *Id.*

OKLAHOMA

²⁷⁵ **Funding** - In implementing this act, every effort shall be made to combine funds appropriated for this purpose with funds available from all other sources, federal, state, local or private, in order to achieve maximum benefits for improving education of gifted and talented children. OKLA. STAT. tit. 70, § 1210.305. Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in § 210.301 of this title to the State Department of Education which shall include A budget for the district gifted child educational programs. At the conclusion of the 1994-95 school year and each school year hereafter, the board of education of each school district shall prepare a report which outlines the expenditures made by the district during that year for gifted child educational programs. For districts which receive six percent (6%) or more of their total State Aid money for gifted and talented programs or which received One Million Dollars (\$1,000,000.00) or more in State Aid for gifted and talented programs for the preceding year, the report shall identify expenditures by major object codes and program classifications pursuant to the Oklahoma Cost Accounting System, as adopted by the State Board of Education pursuant to § 5-135 of this title. All other districts shall identify expenditures by major object codes. Copies of the report shall be sent to the State Department of Education by August 1 of each year. *Id.* tit. 70, § 1210.307.

²⁷⁶ **Standards** - It shall be the duty of each school district to provide gifted child educational programs and to serve those children, as defined in § 1210.301 of this title, who reside in that school district. *Id.* tit.70, § 1210.307.

²⁷⁷ **Technical Assistance** - In administering this act the Department of Education shall provide assistance in the development of new programs and the projection of program alternatives for the eventual provision of high quality programs for all identified gifted and talented children. *Id.* tit. 70, § 1210.303.

²⁷⁸ **Identification** - One of the purposes of the Regional Education Service Center Act is to expand the services of the Regional Education Service Centers, personnel, and certain selected material to ensure that students with learning difficulty or exceptional capability which shall include any gifted child will receive proper screening, diagnosis, and evaluation or consultation in order to benefit from an appropriate public education. *Id.* tit. 70, § 1210.272. "Gifted and talented children" means those children identified at the preschool, elementary and secondary level as having demonstrated potential abilities of high performance capability and needing differentiated or accelerated education or services. For the purpose of this definition, "demonstrated abilities of high performance capability" means those identified students who score in the top three percent (3%) on any national standardized test of intellectual ability. Said definition may also include students who excel in one or more of the following areas: creative thinking ability, leadership ability, visual and performing arts ability, and specific academic ability. A school district shall identify children in capability areas by means of a multicriteria evaluation. Provided, with first and second grade level children, a local school district may utilize other evaluation mechanisms such as, but not limited to, teacher referrals in lieu of standardized testing measures. OKLA. STAT. tit. 70, §1210.301. Evaluations

for placement in gifted programs. The third area is individual evaluation of students referred for consideration for gifted programs. Regional Education Service Center (RESC) evaluation of gifted students consists of: administration and scoring of a normed intelligence test [and] providing schools with the test results. In order for schools to obtain an evaluation for a possibly gifted student, a Referral/Parent Permission for Evaluation, Gifted Student form must be completed. Upon completion of the evaluation, the RESC will provide the results to the referring school district. The RESC will also notify the parent or guardian that the evaluation has been completed and that the results have been transmitted to the referring school. Upon receipt of the evaluation report, the local school district becomes responsible for compliance with all confidentiality procedures which must be afforded the report. OKLA. ADMIN. CODE § 210:10-11-2. Gifted and talented children shall be identified consistent with 70 O.S. 1210.301 for the purposes of funding through the gifted educational child count. Identification procedures are clearly stated and uniformly implemented. Student placement decisions in the capability areas are based on multiple criteria. Procedures used in the identification process are non-discriminatory with respect to race, economic background, national origin or handicapping condition. *Id.* § 210:15-23-2.

²⁷⁹ **Programming** - In administering this act, the Department of Education shall utilize, insofar as possible, prescriptive teaching materials, prescribed by appropriate testing and evaluation by the regional prescriptive teaching centers. Such curriculum material shall be utilized for as many students as possible, by their regular or homeroom teachers. OKLA. STAT. tit. 70, § 1210.304. It shall be the duty of each school district to provide gifted child educational programs and to serve those children, as defined in § 1210.301 of this title, who reside in that school district. This duty may be satisfied by: the district directly providing gifted child educational programs for such children; the district joining in a cooperative program with another district or districts to provide gifted child educational programs for such children; the district joining in a cooperative program with a private or public institution within such district; or the district transferring identified gifted and talented children to other school districts which provide the appropriate gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe. Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in § 1210.301 of this title to the State Department of Education which shall include: a written policy statement which specifies a process for selection and assessment of children for placement in gifted and talented programs that is consistent for grades one through twelve and a description of curriculum for the gifted child educational program. Such description shall demonstrate that the curriculum is differentiated from the normal curriculum in pace and/or depth and that it has scope and sequence. OKLA. STAT. tit. 70, § 1210.307. Beginning with the school year 1983-84, it shall be the duty of each school district to provide gifted child educational programs for all identified gifted children, as defined in § 1210.301 of Title 70 of the Oklahoma Statutes, who reside in that school district. This duty may be satisfied by: The district transferring identified gifted and talented children to other school districts which provide the appropriate gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe; or the district located wholly or in part in a county participating in any program established by that county superintendent of schools. OKLA. ADMIN. CODE § 210:10-1-9. The local board of education is responsible to provide gifted and talented educational programs for all identified gifted and talented children who reside in the district. For purposes of this subchapter "children who reside in the district" means children who are legally enrolled in the district. Gifted and talented educational programs must include multiple programming options which are matched with student's identified needs and interests. OKLA. ADMIN. CODE § 210:15-23-1.

²⁸⁰ **Teacher Training** - In administering this act the Department of Education shall provide in-service training for selected teachers, administrators, college personnel, parents and interested lay persons, recommendations to the State Board of Education concerning qualifications of teachers for gifted and talented children, and recommendations for degree programs and short course seminars for the preparation of teaching personnel for gifted and talented children. OKLA. STAT. tit. 70, § 1210.303. The State Board shall adopt criteria for qualifications for teachers of gifted and talented children, as well as criteria for special enrichment program instructors who may be professionals in fields other than education. *Id.* tit. 70, § 1210.306. Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in § 1210.301 of this title to the State Department of Education which shall include required competencies and duties of gifted child educational program staff. *Id.* tit. 70, § 1210.307.

²⁸¹ **Data Collection** - Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in § 1210.301 of this title to the State Department of Education which shall include number and percentage of students identified by the district as gifted children pursuant to subparagraph g of paragraph 2 of subsection B of § 18-201 of this title. *Id.* tit. 70, § 1210.307.

²⁸² **Program Evaluation** - In administering this act the Department of Education shall provide the necessary State Department of Education staff with a primary responsibility for assuring appropriate assessment and evaluation procedures for use by school districts of this state and the procedures for educational screening, needs analysis and prescriptive programming for gifted and talented children by Regional Education Service Center personnel and others approved by the Department. *Id.* tit. 70, § 1210.303. Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in § 1210.301 of this title to the State Department of Education which shall include criteria for evaluation of the gifted child educational program. The State Department of Education shall, after each school year, report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives concerning the number of children identified for the programs, number of children served by the programs, type of programs provided, type of screening procedures utilized, cost analysis of the programs and the estimated number of gifted and talented children unserved by the programs. *Id.* tit. 70, § 1210.307.

²⁸³ **Procedural Safeguards** - Each district shall, regardless of the method used for accomplishing the duty set forth in subsection A of this section, notify in writing the parents of each child identified as gifted of the fact that the child has been so identified. The district shall also provide each such parent a summary of the program to be offered such child. *Id.* tit. 70, § 1210.307. Written identification and placement procedures include parental involvement. Parents grant written permission for individual testing. Opportunities are provided for students to be considered for placement in gifted programs throughout their school experience. Students' placement in programming options is based on their abilities, needs and interests. Identification of students based on a nationally standardized test of intellectual ability is valid for a minimum of three years and may be valid for the student's educational experience. Procedures for the consideration of identification and placement of a pupil who was identified as gifted and talented in another school district are developed and implemented. Evaluation of the appropriateness of students' placement in gifted educational programming shall be ongoing. Written policies for removal from a programming option include a procedure for conferencing with parents relative to any change in placement. Strict confidentiality procedures are followed in regard to records of placement decisions and data on all nominated students. Records of placement decisions and data on all nominated students are kept on file for a minimum of five years or for as long as needed for educational decisions. OKLA. ADMIN. CODE § 210:15-23-2.

²⁸⁴ **Due process hearing** - The local gifted educational plan must include a procedure for parents to appeal a placement or non-placement decision with which they disagree. *Id.*

²⁸⁵ **Other** - Beginning with the 1994-95 school year, and each year thereafter, each board of education shall submit a plan for gifted child educational programs as defined in § 1210.301 of this title to the State Department of Education which shall include evidence of participation by the local advisory committee on education for gifted and talented children in planning, child identification process and program evaluation. OKLA. STAT. tit. 70, § 1210.307. Each district board of education shall create a local advisory committee on education for gifted and talented children or expand the duties of a curriculum advisory committee for the district to assist the district on gifted and talented programs. *Id.* tit. 70, § 1210.308.

²⁸⁶ **Other** - A secondary school to be known as the Oklahoma School of Science and Mathematics is hereby established. *Id.* tit. 70, § 1210.401.

OREGON

²⁸⁷ **Funding** - Any school district may apply for state funds for special programs and services for talented and gifted children identified in the district. OR. REV. STAT. § 343.399. State funds shall be allocated on an approved program cost basis, the amount of which shall be established by the State Board of Education annually. No application shall be approved by the superintendent unless the district agrees to expend district funds for special educational programs for talented and gifted children in an amount equal or greater than the amount of state funds approved by the superintendent. *Id.* § 343.401. The Superintendent of Public Instruction may annually expend funds appropriated for the talented and gifted program to provide support for the development of talented and gifted education statewide. These services may include: Teacher training programs and workshops; Consultant and technical assistance to districts; Small grants to and contracts with school districts, education service districts, colleges and universities and private contractors to produce and disseminate curriculum and instruction materials to other school districts; and Training and assistance for parents of the talented and gifted children in meeting the educational needs of their children. The amount of funds that may be expended for purposes described in this section shall not exceed 10 percent of the amount appropriated in a biennium for purposes of ORS 343.391 to 343.413. *Id.* § 343.404.

²⁸⁸ **Standards** - It is legislative policy that, when talented and gifted programs are offered, the programs should be provided by common or union high school districts, combinations of such districts or education service districts, in accordance with ORS 334.175, and that the state will provide financial and technical support to the districts to implement the education programs within the limits of available funds. *Id.* § 343.396. School districts shall provide educational programs or services to talented and gifted students enrolled in public schools under rules adopted by the State Board of Education. *Id.* § 343.409.

²⁸⁹ **Identification** - "Talented and gifted children" means those children who require special educational programs or services, or both, beyond those normally provided by the regular school program in order to realize their contribution to self and society and who demonstrate outstanding ability or potential in one or more of the following areas: General intellectual ability as commonly measured by measures of intelligence and aptitude, Unusual academic ability in one or more academic areas, Creative ability in using original or nontraditional methods in thinking and producing, Leadership ability in motivating the performance of others either in educational or noneducational settings, and Ability in the visual or performing arts, such as dance, music or art. *Id.* § 343.395. School districts shall identify talented and gifted students enrolled in public schools under rules adopted by the State Board of Education. *Id.* § 343.407. Each school district shall have local district policies and procedures for the identification of talented and gifted students as defined in ORS 343.395(7)(a) and (b): Districts shall make efforts to identify students from ethnic minorities, students with disabilities, and students who are culturally different or economically disadvantaged. A team shall make the final decisions on the identification of students using the information collected under sections (3) and (4) of this rule. No single test, measure or score shall be the sole criteria. A record of the team's decision, and the data used by the team to make the decision, shall become part of the education record for each student considered. Districts shall collect behavioral, learning and/or performance information and include the information in all procedures for the identification of students. The following measures and criteria for identifying the intellectually gifted and

the academically talented shall be used by the team: Intellectually gifted students shall score at or above the 97th percentile on a nationally standardized test of mental ability; and Academically talented students shall score at or above the 97th percentile on a test of total reading or a test of total mathematics from a nationally standardized test battery or a nationally standardized test of reading or mathematics. Despite a student's failure to qualify under subsections (4)(a) and (b) of this rule, districts, by local policies and procedures, shall identify students who demonstrate the potential to perform at the 97th percentile. School districts may identify additional students who are talented and gifted as defined in RS 343.395(7)(c), (d), and (e) as determined by local district policies and procedures. OR. ADMIN. R. 581-022-1310.

²⁹⁰ **Programming** - Any school district may submit to the Superintendent of Public Instruction for approval a written plan of instruction for talented and gifted children. The plan shall include, but not be limited to: A statement of school district policy on the education of talented and gifted children; An assessment of current special programs and services provided by the district for talented and gifted children; A statement of district goals for providing comprehensive special programs and services and over what span of time the goals will be achieved; A description of the nature of the special programs and services which will be provided to accomplish the goals; and A plan for evaluating progress on the district plan including each component program and service. OR. REV. STAT. § 343.397. The superintendent shall select applications from among those that comply with ORS 343.391 to 343.413 and rules adopted by the State Board of Education. Any criteria used by the superintendent to evaluate applications shall include, but not be limited to: a statement of the school district's present level of special educational programs and services for the talented and gifted and how the special educational programs and services contained in the application conform with the school district's written plan, identification procedures that comply with rules adopted by the board, a detailed budget for the program expenditures, a description of the individual student assessment and evaluative procedures and tools, a justification of special educational services and programs for identified talented and gifted students in terms of the student assessment and evaluation, and an evaluation design which meets standards set forth by the Department of Education. *Id.* § 343.399. School districts may identify and provide special educational programs and services for students who demonstrate creative abilities, leadership abilities or unusual abilities in the visual or performing arts as described in ORS 343.395 (7)(c), (d) and (e) and rules adopted by the board. The board shall adopt state guidelines for the identification and provision of special educational programs and services described in subsection (2) of this section. *Id.* § 343.411. Each school district shall have a written plan for programs and services. The instruction provided to identified students shall address their assessed levels of learning and accelerated rates of learning. Assessments for the development of an appropriate academic instructional program shall include the information used by the team for identification purposes and also may include one or more of the following: An academic history which may include grades, portfolio assessment records or other progress records and achievement information that demonstrates the student's level of learning and rate of learning; Other evaluation methods such as formal tests or informal assessment methods designed by teachers to determine the student's instructional level and rate of learning related to specific academic programs; Student interest, style, and learning preferences information from inventories or interviews; and Other measures determined by the school district to be relevant to the appropriate academic instructional program for the student. OR. ADMIN. R. 581-022-1330.

²⁹¹ **Procedural Safeguards** - In carrying out the requirements of OAR 581-022-1310 and OAR 581-022-1330, the school district shall: Inform parents at the time of the identification of the child and the programs and services available. Provide an opportunity for the parents to provide input to and discuss with the district the programs and services to be received by their child. The parents may, at any time, request the withdrawal of their child from programs and services provided under OAR 581-022-1320. The school district shall notify parents of identified students of this right. *Id.* R. 581-022-1320.

²⁹² **Complaint Procedure** - Parents shall be informed of their right to file a complaint under OAR 581-022-1940 (which is a general education state complaint procedure from local determination to the state commissioner). *Id.* R. 581-022-1320.

Pennsylvania

²⁹³ **Funding** - Where in the judgment of the Superintendent of Public Instruction, the provisions of this act relating to the proper education and training of exceptional children have not been complied with or the needs of exceptional children are not being adequately served, the Department of Public Instruction is hereby authorized to provide, including the payment of rental when necessary, maintain, administer, supervise and operate classes and schools for the proper education and training of exceptional children. Pupil eligibility for enrollment in classes for exceptional children shall be determined according to standards and regulations promulgated by the State Board of Education. For each child enrolled in any special class or school for exceptional children operated by the Department of Public Instruction, the school district in which the child is resident shall pay to the Commonwealth, a sum equal to the "tuition charge per elementary pupil" or the "tuition charge per high school pupil" as determined for the schools operated by the district or by a joint board of which the district is a member, based upon the costs of the preceding school term as provided for in section two thousand five hundred sixty-one of the act to which this is an amendment plus a sum equal to ten (10) per centum of such tuition charges. In the event that any school district has not established such "tuition charge per elementary pupil" or "tuition charge per high school pupil," the Superintendent of Public Instruction shall fix a reasonable charge for such district for the year in question. In order to facilitate such payments by the several school districts, the Superintendent of Public Instruction shall withhold from any moneys due to such district out of any State appropriation, except from reimbursement due on account of rentals as provided in section two thousand five hundred eleven point one of the act to which this is an amendment, the amounts due by such school districts to the Commonwealth. All amounts so withheld are hereby specifically appropriated to the Department of Public Instruction for the maintenance and administration of centers and classes for exceptional children. The average daily membership of pupils enrolled in classes and schools for exceptional children, operated by an intermediate unit or by the Department of Public Instruction, shall be credited to the school district of residence for the purpose of determining the district's "teaching units" to be used in calculating the district's reimbursement fractions or weighted average daily membership to be used in calculating a district's aid ratio and in determining payments to the district on account of instruction as provided in section two thousand five hundred two of the act to which this is an amendment. By December 31, 2000, and each year thereafter, each school district shall compile information listing the number of students with disabilities for which expenditures are between twenty-five thousand dollars (\$25,000) and fifty thousand dollars (\$50,000), between fifty thousand dollars (\$50,000) and seventy-five thousand dollars (\$75,000) and over seventy-five thousand dollars (\$75,000) for the prior school year. The information shall be submitted to the department in a form prescribed by the department. By February 1, 2001, and each year thereafter, the department shall submit to the chairman and minority chairman of the Education and Appropriations Committees of the Senate and the chairman and minority chairman of the Education and Appropriations Committees of the House of Representatives a report listing this information by school district. 24 PA. CONS. STAT. § 13-1372.

²⁹⁴ **Standards** - The State Board of Education shall adopt and prescribe standards and regulations for the proper education and training of all exceptional children by school districts or counties singly or jointly. *Id.* § 13-1372.

²⁹⁵ **Identification** - 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. 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. Each school district shall determine the student's needs through a screening and evaluation process which meets the requirements of this chapter. 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 when multiple criteria as set forth in Department Guidelines indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. 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 include an assessment by a

certified school psychologist. Multiple criteria indicating gifted ability include: 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. An observed or measured rate of acquisition/retention of new academic content or skills that reflect gifted ability. 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. 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. Documented, observed, validated or assessed evidence that intervening factors such as English as a second language, learning disability, physical impairment, emotional disability, gender or race bias, or socio/cultural deprivation are masking gifted abilities. 22 PA. CODE § 16.21. 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: A request for evaluation has been made by the student's parents under subsection (c). 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. A hearing officer or judicial decision orders a gifted multidisciplinary evaluation. 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 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. 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. Gifted multidisciplinary evaluations shall be sufficient in scope and depth to investigate information relevant to the student's suspected giftedness, including academic functioning, learning strengths and educational needs. The multidisciplinary evaluation process shall 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. The following protection-in-evaluation measures shall be considered when performing an evaluation of students suspected of being gifted: No one test or type of test may be used as the sole criterion for determining that a student is or is not gifted. 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. Tests and similar evaluation materials used in the determination of giftedness shall be: Selected and administered in a manner that is free from racial and cultural bias and bias based on disability. 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. Professionally validated for the specific purpose for which they are used. Administered by certified school psychologists under instructions provided by the producer of the tests and sound professional practice. Selected and administered to assess specific areas of educational need and ability and not merely a single general IQ. 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 make recommendations as to whether the student is gifted and in need of specially designed instruction, shall indicate the bases for those recommendations, and shall indicate the names and positions of the members of the GMDT. 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 following timeline applies to the completion of gifted multidisciplinary evaluations: 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. An evaluation report shall be completed within 10 school days after

completion of the gifted multidisciplinary evaluation. Within 5 school days after its completion, a copy of the evaluation report shall be delivered to the parents of the student. *Id.* § 16.22. 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. Reevaluations shall be developed in accordance with all the requirements concerning evaluation in this chapter. Reevaluations shall 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. *Id.* § 16.23.

²⁹⁶ **Programming** - Each intermediate unit, cooperatively with other intermediate units and with school districts shall prepare and submit to the Superintendent of Public Instruction for his approval or disapproval, plans for the proper education and training of all exceptional children in accordance with the standards and regulations adopted by the State Board of Education. Plans as provided for in this section shall be subject to revision from time to time as conditions warrant, subject to the approval of the Superintendent of Public Instruction. Except as herein otherwise provided, it shall be the duty of the board of school directors of every school district to provide and maintain, or to jointly provide and maintain with neighboring districts, special classes or schools in accordance with the approved plan. The Secretary of Education shall superintend the organization of such special classes and such other arrangements for special education and shall enforce the provisions of this act relating thereto. If the approved plan indicates that it is not feasible to form a special class in any district or to provide such education for any such child in the public schools of the district, the board of school directors of the district shall secure such proper education and training outside the public schools of the district or in special institutions, or by providing for teaching the child in his home, in accordance with rules and regulations prescribed by the Department of Education, on terms and conditions not inconsistent with the terms of this act or of any other act then in force applicable to such children. In addition to the above and in accordance with rules and regulations prescribed by the Department of Education, homebound instruction shall be provided for children confined in detention homes as provided in § 7, act of June 2, 1933 (P.L. 1433, No. 311), as amended, for the period of their confinement, if their confinement exceeds or is expected to exceed ten days, even though such children are not exceptional. The Intermediate unit shall have power, and it shall be its duty, to provide, maintain, administer, supervise and operate such additional classes or schools as are necessary or to otherwise provide for the proper education and training for all exceptional children who are not enrolled in classes or schools maintained and operated by school districts or who are not otherwise provided for. 24 PA. CONS. STAT. § 13-1372. Students who are gifted as defined in this part shall be provided an education that enables them to participate in acceleration or enrichment, or both, as appropriate. 22 PA. CODE § 4.28. 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. *Id.* § 16.2.

²⁹⁷ **Individualized Programming** - A GIEP is a written plan describing the education to be provided to a gifted student. The initial GIEP shall be based on and be responsive to the results of the evaluation and shall be developed and implemented in accordance with this chapter. 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 shall 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). 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. Every student receiving gifted education prior to December 9, 2000, shall continue to receive gifted education until the student one of the following

conditions exists: The student graduates from high school. The student is no longer of school age. A GIEP team determines that the student no longer needs gifted education. *Id.* § 16.31. 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. 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, as well as on information in the most recent evaluation. Each GIEP team shall include persons who meet the following qualifications: One or both of the student's parents. The student if the parents choose to have the student participate. 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. One or more of the student's current teachers. Other individuals at the discretion of either the parents or the district. 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 shall 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: The purpose, time and location of the meeting. The names of the persons expected to attend. The procedural rights available to protect the student and parent, in language which is clear and fully explains all rights. That a determination will be made at the meeting as to whether or not the student is gifted. That if the student is determined to be gifted, a GIEP will be developed. 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. The GIEP of each gifted student shall be based on the GMDT's recommendations and shall contain the following: A statement of the student's present levels of educational performance. A statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report. A statement of the specially designed instruction and support services to be provided to the student. Projected dates for initiation and anticipated duration of gifted education. Appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning outcomes are being achieved. The names and positions of GIEP team participants and the date of the meeting. 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). The following timeline governs the preparation and implementation of GIEPs: A GIEP shall be developed within 30 calendar days after issuance of a GMDT's written report. 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). 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. *Id.* § 16.32. The GIEP team, during the development, review or revision of a GIEP, shall determine whether the gifted student needs one or more support services. 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: The service is an integral part of an educational objective of the student's GIEP, without which the GIEP cannot be implemented. The service is needed to ensure the student benefits from or gains access to a gifted education program. *Id.* § 16.33.

²⁹⁸ **Procedural Safeguards** - 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: The school district proposes to conduct a gifted multidisciplinary evaluation or reevaluation of the student. 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. 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. 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. The notice shall include: 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. A description of each evaluation procedure, type of test, record or report used as a basis for the action. A description of other factors relevant to the district's action. A full explanation of the procedural safeguards, including the right to an impartial hearing available to the student or the parents under this chapter. The notice shall inform the parents of the following: The addresses and telephone numbers of various organizations which are available to assist in connection with the hearing. The timelines involved in conducting an evaluation, developing a GIEP, and initiating a hearing. An outside evaluation submitted by the parents shall be considered. The information in § 16.63 (relating to impartial due process hearing). *Id.* § 16.61. The district shall document that written parental consent is obtained prior to: Conducting an initial multidisciplinary evaluation. Initially placing a gifted student in a gifted program. Disclosing to unauthorized persons information identifiable to a gifted student. 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. 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. *Id.* § 16.62.

²⁹⁹ **Due Process Hearing** - 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. 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). 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 shall be set forth in the form provided for requesting a hearing. The hearing shall be an oral, personal hearing and shall 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. The decision of the hearing officer shall include findings of fact, a discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision shall be based solely upon the substantial evidence presented during the course of the hearing. The hearing officer shall have the authority to order that additional evidence be presented. A written transcript of the hearing shall, upon request, be made and provided to parents at no cost. 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. 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. 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. A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony. 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 decision, the panel shall indicate the courts to which

an appeal may be taken. The following applies to coordination services for hearings and to hearing officers: The Secretary may contract for coordination services in support of hearings conducted by local school districts. The coordination services shall be provided on behalf of school districts and may include arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings and other functions in support of procedural consistency and the rights of the parties to hearings. 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. 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 following timeline applies to due process hearings: A hearing shall be held within 30-calendar days after a parent's or school district's initial request for a hearing. The hearing officer's decision shall be issued within 45-calendar days after the parent's or school district's request for a hearing. Each school district shall keep a list of the persons who serve as hearing officers. The list shall include the qualifications of each hearing officer. School districts shall provide parents with information as to the availability of the list and shall make copies of it available upon request. 22 PA. CODE § 16.63. 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. 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. 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. During a mediation conference, the mediator shall meet with the parties together in a joint session and individually in private sessions. Discussions occurring during the mediation session shall be confidential, and no part of the mediation conference shall be recorded. The mediator may not be called as a witness in future proceedings. 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.

The written mediation agreement is not a confidential document and shall be incorporated into the student's GIEP and is binding on the parties. The mediation agreement shall be enforceable by the Department. A GIEP team shall be convened, within 10 school days following the mediation agreement, to incorporate the mediation agreement into the GIEP. 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. Mediation may not be used to deny or delay a party's right to a due process hearing. *Id.* § 16.64.

³⁰⁰ **Other** - Any exceptional child, who is regularly enrolled in a special class that is approved by the Department of Education, or who is enrolled in a regular class in which approved educational provisions are made for him, may be furnished with free transportation by the school district. When it is not feasible to provide such transportation the board of school directors may in lieu thereof pay for suitable board and lodging for any such child. If free transportation or board and lodging is not furnished for any exceptional child or any eligible young child as defined in the act of December 19, 1990 (P.L. 1372, No.

212), known as the "Early Intervention Services System Act," who, by reason thereof, is unable to attend the class or center for which he is qualified, the intermediate unit shall provide the transportation necessary. 24 PA. CONS. STAT. § 13-1374.

RHODE ISLAND

³⁰¹ **Standards** - In any city or town where there is a child eligible to attend elementary or secondary schools who is either gifted or talented to an extent that a standard educational program would not foster potential development, the school committee of the city or town may provide the type of educational program that will satisfy the needs of the gifted or talented child in grades pre- kindergarten through twelve (12), the program to be approved by the commissioner of elementary and secondary education. Providing programs and services for gifted and talented elementary or secondary level students requires an educational program and/or service which is different from that normally provided in the standard school program and which is educationally, personally, and socially beneficial; and requires that programs developed serve students who demonstrate unique talents and/or superior capabilities in areas such as specific academic aptitude, creative thinking, intelligence, visual, performing and industrial arts, and leadership. R.I. GEN. LAWS § 16-42-1.

³⁰² **Identification** - It shall be the duty of the board of regents for elementary and secondary education to establish regulations for the purpose of carrying out the intent of this chapter; these regulations shall include criteria for the identification of gifted and talented students in the categories in § 16-42-1. *Id.* § 16-42-2.

³⁰³ **Programming** - It shall be the duty of the board of regents for elementary and secondary education to establish regulations for the purpose of carrying out the intent of this chapter; these regulations shall include criteria for education programming for each category of gifted and talented and definitions of responsibilities of local school committees and the department of elementary and secondary education. *Id.* § 16-42.2.

³⁰⁴ **Program Evaluation** - It shall be the duty of the board of regents for elementary and secondary education to establish regulations for the purpose of carrying out the intent of this chapter; these regulations shall include criteria for monitoring and evaluating of educational programs. *Id.* § 16-42.2.

³⁰⁵ **Other** - A state advisory committee shall be established by the department of elementary and secondary education. The advisory committee shall advise the commissioner of elementary and secondary education on all matters pertaining to the education of gifted and talented students. *Id.* § 16-42-3.

³⁰⁶ **Other** - There is created within the department of elementary and secondary education the Rhode Island academy for gifted and talented children, referred to as "the academy." The role of the academy will be to offer the opportunity for uniquely challenging education for gifted and talented students. *Id.* § 16-42.1-1.

³⁰⁷ **Other** - There is created the Rhode Island academy for gifted and talented limited English proficient students within the department of elementary and secondary education, referred to as "the LEP Academy." The role of the LEP Academy will be to offer the opportunity for uniquely challenging education for gifted and talented limited English proficient students. *Id.* § 16-42.2-1.

SOUTH CAROLINA

³⁰⁸ **Funding** - The funds appropriated for Gifted and Talented Programs under the Education Improvement Act of 1984 must be allocated to the school districts of the State on the basis that the number of gifted and talented students served in each district bears to the total of all those students in the State. However, districts unable to identify more than forty students using the selection criteria established by regulations of the State Board of Education shall receive fifteen thousand dollars annually. Provided, further, school districts shall serve gifted and talented students according to the following order of priority: (1) grades 3-12 academically identified gifted and talented students not included in the state-funded

Advanced Placement Program for eleventh and twelfth grade students; (2) after all students eligible under priority one are served, students in grades 3-12 identified in one of the following visual and performing arts areas: dance, drama, music, and visual arts must be served; and (3) after all students eligible under priorities one and two are served, students in grades 1 and 2 identified as academically or artistically gifted and talented must be served. All categories of students identified and served shall be funded at a weight of .30 for the base student cost as provided in Chapter 20 of this title. Where funds are insufficient to serve all students in a given category, the district may determine which students within the category shall be served. Provided, further, no district shall be prohibited from using local funds to serve additional students above those for whom state funds are provided. S.C. CODE ANN. § 59-29-170. The State Department of Education will annually calculate each district's allocation based on the number of gifted and talented students projected to be served in each district as it relates to the total of all such students in the state. Unobligated funds which become available during the fiscal year (July 1-June 30) will be redistributed to serve additional eligible students. School districts will be authorized to expend allocated funds on students meeting the eligibility criteria of prior regulations and students meeting the eligibility criteria and being served in approved programs. Distribution of funds will be made periodically with a final adjustment occurring at the end of the 135-day attendance-reporting period for regular academic programs. School districts identifying and serving, according to the State Board of Education Regulations, 40 students or less shall receive a minimum funding of \$15,000 annually for academic programs. State funds provided for gifted and talented programs must impact directly on students served in accordance with provisions of the State Board of Education Regulations. Accounting procedures shall conform to those outlined in the Financial Accounting Handbook issued by the State Department of Education. The entire allocation must be used directly for gifted and talented related expenditures. A supplemental schedule shall be required in the school district's annual audit under the single audit concept. 43 S.C. CODE ANN. REGS. 220.

³⁰⁹ **Standards** - Gifted and talented students at the elementary and secondary levels must be provided programs during the regular school year or during summer school to develop their unique talents in the manner the State Board of Education must specify and to the extent state funds are provided. S.C. CODE ANN. § 59-29-170.

³¹⁰ **Identification** - By August 15, 1984, the State Board of Education shall promulgate regulations establishing the criteria for student eligibility in Gifted and Talented Programs. *Id.* § 59-29-170. Gifted and talented students are those who are identified in grades 1-12 as demonstrating high performance ability or potential in academic and/or artistic areas and therefore require an educational program beyond that normally provided by the general school program in order to achieve their potential. Gifted and talented abilities for these regulations include:. Academic and Intellectual Ability: Students who have the academic and/or intellectual potential to function at a high level in one or more academic areas. Visual and Performing Arts: Students who have the artistic potential to function at a high performance level in one or more of the fine arts. The purposes of identification are to find students who display characteristics of the gifted and talented, to assess the aptitudes, attributes and behaviors of each student, and to evaluate each student for the purposes of placement. Student aptitudes, attributes, and behaviors will be identified, assessed, and reviewed through a multi-step, multi-modal, and multi-dimensional identification system. Gifted and talented students may be found within any racial, ethnic, or socio-economic group; within any nationality; within both genders; and within populations with physical disabilities, learning disabilities, or behavioral problems. Identification is a multi-step process, which consists of screening and referral, assessment of eligibility, and placement. 4. Districts should reference the South Carolina Best Practices Manual for the identification process. The following students are deemed eligible for services with the approval of the District Evaluation Placement Team: Students who were served and qualified by state regulations prior to 1999. Students who meet the criteria in two out of three dimensions that follow. Students who meet the 96th national age percentile composite score or higher (placement grades 3-12) or the 98th national age percentile composite score or higher (placement grades 1-2) on an individual or group aptitude test. Students identified in one South Carolina school district are eligible for services in any South Carolina school district. Districts shall screen all students by reviewing census aptitude and achievement test scores. Referrals from administrators, parents, teachers, and students must be accepted. Initial screening does not in itself guarantee placement. Districts shall include the following procedures in the

Screening/Referral process: Provide all parents/guardians with effective, written notice of the gifted education program, screening/referral procedures and eligibility requirements; Implement processes for identifying the academically gifted from all student populations; Provide training/guidance regarding the characteristics of academic giftedness for teachers and other district staff involved in the identification process; Use screening criteria and procedures which are directly related to the purpose of the gifted program, i.e., identifying all students with demonstrated potential for high academic performance as well as those who have demonstrated high achievement. All students with the potential for eligibility after screening and all students with referrals must continue into the Assessment for Eligibility phase of the identification process. The State Department of Education will establish procedures for screening and referral criteria with options for districts. Districts must use one of these options or obtain State Department of Education approval of alternative proposal. Districts must ensure that all assessment instruments/measures are reviewed for bias and accurately assess the abilities/skills/potential intended to be measured; these abilities/skills/potentials are consistent with the definition of population set forth in the State Board regulation; and, to the extent that subjective assessment criteria are used, those individuals conducting the assessment are trained to ensure proper evaluation. No private testing will be accepted for eligibility, but those results may be considered for referral purposes. The following criteria organized by dimensions shall be used in the screening/referral/assessment processes of identification: Dimension A: Reasoning Abilities - These students demonstrate high aptitude (90th national age percentile or above) in one or more of these areas: verbal/linguistic, quantitative/mathematical, non-verbal, and/or a composite of the three. Individual aptitude test (full-scale or component score), Group aptitude test (composite, verbal or non-verbal scores) Dimension B: High Achievement in Reading and/or Mathematical Areas - These students demonstrate high achievement (94th national percentile and above or advanced status) in reading and/or mathematical areas as measured by nationally normed or South Carolina statewide assessment instruments. (See South Carolina Gifted and Talented Best Practices Manual for approved subtest areas.). Dimension C: Intellectual/Academic Performance - These students demonstrate a high degree of interest in and commitment to academic and/or intellectual pursuits or demonstrate intellectual characteristics such as curiosity/inquiry, reflection, persistence/tenacity in the face of challenge and creative productive thinking. Characteristics for this dimension are demonstrated through: Evidence of commitment in academic disciplines through grades for placement in Grades 5-12; the standard is 3.5 points on a 4.0 scale (See the glossary of terms for a listing of the academic disciplines.); or Assessments of performance tasks for placement in Grades 1-6. Instruments for these assessments will be maintained secure under § 59-1-445, Violations of mandatory test security; penalties; investigations, Code of Laws of South Carolina 1976. The performance standard is four points on a five point scale. Districts will follow steps established by the Department of Education to guarantee no single criterion eliminates students from gifted program participation. Placement - The evaluation step in the identification process of gifted and talented students shall be the responsibility of an Evaluation/Placement Team within the school or district. The Team shall be composed of at least a teacher, an administrator, and a psychologist (if employed by the district) and may also include a guidance counselor and/or a community-related person whose training and expertise qualifies him/her to appraise the special competencies of students. The Evaluation/Placement Team shall have the responsibility to interpret and evaluate student data in such a way that will insure appropriate placement. The Evaluation/Placement Team may require additional assessment before determining student placement. Placement may involve a trial period for at least one semester but not more than one year. Criteria for trial placement shall be established in guidelines established by the State Department of Education. Students whose progress within the gifted and talented program at the end of trial placement is not deemed adequate by the Evaluation/Placement Team may be withdrawn from the program. The Evaluation/Placement Team will be responsible for developing appropriate written procedures for removing a student from the gifted program. Removal from the program must be preceded by appropriate counseling with the student and conferences with the student's parents and teachers. Records of any assessment and evaluative measures and other student information must be maintained in a confidential manner. Students identified and served according to prior eligibility criteria will continue to be eligible for placement and funding provided their program service meets the requirements herein. Any student entering the program once these regulation amendments are effective shall be considered for placement based on the eligibility criteria herein. Districts shall develop specific identification procedures for academic and intellectual ability and the visual and performing arts. In order for students to be eligible for enrollment in

the state-funded gifted and talented program in the visual and performing arts, the student must meet the following criteria: Superior ability as evaluated by at least two persons with special expertise in the category of a fine art form for which the student is being considered. (One evaluator may be a member of the district staff or faculty, and one must be a professional artist from outside the district staff. A State Department of Education approved rating instrument must be used and reported as part of the screening process.); and Demonstrated ability as evidenced by specific school, individual, or community-related activities; and Teacher, administrator, parent, or peer nominations based on a State Department of Education approved instrument appropriate to the visual and performing arts area, to include creativity and expressive qualities. The screening, identification, and selection of gifted and talented students shall be the responsibility of an Evaluation/Placement Team within the individual school and/or district. The Team shall be composed of at least a teacher, an administrator, a psychologist (if employed in the district), and may also include a guidance counselor and/or a community-related person whose training and expertise qualifies him/her to appraise the special competencies of students. The Evaluation/Placement Team shall have the responsibility to determine, within the framework of these Regulations, the nomination procedures, supplementary instruments, observations, etc. to be used in the screening of students for the program and to interpret and evaluate student data in such a way that will insure appropriate placement. The Evaluation/Placement Team will be responsible for developing appropriate written procedures for removing a student from the gifted program. Removal from the program must be preceded by appropriate counseling with the student and conferences with the student's parents and teachers. The Evaluation/Placement Team must follow due process procedures in evaluating and placing students in the gifted and talented program. Records of any evaluative measures and other student information must be maintained in a confidential manner. 43 S.C. CODE ANN. REGS. 220.

³¹¹ **Programming** - Each school district shall provide advanced placement courses in all secondary schools of the district which enroll an adequate number of academically talented students to support the course. S.C. CODE ANN. § 59-29-190. Districts shall develop a plan to include the following academic program requirements: Curriculum, instruction and assessment that maximize the potential of the identified students; Support services that facilitate student learning (e.g., technology, guidance, academic support, staff development, academic competition); Program models that facilitate the delivery of curriculum and instruction; A teacher/pupil ratio that fosters positive results; Appropriate and sufficient time in instruction to assure that the goals and objectives of the program are met. To provide curriculum, instruction and assessment that maximize the potential of the identified students, educational programs for academically gifted and talented students must reflect the following characteristics: Content, process and product standards that exceed the state adopted standards for all students; Goals and indicators that require students to demonstrate depth and complexity of knowledge and skills; Instructional strategies that accommodate the unique needs of gifted learners; A confluent approach that incorporates acceleration and enrichment; Opportunities for worldwide communication/research; Evaluation of student performance and program effectiveness. Districts should reference the South Carolina Best Practices Manual for program models and curriculum requirements. Visual and performing arts programs shall be offered during the regular school year or during the summer for grades 1-12. Visual and performing arts programs shall focus on creative expression in one or more of the following areas: dance, drama, music, and/or visual arts. A diversified arts program encompassing the disciplines of dance, drama, music and the visual arts may be offered in grades 1-6. A school district may elect to serve students in any of the models through a consortium agreement with other school districts. 43 S.C. CODE ANN. REGS. 220.

³¹² **Other** - There is established a special school of science and mathematics for the purpose of fostering educational development of high school juniors and seniors in this State who are academically talented in the areas of science and mathematics and who show promise of exceptional development in these subjects. S.C. CODE ANN. § 59-48-10.

³¹³ **Other** - The Governor's schools for talented high school students and the gifted and talented programs shall emphasize the importance of the teaching profession.

³¹⁴ **Other** - There is established the South Carolina Governor's School for the Arts and Humanities to provide training for exceptional artistically talented students and serve as a research and resource center for all students and teachers in South Carolina. The school is dedicated to serving talented students in South Carolina who show exceptional talent, promise, aptitude, and interest in creative writing, dance, music, theater, and the visual arts. *Id.* § 59-50-10.

³¹⁵ **Other** - Beginning with school year 2002-2003, an entering freshman at a four-year institution to be eligible for a LIFE Scholarship in addition to the other requirements of this chapter shall meet two of the following three criteria: Have the grade point average required by this section; have the Scholastic Aptitude Test (SAT) or equivalent ACT score required by this section; or be in the top thirty percent of his high school graduating class. For an exceptionally gifted student who is accepted into college without having attended high school, the Commission on Higher Education shall define alternative criteria for the student to qualify for a LIFE Scholarship. *Id.* § 59-149-50.

SOUTH DAKOTA

³¹⁶ In 1995, the state board of education repealed, along with many other regulations, the rules governing gifted education. E-mail from Sue Burgard, Director of Character Education, South Dakota Department of Education (July 12, 2004, 10:36:05 PST) (on file with author). In 1997, the legislature repealed state funding for gifted education. See the "policy developments" section of the Education Commission of the States web-site (<http://www.ecs.org>). In February 2005, the South Dakota legislature repealed the statute (S.D. Codified Laws § 13-33-16) that had required the state board of education to establish rules for identification and programming for gifted students.

TENNESSEE

³¹⁷ **Funding** - It is the responsibility of local governments and school districts to expend effort on behalf of the education of each child with disabilities equal to the effort expended on account of the education of each child who does not have a disability. TENN. CODE ANN. § 49-10-103. The state shall provide financial aid in each school year to school districts and other entities entitled by the laws of this state to receive school aid for educational and related services provided by them for children with disabilities. *Id.* § 49-10-113.

³¹⁸ **Standards** - It is the policy of this state to provide, and to require school districts to provide, as an integral part of free public education, special education services sufficient to meet the needs and maximize the capabilities of children with disabilities. *Id.* § 49-10-101. The state board of education shall provide or cause to be provided by school districts all regular and special education, corrective and supporting services required by children with disabilities, to the end that they shall receive the benefits of a free public education appropriate to their needs. *Id.* § 49-10-103. The state board of education is hereby authorized to do whatever it deems necessary in the area of special education to: Adopt plans for the establishment and maintenance of classes in public schools, homes, convalescent homes, and hospitals, adopt teacher-pupil ratios for such classes, adopt methods of instruction for exceptional children, and prescribe standards or qualifications for teachers and other personnel for whom certification has not been established by the state board of education; Establish standards and policies for the minimum requirements for admission to, and discharge from, special schools and special classes and for providing special instruction to individual children; Study and prescribe modifications of curriculum as needed for adjustment to the needs of exceptional children in special schools, special classes and in special instruction for individual children; and Provide for the use of professional services for the purpose of determining the eligibility of exceptional children for admission to special schools, special classes, and individual instruction; provided, that such services are not available through other state or local agencies; Purchase or otherwise acquire, from funds provided for "excess cost," as may be allocated by the general assembly for such purposes, special transportation, special equipment, and special instructional materials and supplies for use in special education for exceptional children. Such special equipment or instructional material that is not expendable may be provided on loan to local boards of education according to such terms as may be prescribed under the rules and regulations governing the use of same as established by the state board of education; Provide out of appropriated funds an attendant or attendants, in special schools or special

classes, when, in the judgment of the commissioner of education, the physical condition of children in special schools or special classes makes it necessary for provision of such attendant or attendants; Assist local school system boards of education in establishing and maintaining special classes for exceptional children in the areas of the crippled, defective speech and hearing, partially seeing and psychologically exceptional, and to assist two (2) or more local school system boards of education in establishing classes through cooperative contract in instances where there are not sufficient numbers of students in one (1) local school system to warrant the establishment of such a class; Permit a local school system board of education to contract with a suitable private institution or organization located in the same county for the provision of such approved facilities and services for exceptional children, and to permit the expenditure of funds by such local school system board of education to constitute approved expenditures hereunder; provided, that the authority of the commissioner, the local superintendent of schools, and all public school officers shall be as full and ample in such private institution as in any school of the local school system; and provided further, that the facilities and services of such private institution meet the minimum standards as prescribed by the state board of education. *Id.* § 49-10-701.

³¹⁹ **Identification** - "Child with disabilities" means children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive, who have been certified under regulations of the state board of education by a specialist as being unsuited for enrollment in regular classes of the public schools, or who are unable to be educated or trained adequately in such regular programs without the provision of special classes, instruction, facilities or related services, or a combination thereof. Any child with disabilities who turns twenty-two (22) years of age between the commencement of the school year in August and the conclusion of the school year the following June, will continue to be a "child with disabilities" for the remainder of that school year. "Child with disabilities" includes the intellectually gifted. *Id.* § 49-10-102. Every school district shall test and examine, or cause to be tested and examined, each child attending the public and private schools within its boundaries in order to determine whether such child is disabled. The tests and examinations shall be administered on a regular basis in accordance with rules and regulations of the state board of education. *Id.* § 49-10-108. The commissioner of education, as head of the department of education, and acting through its division of special education, shall make and keep current a plan for the implementation of the policy set forth in § 49-10-101. The plan shall include provisions for diagnosis and screening of children with disabilities. *Id.* § 49-10-301. "Intellectually Gifted" means a child whose intellectual abilities and potential for achievement are so outstanding that special provisions are required to meet the child's educational needs. TENN. COMP. R & REGS. 0520-1-9-.01.

³²⁰ **Programming** - The commissioner of education, as head of the department of education, and acting through its division of special education, shall make and keep current a plan for the implementation of the policy set forth in § 49-10-101. The plan shall include . . . methods of assuring that education afforded children with disabilities will be as nearly equivalent as may be to that afforded regular children and also will take account of their special needs. TENN. CODE ANN. § 49-10-301.

³²¹ **Teacher Training** - The commissioner of education, as head of the department of education, and acting through its division of special education, shall make and keep current a plan for the implementation of the policy set forth in § 49-10-101. The plan shall include a program for the preparation, recruitment and in-service training of personnel in special education and allied fields, including participation, as appropriate, by institutions of higher learning, state and local agencies, and any other public and private entities having relevant expertise. *Id.* § 49-10-301.

³²² **Data Collection** - Every school district shall make and keep current a list of all children with disabilities required to be tested and examined pursuant to subsections (a) and (b) who are found to be disabled, and of all children who are residents of the school district and who are receiving home, hospital, institutional or other special education services in other than the regular programs. *Id.* § 49-10-108. The commissioner of education, as head of the department of education, and acting through its division of special education, shall make and keep current a plan for the implementation of the policy set forth in § 49-10-101. The plan shall include a census of the children with disabilities in this state showing the total

number of such children and the geographic distribution of children with disabilities as a whole, an inventory of the personnel and facilities available to provide instruction and other services for children with disabilities, and an analysis of the present distribution of responsibility for special education between the state and local school systems and general units of local government, together with recommendations for any necessary or desirable changes in the distribution of responsibilities. *Id.* § 49-10-301. On or before July 1 of each year, each school district shall report to the commissioner of education and the state board of education the extent to which it is then providing the special education for children with disabilities necessary to implement fully the policy of parts 1-6 of this chapter. The report also shall detail the means by which the school district or political subdivision proposes to secure full compliance with the policy of parts 1-6 of this chapter, including: A precise statement of the extent to which the necessary education and services will be provided directly by the district pursuant to law requiring such direct provision; A precise statement of the extent to which standards in force pursuant to § 49-10-301(b)(6) are being met; and An identification and description of the means which the school district or political subdivision will employ to provide, at levels meeting standards in force pursuant to § 49-10-301(c), all special education not to be provided directly by the state. After submission of the report required by this section, the school district shall submit such supplemental and additional reports as the commissioner and department may require, in order to keep the plan current. By rule or regulation, the department shall prescribe the due dates, form and all other necessary or appropriate matters relating to such reports. For the purposes of this section, children with disabilities being furnished special education in state facilities shall continue to be the planning responsibility of the school district in which they would be entitled to attend school if it were not for the direct provision of special education to them by the state. A record of each such child, the nature and degree of the child's disability and of the way in which the child's educational needs are being met shall be kept by the school district. *Id.* § 49-10-302.

³²³ **Individualized Programming** - Except when a written explanation to the contrary is included, the individualized education program of a child with disabilities will include prevocational career education for pupils in kindergarten (K) and grades one (1) to six (6), inclusive, or pupils of comparable chronological age and vocational education, career education, or work experience education, or any combination of these, including independent living skill training for pupils in grades seven (7) to twelve (12), inclusive, or comparable chronological age. *Id.* § 49-10-114.

³²⁴ **Procedural Safeguards** - Inasmuch as gifted students are defined a children with disabilities, they are presumably entitled to the procedural safeguards for children with disabilities.

³²⁵ **Due Process Hearing** - A child, or such child's parent or guardian, may obtain review of an action or omission by state or local authorities on the ground that the child has been or is about to be: Denied entry or continuance in a program of special education appropriate to the child's condition and needs; Placed in a special education program which is inappropriate to such child's condition and needs; Denied educational services because no suitable program of education or related services are maintained; Provided with special education or other education which is insufficient in quantity to satisfy the requirements of law; Provided with special education or other education to which the child is entitled only by units of government or in situations which are not those having the primary responsibility for providing the services in question; or Assigned to a program of special education when the child does not have disabilities. The parent or guardian of a child placed or denied placement in a program of special education shall be notified promptly, by certified mail, return receipt requested, of such placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that the parent or guardian is entitled to a review of the determination and of the procedure for obtaining such review. The notice shall contain the information that a hearing may be had, upon written request, no less than fifteen (15) days nor more than thirty (30) days from the date on which the notice was received. No change in the program assignment or status of a child with disabilities shall be made within the period afforded the parent or guardian to request a hearing, which period shall not be less than fourteen (14) days, except that such change may be made with the written consent of the parent or guardian. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be sooner made, but without prejudice to any rights that the child and the child's parent or

guardian may have pursuant to this section or otherwise pursuant to law. The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination. At any hearing held pursuant to this part or § 49-10-109, the child and the child's parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person and to be represented by counsel. A full record of the hearing shall be made and kept, including a transcript thereof if requested by the parent or guardian. A parent or guardian who believes the diagnosis or evaluation of the child, as shown in the records made available to the parent or guardian pursuant to subsection (d), to be in error may request an independent examination and evaluation of the child and shall have the right to secure the same and to have the report thereof presented as evidence in the proceeding. If the parent or guardian is financially unable to afford an independent examination or evaluation, it shall be provided at state expense. The state board of education shall make and, from time to time, may amend or revise rules and regulations for the conduct of hearings authorized by this section and otherwise for the implementation of its purpose. Among other things, such rules and regulations shall require that the hearing officer or board be a person or composed of persons other than those who participated in the action or who are responsible for the omission being complained of; fix the qualifications of the hearing officer or officers; and provide that the hearing officer or board shall have authority to affirm, reverse or modify the action previously taken and to order the taking of appropriate action. Hearing officers shall have a minimum of forty (40) hours of training per year, provided by the department of education and monitored by the state board of education, in current special education issues, related subjects, and legal education to include civil judicial procedures and rules and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The rules and regulations shall govern proceedings pursuant to this section whether held by the state board of education, or by a county, city or special school district board of education. The termination of a hearing officer or board shall be subject to judicial review in the manner provided for judicial review of determinations of the state or local education agency, as the case may be. If a determination of a hearing officer or board is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the chancery or circuit court. Any action pursuant to this section shall not be a bar to any administrative or judicial proceeding by or at the instance of the department to secure compliance or otherwise to secure proper administration of laws and regulations relating to the provision of regular or special education. TENN. CODE ANN. § 49-10-601. Unlike prevailing parents of students who also or solely have a disability, prevailing parents of students who are gifted alone are not entitled to attorney's fees. TENN. COMP. R & REGS. 0520-1-9-.14(h)(1).

³²⁶ **Complaint Procedure** - The remedies provided by this section are in addition to any other remedies which a child or the child's parent or guardian may otherwise have pursuant to law. TENN. CODE ANN. § 49-10-601. Inasmuch as gifted students are defined a children with disabilities, they are entitled to the state's complaint resolution procedures for children with disabilities.

³²⁷ **Other** - Academically talented/gifted students enrolled in grades nine (9), ten (10), eleven (11) or twelve (12) in public or private high schools in Tennessee may, with the recommendation and approval of the high school principal and appropriate higher education institution personnel, enroll in and receive regular college degree credit from a Tennessee postsecondary institution, if such a student has a grade point average equivalent to three point two (3.2) on a four point zero (4.0) maximum basis and if such placement is a part of the student's planned Individual Educational Placement (IEP) as established by the multi-disciplinary team process. Students enrolled in grades eleven (11) and twelve (12) may also be allowed to enroll in courses at institutions operated by the board of regents and the University of Tennessee board of trust, in accordance with regulations governing such attendance promulgated by the state board of education, after consultation with the board of regents and the University of Tennessee board of trust. *Id.* § 49-6-3111.

³²⁸ **Other** - Physical aspects and specifications of schools, classrooms and other facilities for, or likely to be used by, children with disabilities, shall be related to their special physical, educational and psychological needs. To this end, school districts, special education services associations, agencies of the state and its subdivisions, and any private persons or entities constructing, renovating or repairing facilities

with or aided by public funds, which facilities are expressly intended for or are likely to be used by children with disabilities, shall plan, locate, design, construct, equip and maintain them with due regard for the special capabilities, disabilities and requirements of the children with disabilities to be accommodated therein. *Id.* § 49-10-103.

³²⁹ **Other** - Whenever private schools and services are utilized, it continues to be the public responsibility to assure an appropriate quantity and quality of instructional and related services, and the protection of all other rights, and to ascertain that all children with disabilities receive the educational and related services and rights to which the laws of this state entitle them. *Id.* § 49-10-103.

³³⁰ **Other** - There shall be an advisory council for the education of students with disabilities which shall advise and consult with the governor, the commissioner of education, the state board of education, and the director of the division of special education, and which shall engage in such other activities as are hereinafter set forth. *Id.* 49-10-105.

³³¹ **Other** - In 2003, the legislature established a special joint study committee to review the state board rules and regulations regarding intellectually gifted students.

³³² **Other** - If a school district is found by the commissioner of education to have failed to provide necessary education to all children with disabilities who by law are entitled to receive the same from such school district, the commissioner may withhold all or such portion of the state aid for the regular public schools as, in the commissioner's judgment, is warranted. *Id.* § 49-10-109.

³³³ **Other** - In addition to any state aid for the transportation of children to and from school and other transportation in connection with school-related activities, the department of education, upon a claim properly substantiated, shall pay one hundred per cent (100%) of the costs of special buses and other special equipment actually employed in transporting children with disabilities. *Id.* § 49-10-113.

³³⁴ **Other** - The affairs of a special education services association shall be administered by its governing board, and the officers and employees thereof. A special education services association has power to: Establish and operate programs and classes for the education of children with disabilities; Acquire, construct, maintain and operate facilities in which to provide education, corrective and supporting services for children with disabilities; Make arrangements with school districts participating in the special education services association for the provision of special education, corrective and supporting services, to the children with disabilities of such school districts; Employ special education teachers and personnel required to furnish corrective or supporting services to children with disabilities; Acquire, hold and convey real and personal property; Provide transportation for children with disabilities in connection with any of its programs, classes or services; Receive, administer and expend funds appropriated for its use; Receive, administer and expend the proceeds of any issue of school bonds or other bonds intended wholly or partly for its benefit; Apply for, accept and utilize grants, gifts or other assistance, and, if not contrary to law, comply with the conditions, if any, attached thereto; Participate in, and make its employees eligible to participate in, any retirement system, group insurance system or other program of employee benefits, on the same terms as govern school districts and their employees; and Do such other things as are necessary and incidental to the execution of any of the foregoing powers, and of any other powers conferred upon special education services associations elsewhere in parts 1-6 of this chapter or in other laws of this state. *Id.* § 49-10-203.

TEXAS

³³⁵ **Funding** - For each identified student a school district serves in a program for gifted and talented students that the district certifies to the commissioner as complying with Subchapter D, Chapter 29, a district is entitled to an annual allotment equal to the district's adjusted basic allotment as determined under § 42.102 or § 42.103, as applicable, multiplied by .12 for each school year or a greater amount provided by appropriation. Funds allocated under this section, other than the amount that represents the program's share of general administrative costs, must be used in providing programs for gifted and talented

students under Subchapter D, Chapter 29, including programs sanctioned by International Baccalaureate and Advanced Placement, or in developing programs for gifted and talented students. Each district must account for the expenditure of state funds as provided by rule of the State Board of Education. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for programs such as MATHCOUNTS, Future Problem Solving, Odyssey of the Mind, and Academic Decathlon, as long as these funds are used to train personnel and provide program services. To be eligible for funding under this subsection, a program must be determined by the State Board of Education to provide services that are effective and consistent with the state plan for gifted and talented education. TEX. EDUC. CODE ANN. § 42.156. School districts shall ensure that: no more than 15% of state funds allocated for gifted/talented education are spent on indirect costs. 19 TEX. ADMIN. CODE § 89.4.

³³⁶ **Standards** - The State Board of Education shall develop and periodically update a state plan for the education of gifted and talented students to guide school districts in establishing and improving programs for identified students. The plan shall be used for accountability purposes to measure the performance of districts in providing services to students identified as gifted and talented. TEX. EDUC. CODE ANN. § 29.123.

³³⁷ **Identification** - The board shall adopt criteria for identifying gifted and talented students and shall develop and update a state plan for the education of gifted and talented students as required under Subchapter D, Chapter 29. *Id.* § 7.102. In this subchapter, "gifted and talented student" means a child or youth who performs at or shows the potential for performing at a remarkably high level of accomplishment when compared to others of the same age, experience, or environment and who exhibits high performance capability in an intellectual, creative, or artistic area, possesses an unusual capacity for leadership, or excels in a specific academic field. *Id.* § 29.121. Using criteria established by the State Board of Education, each school district shall adopt a process for identifying and serving gifted and talented students in the district. *Id.* § 29.122. School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must: include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, § 29.121; include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of gifted/talented students; include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program; provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; and include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement. 19 TEX. ADMIN. CODE § 89.1.

³³⁸ **Programming** - Using criteria established by the State Board of Education, each school district shall establish a program for those students in each grade level. TEX. EDUC. CODE ANN. § 29.122. School districts shall provide an array of learning opportunities for gifted/talented students in kindergarten through Grade 12 and shall inform parents of the opportunities. Options must include: instructional and organizational patterns that enable identified students to work together as a group, to work with other students, and to work independently; a continuum of learning experiences that leads to the development of advanced-level products and performances; in-school and, when possible, out-of-school options relevant to the student's area of strength that are available during the entire school year; and opportunities to accelerate in areas of strength. 19 TEX. ADMIN. CODE § 89.3.

³³⁹ **Teacher Training** - School districts shall ensure that: prior to assignment in the program, teachers who provide instruction and services that are a part of the program for gifted students have a minimum of 30 hours of staff development that includes nature and needs of gifted/talented students,

assessing student needs, and curriculum and instruction for gifted students; teachers without training required in paragraph (1) of this section who provide instruction and services that are part of the gifted/talented program must complete the 30-hour training requirement within one semester; teachers who provide instruction and services that are a part of the program for gifted students receive a minimum of six hours annually of professional development in gifted education; and administrators and counselors who have authority for program decisions have a minimum of six hours of professional development that includes nature and needs of gifted/talented students and program options. 19 TEX. ADMIN. CODE § 89.2. The professional development sequence for the gifted and talented endorsement shall consist of 12 semester hours to include, but not limited to, the following areas: nature and needs of the gifted and talented; identification and assessment of gifted and talented students; methods, materials, and curriculum for gifted and talented students; counseling and guidance of gifted and talented students; and creativity: theories, models, and applications. *Id.* § 230.199.

³⁴⁰ **Other** - Discrimination prohibited by this subsection includes denial of placement in a gifted and talented program if the student would otherwise be qualified for the program but for the student's learning disability. TEX. EDUC. CODE ANN. § 12.012.

³⁴¹ **Other** - The commissioner shall implement a program under which a school district may offer an electronic course to students enrolled in the district or to students enrolled in another district, as provided by an agreement between the districts. A district may not require a student to enroll in an electronic course. The commissioner shall select school districts to participate in the program based on applications submitted by the districts. The commissioner may not require a district to participate in the program. The commissioner may determine the number of districts permitted to participate in the program, provided that the commissioner shall to the extent possible permit the participation of rural and urban districts with a higher than average number of at-risk students, as determined by the commissioner; dropout rate; or population of underserved gifted and talented students, as determined by the commissioner. *Id.* § 29.903.

³⁴² **Other** - The primary responsibility of a school counselor is to counsel students to fully develop each student's academic, career, personal, and social abilities. In addition to a school counselor's responsibility under Subsection (a), the counselor shall participate in planning, implementing, and evaluating a comprehensive developmental guidance program to serve all students and to address the special needs of students who are gifted and talented, with emphasis on identifying and serving gifted and talented students who are educationally disadvantaged. *Id.* § 33.006.

³⁴³ **Other** - The Texas Academy of Leadership in the Humanities is established as a two- year program at Lamar University at Beaumont for secondary school students selected under this section. *Id.* § 96.707.

³⁴⁴ **Other** - The Texas Academy of Mathematics and Science is established as a division of the University of North Texas. *Id.* § 105.301.

UTAH

³⁴⁵ **Funding** - There is appropriated to the State Board of Education \$9,251,074 for allocation to local school boards for accelerated learning programs in grades one through 12, which include programs for the gifted and talented, concurrent enrollment, and advanced placement. 2002 Utah Laws Ch. 258 (H.B. 274). There is appropriated to the State Board of Education for the fiscal year beginning July 1, 2002, \$8,622,674 for allocation to local school boards for accelerated learning programs in grades one through 12, which include programs for the gifted and talented, concurrent enrollment, and advanced placement. A school participating in the concurrent enrollment programs offered under § 53A-15-101 shall receive on a per student basis up to \$33.33 per quarter hour or \$50 per semester hour for each hour of higher education course work undertaken at the school. Each year the amounts specified in Subsection (2)(a) shall be adjusted in proportion to the increase in the value of the weighted pupil unit from the prior year established in Subsection 53A-17a-103(1). Districts shall spend monies for these programs according

to rules established by the State Board of Education in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act. The State Board of Education shall develop uniform and consistent policies for school districts to follow in utilizing advanced placement and concurrent enrollment monies. 2002 Utah Laws Ch. 279 (S.B. 3). Each school district shall receive its share of funds in the proportion that the district's number of weighted pupil units for kindergarten through grade twelve and necessarily existent small schools bears to the state total. Funds shall be used in any of the following areas: planning, program development, and identification of students; salaries, in-service education costs, and the costs of conferences, workshops, and other educational activities designed to enable teachers to better serve gifted and talented students; supplies, materials, and equipment to supplement and enhance the education programs for gifted and talented students. Funds allocated for programs for gifted and talented students shall not be used for Advanced Placement or Concurrent Enrollment programs. The Utah State Office of Education shall have fiscal and pupil accounting procedures to assess programs for gifted and talented students. UTAH ADMIN. CODE R277-711.

³⁴⁶ **Identification** - "Gifted and talented students" means children and youth whose superior performance or potential for accomplishment requires a differentiated and challenging education program to meet their needs in any one or more of the following areas: general intellectual: students who demonstrate a high aptitude for abstract reasoning and conceptualization, who master skills and concepts quickly, and who are exceptionally alert and observant; specific academic: students who evidence extraordinary learning ability in one or more specific disciplines; visual and performing arts: students who are consistently superior in the development of a product or performance in any of the visual and performing arts; leadership: students who emerge as leaders, and who demonstrate high ability to accomplish group goals by working with and through others; creative, critical or productive thinking: students who are highly insightful, imaginative, and innovative, and who consistently assimilate and synthesize seemingly unrelated information to create new and novel solutions for conventional tasks. *Id.* R277-711.

³⁴⁷ **Programming** - Each school district shall develop and submit, to the Utah State Office of Education for review annually, a plan for educating gifted and talented students. This plan shall reflect a time frame appropriate to the district. The district plan shall contain provisions to: develop a written philosophy for the education of gifted and talented students that is consistent with the goals and values of the school district and the community; select a district coordinator who is responsible for the program; recognize a variety of areas in which a student may be identified as gifted; provide carefully integrated, and articulated curricula throughout the district; identify and use teaching strategies that are appropriate to the learning styles and emotional needs of gifted and talented students; adopt flexible pacing at all levels and allow students to advance as they master content and skills; offer program options that reach through and beyond the normal institutional boundaries: across disciplines, across grade levels, and across levels of intelligence; provide guidance to assist students in addressing personal and interpersonal needs, in program selection and in career and college choices; balance acceleration with enrichment activities for diverse types and degrees of intelligence; provide information regarding special services, programs, and other appropriate educational opportunities; and utilize appropriate community and private resources. *Id.* R277-711.

VERMONT

³⁴⁸ **Funding** - The commissioner shall establish and implement a challenge to excellence grant program for the purpose of promoting quality education for Vermont students. Eligible applicants include Vermont public elementary, middle, secondary and vocational schools, and Vermont supervisory unions on behalf of a school or schools. All proposals shall be to develop or carry out a comprehensive plan, which may be an action plan pursuant to subdivision 165(a)(1) of this title, to create educational opportunities for each student within the school. Any such plan must be or must have been developed with the involvement of parents and other community members, staff and business representatives, and shall be designed to assist students in meeting state board and school board standards. Grants shall be for up to \$50,000.00 and shall include a 1-1 match from other sources of funding including grants from businesses, foundations or other federal or local funding. Priority shall be given to schools which the commissioner finds are having

difficulty meeting the quality standards listed in subsection 165(a) of this title or are making insufficient progress in improving student performance in relation to the standards set forth in subdivision 164(9) of this title. Eligible activities include: a comprehensive planning and goal-setting process to promote a quality education for all students within the school; activities to carry out a comprehensive plan to promote quality education for students within the school; Innovative methods to create educational opportunities for students according to a comprehensive plan, including but not limited to special classes and activities; mentorship; summer institutes on math, science, reading and language arts, social studies, service, the arts or technology; partnerships for learning with businesses, post-secondary institutions and community organizations; tutorials; programs for at-risk or gifted students; guidance, peer counseling and career planning activities. VT. STAT. ANN. tit. 16, § 215.

³⁴⁹ **Identification** - "Gifted and talented children" means children identified by professionally qualified persons who, when compared to others of their age, experience or environment, exhibit capability of high performance in intellectual, creative or artistic areas, possess an unusual capacity for leadership or excel in specific academic fields. *Id.* tit. 16, § 13.

³⁵⁰ **Programming** - Within each school district's comprehensive system of educational services, each public school shall develop and maintain an educational support system for children who require additional assistance in order to succeed or be challenged in the general education environment. It is the intent of the general assembly that a gifted and talented student shall be able to take advantage of services that an educational support team can provide. *Id.* tit. 16, § 2902.

³⁵¹ **Teacher Training** - It is the intent of the general assembly that those who provide educational services to children be encouraged to apply for any available funding that will help to provide teacher training and other services for the benefit of gifted and talented children. *Id.* tit. 16, § 13.

VIRGINIA

³⁵² **Identification** - A school board shall comply with Board regulations governing gifted education relative to the use of multiple criteria for the identification of gifted students. VA. CODE ANN. § 22.1-18.1. Local school boards shall also implement early identification of gifted students and enrollment of such students in appropriately differentiated instructional programs. *Id.* § 22.1-253.13:1. "Gifted students" means those students in public elementary and secondary schools beginning with kindergarten through graduation whose abilities and potential for accomplishment are so outstanding that they require special programs to meet their educational needs. These students will be identified by professionally qualified person through the use of multiple criteria as having potential or demonstrated abilities and who have evidence of high performance capabilities, which may include leadership, in one or more of the following areas: Intellectual aptitude or aptitudes. Students with advanced aptitude or conceptualization whose development is accelerated beyond their age peers as demonstrated by advanced skills, concepts, and creative expression in multiple general intellectual ability or in specific intellectual abilities. Specific academic aptitude. Students with specific aptitudes in selected academic areas: mathematics; the sciences; or the humanities as demonstrated by advanced skills, concepts, and creative expression in those areas. Technical and practical arts aptitude. Students with specific aptitudes in selected technical or practical arts as demonstrated by advanced skills and creative expression in those areas to the extent they need and can benefit from specifically planned educational services differentiated from those provided by the general program experience. Visual or performing arts aptitude. Students with specific aptitudes in selected visual or performing arts as demonstrated by advanced skills and creative expression who excel consistently in the development of a product or performance in any of the visual and performing arts to the extent that they need and can benefit from specifically planned educational services differentiated from those generally provided by the general program experience. "Identification" is the process of reviewing student data collected at the screening level and conducting further evaluation of student potential to determine the most qualified students for the specific gifted program available. "Identification/Placement Committee" means a standing committee which is composed of a professional who knows the child, classroom teacher or teachers, others representing assessment specialists, gifted program staff and school administration, and others deemed appropriate. This committee may operate at the school or division level. In either case,

consistent criteria must be established for the division. "Placement" means the determination of the appropriate educational option for each eligible student. "Screening" is the process of creating the pool of potential candidates using multiple criteria through the referral process, review of test data, or from other sources. Screening is the active search for students who should be evaluated for identification. 8 VA. ADMIN. CODE § 20-40-20. Each school division shall establish a uniform procedure with common criteria for screening and identification of gifted students. If the school division elects to identify students with specific academic aptitudes, they shall include procedures for identification and service in mathematics, science, and humanities. These procedures will permit referrals from school personnel, parents or legal guardians, other persons of related expertise, peer referral and self-referral of those students believed to be gifted. Pertinent information, records, and other performance evidence of referred students will be examined by a building level or division level identification committee. Further, the committee or committees will determine the eligibility of the referred students for differentiated programs. Students who are found to be eligible by the Identification/Placement Committee shall be offered a differentiated program by the school division. Each school division shall maintain a division review procedure for students whose cases are appealed. This procedure shall involve individuals, the majority of whom did not serve on the Identification/Placement Committee. *Id.* § 20-40-40. Eligibility of students for programs for the gifted shall be based on multiple criteria for screening and identification established by the school division, and designed to seek out high aptitude in all populations. Multiple criteria shall include four or more of the following categories: assessment of appropriate student products, performance, or portfolio; record of observation of in-classroom behavior; appropriate rating scales, checklists, or questionnaires; Individual interview; Individual or group aptitude tests; Individual or group achievement tests; record of previous accomplishments (such as awards, honors, grades, etc.); additional valid and reliable measures or procedures. If a program is designed to address general intellectual aptitude, aptitude measures must be included as one of the categories in the division identification plan. If a program is designed to address specific academic aptitude, an achievement or an aptitude measure in the specific academic area must be included as one of the categories in the division identification plan. If a program is designed to address either the visual/performing arts or technical/practical arts aptitude, a performance measure in the specific aptitude area must be used. Inclusion of a test score in a division identification plan does not indicate that an individual student must score at a prescribed level on the test or tests to be admitted to the program. No single criterion shall be used in determining students who qualify for, or are denied access to, programs for the gifted. 8 VA. ADMIN. CODE § 20-40-50. For related testing requirements, see *infra* note 353.

³⁵³ **Programming** - Each school division shall submit to the Department of Education for approval a plan for the education of gifted students. Modifications to the plan shall be reported to the Department of Education on dates specified by the department. The plan shall include the components as follow: a statement of philosophy; a statement of program goals and objectives; procedures for the early and on-going identification and placement of gifted students; beginning with kindergarten through secondary graduation in at least one of the four defined areas of giftedness; a procedure for notifying parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission prior to placement of students in the appropriate program; a policy for notifying gifted students' change of placement within, and exit from the program, which includes an opportunity for parents who disagree with the committee or committees decision to meet and discuss their concern or concerns with an appropriate administrator; assurances that records are maintained according to 8 VA. ADMIN. CODE § 20-150-10 *et seq.*, Management of Student's Scholastic Record in the Public Schools of Virginia; assurances that testing and evaluation materials selected and administered are sensitive to cultural, racial, and linguistic differences, identification procedures are constructed so that they identify high potential/ability in all underserved culturally diverse, low socio-economic, and disabled populations, standardized tests have been validated for the specific purpose for which they are used, instruments are administered and interpreted by a trained personnel in conformity with the instructions of their producer; a procedure to identify and evaluate student outcomes based on the initial and ongoing assessment of their cognitive and affective needs; a procedure to match service options, including instructional approaches, settings, and staffing, to designated student needs; a framework for appropriately differentiated curricula indicating accelerative and enrichment opportunities in content, process, and product; procedures for the selection/evaluation of teachers and for the training of personnel to include administrators/supervisors,

teachers, and support staff; procedures for the appropriate evaluation of the effectiveness of the school division's program for gifted students; and other information as required by the Department of Education. Each school division shall establish a local advisory committee composed of parents, school personnel, and other community members. This committee shall reflect the ethnic and geographical composition of the school division. The purpose of this committee shall be to advise the school board through the division superintendent of the educational needs of all gifted students in the division. As a part of this goal, the committee shall review annually the local plan for the education of gifted students, including revisions, and determine the extent to which the plan for the previous year was implemented. The recommendations of the advisory committee shall be submitted in writing through the division superintendent to the school board. *Id.* § 20-40-60. Instruction shall be designed to accommodate all students, including those with disabilities, those identified as gifted/talented, and those who have limited English proficiency. *Id.* § 20-131-70.

³⁵⁴ **Teacher Training** - Each local school board shall provide a program of professional development, as part of the license renewal process, to assist teachers and principals in acquiring the skills needed to work with gifted students and handicapped students and to increase student achievement. VA. CODE ANN. § 22.1-253.13:5. The Board of Education shall, by regulation, prescribe the requirements for licensure of teachers. Regardless of the authority of any other agency of the Commonwealth to approve educational programs, only the Board of Education shall have the authority to license teachers to be regularly employed by school boards, including those teachers employed to provide nursing education. Such regulations shall include a requirement that persons seeking licensure on and after July 1, 2000, complete study in attention deficit disorder and gifted education, including the use of multiple criteria to identify gifted students. *Id.* § 22.1-298. Each school shall provide students identified as gifted/talented with instructional programs taught by teachers with special training or experience in working with gifted/talented students. 8 VA. ADMIN. CODE § 20-131-70.

³⁵⁵ **Data Collection** - Each local school board shall submit the annual report, "Programs for Gifted Education," as required by Board regulations, to the Department of Education. VA. CODE ANN. § 22.1-18.1.

³⁵⁶ **Program Evaluation** - With such funds as may be appropriated for this purpose, the Department of Education shall conduct an annual review of all local gifted education programs, on such date as it may determine, to ensure full implementation and compliance with federal and state laws and regulations governing gifted education. *Id.* § 22.1-18.1.

³⁵⁷ **Procedural safeguards** - The local plan for gifted education must include "[a] procedure for notifying parents or legal guardians when additional testing or additional information is required during the identification process and for obtaining permission prior to placement of students in the appropriate program" and "[a] policy for notifying gifted students' change of placement within, and exit from the program." 8 VA. ADMIN. CODE § 20-40-60.

³⁵⁸ **Due Process Hearing** - The local plan for gifted education must also include for change of placement, including exiting from the program, "an opportunity for parents who disagree with the committee or committees decision to meet and discuss their concern or concerns with an appropriate administrator." *Id.* § 20-40-60.

³⁵⁹ **Other** - With such funds as may be appropriated for this purpose, there is hereby established the Virginia Gifted Education Consortium to facilitate collaboration, cooperation, and communication among school divisions to address issues of mutual concern regarding gifted education. VA. CODE ANN. § 22.1-355.

³⁶⁰ **Other** - With such funds as may be appropriated for the purposes of this section, there is hereby created the Virginia Gifted Education Pilot program to provide a model for school divisions, facilitate the identification of gifted students, and enhance and improve existing gifted education programs. On and after

July 1, 1998, the Program shall consist of selected pilot projects located in regions throughout the Commonwealth to provide equal geographical distribution of such projects. Priority for awarding such grants shall be given to projects designed to identify and serve gifted students, particularly students who are eligible for the federal Free Lunch Program. Criteria for awarding such grants shall include, but not be limited to, the use of multiple criteria to identify gifted and talented students; a pupil-teacher ratio of one full-time equivalent instructional position per 750 students in average daily membership; the annual local school board report, Programs for the Gifted, submitted to the Department of Education; teachers, coordinators, counselors, and administrators who are specially trained in gifted education or who have the add-on endorsement in gifted education; demonstration of fiscal accountability for state gifted education funds, regional cooperation, and joint ventures with institutions of higher education; a demographic profile of the students served, including economic status; a demonstrated or planned counseling program which is culturally sensitive and responsive to the educational needs of gifted students and acknowledges and accommodates the social and emotional needs of gifted students; a plan to provide for family participation and community support; and a review and evaluation component for the pilot project. Grants for all projects shall be awarded on a competitive basis to applicants responding to requests for proposals. Upon appropriation of funds for the purposes of this section, the Board shall issue a request for proposals for projects for the program. Grants shall be awarded by December 1, 1998. Eligible projects shall satisfy the criteria for receiving awards pursuant to subsection B of this section; comply with federal and state laws and regulations governing gifted education; ensure the flow-through of state funds for gifted education to gifted and talented programs serving each school division; provide for family participation in and community support for the project; encourage the development of innovative teaching strategies to improve the achievement of gifted students regardless of their socio-economic status; and aggressively seek eligible gifted students to improve their representation in gifted education programs. Grant recipients may work collaboratively, upon request, to provide approved service delivery. The Department shall require funded projects to submit a written evaluation of the program on such date as it may determine. The Department shall report the data analysis of the evaluation of the projects to the Governor and the General Assembly by July 1, 2001. *Id.* § 22.1-209.1:5.

³⁶¹ **Other** - With such funds as may be appropriated for this purpose, there is hereby created the Academic Opportunities Pilot Program (the Program) to provide a model for school divisions to explore innovative options and creative instructional programs for the education of secondary school students with diverse educational needs within the same facility. Such options and programs shall address the needs of two or more student populations that may include those students who are educationally at risk, assigned to the regular instructional program, identified as gifted or talented or enrolled in advanced placement or honors classes, identified as having special needs, enrolled in career and technical education programs, or who are over-age or for whom the regular instructional program is inappropriate, or have been suspended, excluded, or expelled from school attendance. *Id.* § 22.1-209.1:8.

WASHINGTON

³⁶² **Funding** - The legislature may appropriate funds to be distributed to school districts for special programs, including programs for gifted students. WASH. REV. CODE 28A.150.370. Supplementary funds as may be provided by the state for this program, in accordance with RCW 28A.150.370, shall be categorical funding on an excess cost basis based upon a per student amount not to exceed three percent of any district's full-time equivalent enrollment. WASH. REV. CODE 28A.185.020.

³⁶³ **Standards** - Local school districts may establish and operate, either separately or jointly, programs for highly capable students. *Id.* 28A.185.030. In order to ensure that school districts are meeting the requirements of an approved program for highly capable students, the superintendent of public instruction shall monitor highly capable programs at least once every five years. Monitoring shall begin during the 2002-03 school year. Any program review and monitoring under this section may be conducted concurrently with other program reviews and monitoring conducted by the office of the superintendent of public instruction. In its review, the office shall monitor program components that include but need not be limited to the process used by the district to identify and reach out to highly capable students with diverse talents and from diverse backgrounds, assessment data and other indicators to determine how well the

district is meeting the academic needs of highly capable students, and district expenditures used to enrich or expand opportunities for these students. *Id.* 28A.185.050.

³⁶⁴ **Technical Assistance** - Pursuant to rules and regulations adopted by the superintendent of public instruction for the administration of this chapter, the superintendent of public instruction shall carry out a program for highly capable students. Such program may include conducting, coordinating and aiding in research (including pilot programs), disseminating information to local school districts, providing statewide staff development, and allocating to school districts supplementary funds for additional costs of district programs, as provided by RCW 28A.185.020. *Id.* 28A.185.010.

³⁶⁵ **Identification** - Local school districts which establish and operate programs for highly capable students shall adopt identification procedures and provide educational opportunities as follows: In accordance with rules and regulations adopted by the superintendent of public instruction, school districts shall implement procedures for nomination, assessment and selection of their most highly capable students. Nominations shall be based upon data from teachers, other staff, parents, students, and members of the community. Assessment shall be based upon a review of each student's capability as shown by multiple criteria intended to reveal, from a wide variety of sources and data, each student's unique needs and capabilities. Selection shall be made by a broadly based committee of professionals, after consideration of the results of the multiple criteria assessment. Students selected pursuant to procedures outlined in this section shall be provided, to the extent feasible, an educational opportunity which takes into account each student's unique needs and capabilities and the limits of the resources and program options available to the district, including those options which can be developed or provided by using funds allocated by the superintendent of public instruction for that purpose. *Id.* 28A.185.030.

³⁶⁶ **Programming** - Each student identified as a highly capable student shall be provided educational opportunities which take into account such students' unique needs and capabilities. Such program shall recognize the limits of the resources provided by the state and the program options available to the district, including programs in adjoining districts and public institutions of higher education. Districts shall keep on file a description of the educational program provided for each student selected. WASH. ADMIN. CODE § 392-170-080.

³⁶⁷ **Other** - The superintendent of public instruction shall contract with the University of Washington for the education of highly capable students below eighteen years of age who are admitted or enrolled at such early entrance program or transition school as are now or hereafter established and maintained by the University of Washington. WASH. REV. CODE 28A.185.040.

WEST VIRGINIA

³⁶⁸ **Standards** - Provisions shall be made for educating exceptional children (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to educate them in accordance with their capacities, limitations and needs: provided that for the school year beginning on the first day of July, 1999, provisions shall be made for educating exceptional children, including the handicapped, the gifted in grades 1 through 8, the pupils enrolled on the first day of July, 1989, in the gifted program in grades 9 through 12 and the exceptional gifted in grades 9 through 12. Each county board of education is mandated to provide gifted education to its students according to guidelines promulgated by the state board and consistent with the provisions of this chapter. Upon the recommendation of a principal, counselor, teacher and parent, a student who does not meet the gifted eligibility criteria may participate in any school program deemed appropriate for the student provided that classroom space is available. In addition, county boards of education may establish and maintain other educational services for exceptional children as the state superintendent of schools may approve. W. VA. CODE § 18-20-1.

³⁶⁹ **Identification** - The term "exceptional gifted" means those students in grades nine through twelve identified as gifted and at least one of the following: Behavior disorder, specific learning disabilities, psychological adjustment disorder, underachieving, or economically disadvantaged. Exceptional gifted children shall be referred for identification pursuant to recommendation by a school psychologist, school counselor, principal, teacher, parent or by self-referral, at which time the placement process, including development of an individualized education program, and attendant due process rights, shall commence. Exceptional gifted children, for purposes of calculating adjusted enrollment pursuant to section two [§ 18-9A-2], article nine-a of this chapter, shall not exceed one percent of net enrollment in grades nine through twelve. Nothing herein shall be construed to limit the number of students identified as exceptional gifted and who receive appropriate services. *Id.* § 18-20-1. The mandated target group for the state child find requirements includes individuals with disabilities between birth and 21 years of age, gifted students from grades 1 through 8, and exceptional gifted in grades 9 through 12. Part C of the Individuals with Disabilities Education Act (IDEA) requires interagency collaboration in child find activities targeting children from birth through 5 years of age. The intent of the federal and state legislative child find mandates is to require an aggressive search by the state and local education agencies for: (a) individuals with disabilities ages birth to 21, gifted individuals from first through eighth grades, and exceptional gifted in grades nine through 12, who are out of school and not receiving preschool, early childhood, middle childhood, adolescent, or adult educational programs; and (b) children with disabilities who are enrolled in preschool, early childhood, middle childhood, adolescent, and adult educational programs, gifted students who are in grades one through eight, and exceptional gifted students in grades nine through 12, but who are receiving programs and services inappropriate to meet their needs. W. VA. CODE ST. R. § 126-16-1. Each public agency shall conduct child find activities to ensure that all students with disabilities regardless of the severity of their disability, ages 0-21, gifted students from first through eighth grades and exceptional gifted in grades 9-12, are identified and referred for appropriate evaluation. Specific methods for conducting these activities, including procedures for the referral of students suspected of having an exceptionality even though they are advancing from grade to grade, students in private/religious schools, highly mobile students, or for referral by any interested person or agency, shall be stated in each public agency's policies and procedures. Public Awareness. Each public agency shall conduct an on-going awareness campaign that informs the public of the nature of exceptional students, the availability of special education and related services, and the persons to contact for initiating a referral. Each public agency shall establish a child identification system which includes referrals from at least the following sources: the screening process; school teams; private/religious schools; and any interested person or agency. Each public agency shall establish a team in each school to assist in the identification/referral of students whose educational performance is not commensurate with non-exceptional peers. Each public agency shall define the membership of the team and its relationship to the special education process. *Id.* §§ 126-16-2 and 126-16-3. Giftedness is exceptional intellectual abilities that are evidence of outstanding capability and require specially designed instruction and/or services beyond those normally provided by the regular school program. For gifted students, grades 1 through 8, documentation that a student meets both of the following: 1) Intellectual Ability, general intellectual ability - a full scale score of 2.0 or more standard deviations above the mean on a comprehensive test of intellectual ability, with consideration of 1.0 standard error of measurement at the 68% confidence interval, and 2) Achievement/Performance - at least one area of academic achievement as measured by an individual standardized achievement test, indicating that the student requires specially designed instruction in one or more of the four core curriculum areas; or at least one area of classroom performance, as determined during the multidisciplinary evaluation, indicating that the student requires specially designed instruction in one or more of the four core curriculum areas. For exceptional gifted, grades 9 through 12, documentation that a student meets the eligibility criteria for gifted and one or more of the following: the eligibility criteria for one or more of the disabilities as defined in this section; and/or the definition for economically disadvantaged; and/or the definition for underachievement, which takes into consideration the student's ability level, educational performance and achievement levels; and/or the definition for psychological adjustment disorder as documented by a comprehensive psychological evaluation. Special Considerations: When a student is being considered for eligibility based upon an ability score that falls within the minus range of a 1.0 standard error of measurement, at 2.0 standard deviations above the mean, the EC shall document that the student has the potential to achieve or perform at a level expected of a student scoring 2.0 standard deviations above the mean. If determined that

the eligibility criteria and/or assessment instruments discriminate against a student because the student belongs to an historically under-represented gifted population, eligibility for gifted services shall be based upon criteria that complement the definition and eligibility for gifted as described in this policy. To determine whether a student demonstrates the potential for intellectual giftedness, absent a definitive cognitive measurement that meets the traditional eligibility criteria, the eligibility committee must consider all data gathered by the multidisciplinary evaluation team. These data include, but are not limited to, individual achievement, group achievement, classroom performance, teacher input, inventories, scales, checklists, student product(s) and parent information. Before the end of the eighth-grade year, the EC shall review the evaluation data for each identified gifted student to determine eligibility as an exceptional gifted student in grades 9 - 12. The records for each eighth grade student are then referred to the IEP team. *Id.* § 126-16-4.

³⁷⁰ **Programming** - Students who are eligible to participate in the Honors and Advanced Education programs must have achieved at least two of the following three criteria: Demonstrated exceptional ability and interest in the given content area through past experiences. Obtained the prerequisite knowledge and skills to perform in these programs. Recommended by the student's former or present teacher. Gifted students in grades 9-12 may be served in Honors and Advanced Education as described in § 5.1, pursuant to the individualized education program and set forth in the student's four year education plan. *Id.* § 126-52-5.

³⁷¹ **Data Collection** - The state board shall review class sizes and enrollment percentages of students in gifted, exceptional gifted, honors, and advanced placement programs in grades nine through twelve and report its findings to the standing education committees of the Senate and House of Delegates by the tenth day of January, one thousand nine hundred ninety-one. W. VA. CODE § 18-20-9.

³⁷² **Individualized Programming** - Gifted students in grades nine through twelve may be served in honors and advanced placement programs as described in section three of this article, pursuant to the student's individualized education program and set forth in the student's four-year education plan. Prior to the end of grade eight, a placement advisory committee shall convene for the purpose of determining whether a student should be placed in an honors or advanced placement program pursuant to the placement criteria set forth in § 18-2E-3a of this article. Upon a determination that placement in one of the programs would be appropriate, the placement advisory committee shall write a four year education plan which will designate honors or advanced placement courses and/or offerings appropriate and agreed to by the school, parent and student. The four year education plan must be reviewed annually and approved by the parent, student and school. Schools shall be required to deliver the individualized education program as stated in the four year education plan. W. VA. CODE § 18-2E-3b. If the student is eligible as exceptional gifted, the IEP team shall develop an IEP. If the student is not eligible as exceptional gifted, the IEP team shall write a four-year plan that appropriately addresses the student's educational needs, including honors/advanced education, when appropriate. The implementation and annual review of this plan are required by the public agency. The review team shall include the student, parent, school counselor, and building administrator. W. VA. CODE ST. R. § 126-16-4. For more on IEPs, see *id.* §§ 126-16-5 and 126-16-6.

³⁷³ **Procedural Safeguards** - By providing for coverage of "exceptional children," state law provides gifted students with the same rights as students with disabilities except where specified otherwise. For the specific requirements, see *id.* § 126-16-18.

³⁷⁴ **Due Process Hearing** - *Id.* For the specific requirements, which exclude attorney's fees, see *id.* § 126-16-8.1.11.

³⁷⁵ **Complaint Procedure** - For the specific requirements, see *id.* § 126-16-9.1.2.

³⁷⁶ **Other** - The West Virginia board of education shall establish by the July 1, 1999 an annual academy for talented vocational-technical education students, including a foundation for receiving private financial support. W. VA. CODE § 18-10H-2.

WISCONSIN

³⁷⁷ **Standards** - Each school board shall ensure that all gifted and talented pupils enrolled in the school district have access to a program for gifted and talented pupils. WIS. STAT. 118.35. Except as provided in s. 118.40(2r)(d), each school board shall provide access to an appropriate program for pupils identified as gifted or talented. *Id.* 121.02.

³⁷⁸ **Identification** - "Gifted and talented pupils" means pupils enrolled in public schools who give evidence of high performance capability in intellectual, creative, artistic, leadership or specific academic areas and who need services or activities not ordinarily provided in a regular school program in order to fully develop such capabilities. The state superintendent shall by rule establish guidelines for the identification of gifted and talented pupils. *Id.* 118.35.

³⁷⁹ **Programming** - Each school district board shall establish a plan and designate a person to coordinate the gifted and talented program. Gifted and talented students shall be identified as required in s. 118.35 (1), Stats. This identification shall include multiple criteria that are appropriate for the category of gifted including intelligence, achievement, leadership, creativity, product evaluations, and nominations. A pupil may be identified as gifted or talented in one or more of the categories under § 118.35 (1), Stats. The school district board shall provide access, without charge for tuition, to appropriate programs for pupils identified as gifted or talented as required under §§ 118.35 (3) and 121.02 (1) (t), Stats. The school district board shall provide an opportunity for parental participation in the planning of the proposed program. Alternative compliance. A school district board may request that the state superintendent approve a plan for alternative compliance with any of the school district standards under sub. A school district requesting approval of alternative compliance under this subsection shall submit a written request to the state superintendent by September 1, if the alternative compliance plan is to be implemented during the spring semester; by March 1, if the alternative compliance plan is to be implemented during the fall semester. The request shall include all of the following information, as appropriate: The school district standard addressed by the alternative compliance plan. The means by which the alternative compliance plan addresses the objectives of the school district standard including all of the following information: The program objectives and anticipated outcomes of the alternative compliance plan. The rationale and research or other information supporting the alternative compliance plan. The staffing patterns which may be affected by the alternative compliance plan. The number of students by grade level to be affected by the alternative compliance plan. Any needed staff development to support the alternative compliance plan. Timelines for implementation of the alternative compliance plan. A description of how the alternative compliance will be evaluated, including a description of how progress toward meeting program objectives and anticipated outcomes identified under subd. 2a. will be monitored and measured at regular intervals and at the conclusion of the year for which the plan is approved. The state superintendent may approve a school district board's plan for alternative compliance with a school district standard, if he or she determines the alternative compliance plan will meet the objectives of the school district standard, maintains educational equity and will result in any of the following: Improved efficiency in school administration or instruction. Innovation in school district management or instruction, including but not limited to, progress towards outcome-based instruction and assessment; enhancement of educational opportunities; enhancement of education professions; and flexibility in staffing, programming and scheduling. Other educational improvements. The plan approval under subd. 1 may be subject to conditions specified by the state superintendent. The state superintendent shall provide for the review of the requests for alternative compliance plans made under par. (a) and shall notify the school district board of his or her decision within 60 days from the date the request is received. The decision shall be in writing and shall include the reasons for the decision. The state superintendent may either hold a public hearing or request that the school district board hold a public hearing on the alternative compliance being proposed. An initial alternative compliance plan may be approved for a 2 year period. An alternative compliance plan may be renewed every 3 years after the initial plan approval only if an evaluation of the alternative compliance plan is provided by the school district board and is approved by the state superintendent. The evaluation shall include the information specified in par. (a)2g. and is subject to the same timelines specified under par. (a). WIS. ADMIN. CODE § PI 8.01.

³⁸⁰ **Teacher Training** - An applicant who completes an initial professional education program on or after August 31, 1992, shall have preparation in identifying pupils who give evidence of high performance capability in intellectual, creative, artistic, leadership or specific academic endeavors, and in ways to provide access to systematic and continuous learning opportunities appropriate to pupils identified as gifted or talented. *Id.* § PI 3.05. A license in gifted education may be issued to an applicant who holds a regular license under subch. VII and who has completed an approved program including a concentration in gifted, talented, and creative education, which includes demonstrated understanding and competence in all of the following: The educational psychology of the gifted, talented and creative. The ability to develop differentiated curricula and to modify content, process, and product expectations as a means of achieving differentiated learning outcomes. The ability to recognize, recommend, and use alternative instructional strategies, including the use of technologies, to facilitate development of differentiated learner outcomes. The ability and demonstrated performance in working with the gifted. This performance shall be demonstrated through a practicum, an internship, or supervised activity in working with the gifted, talented, and creative. Demonstrated understanding of program models, methods, and general strategies for meeting the educational needs of the talented and creative. These include, but are not limited to, acceleration, enrichment, flexible grouping, resource rooms, mentorships, and independent study. The ability to develop, implement, and evaluate programs. The ability to work collaboratively with colleagues, families, community groups, university faculty, and resource people to facilitate appropriate educational experiences for the gifted, talented, and creative. Operational knowledge of §§ 118.35 and 121.02 (1) (t), Stats., § PI 8.01 (2) (t), and the Wisconsin gifted education model. *Id.* § PI 34.33

WYOMING

³⁸¹ **Funding** - The state superintendent shall require each school district to report in a uniform format and using a uniform accounting system, an annual report comparing the district's annual expenditures prior to the passage of this act and expenditures subsequent to the passage of this act by the following categories: Teacher salaries and benefits; Administration salaries and benefits; Other salaries and benefits; Supplies, equipment and material showing: Classroom supplies; Administration supplies. Specialized services including: Food services; Student activities; Professional development. Transportation; Special education; Gifted and talented; Economically disadvantaged; Necessary small schools; Cost of living. WYO. STAT. ANN. § 21-2-202.

³⁸² **Standards** - Each school district within this state shall provide programs designed for the special needs of those student populations specified within this subsection. Programs under this subsection shall be provided and shall identify special student populations in accordance with rules and regulations of the state board of education. *Id.* § 21-9-101.

³⁸³ **Identification** - Special needs student populations include gifted and talented students identified by professionals and other qualified individuals as having outstanding abilities, who are capable of high performance and whose abilities, talents and potential require qualitatively differentiated educational programs and services beyond those normally provided by the regular school program in order to realize their contribution to self and society. *Id.* § 21-9-101.

³⁸⁴ **Data Collection** - The state board shall monitor the proportion of students in each special needs category, compared to available regional averages. *Id.* § 21-9-101. The state superintendent shall develop recommendations for procedures under which districts shall submit annually, not later than October 15, a summary regarding the district's programs for gifted and talented students during the preceding school year and changes that will be implemented during the current school year. The procedures shall specify that the summaries shall include, at a minimum, a description of the procedures under which the district identifies gifted and talented students, the number of students so identified at each grade level, and a description of the contents of the programs the district provides to these students. The procedures shall specify that the state superintendent shall compile these summaries and submit them to the joint education interim committee of the legislature not later than December 1 of each year. The committee shall review the summaries and may make recommendations to the legislature for modification to applicable law, including by sponsoring legislation. *Id.* § 21-2-202.

PUERTO RICO

³⁸⁵ **Standards** - Children and youths with exceptional talents or aptitudes should be encouraged to develop them fully through scholarships that reward high performance, and to prevent wasting their talent. 18 P.R. LAWS ANN. § 3510. The School Development Office shall see to the needs of students that are in formal educational institutions from kindergarten to the twelfth grade. This Office shall establish aid and assistance programs to provide greater decision-making power to the families of students with financial limitation in the abovementioned grades, as well as high-yield scholarship programs that allow and provide educational incentives for talented students from limited-income families who are in the abovementioned grades. *Id.* § 3513.

³⁸⁶ **Programming** - The Institute shall provide the needed resources for the operation of advanced study programs for high school students with a high academic or vocational potential, as well as to attend to students of any school level who show outstanding aptitudes. The purpose is to develop the capability, aptitudes and talents of students, for whom the present system does not have adequate offerings. 1993 P.R. LAWS 18.

³⁸⁷ **Other** - The Musical Arts and Stagecraft Corporation is hereby established to carry out, without being limited, to establish a permanent program of special scholarships for students who are gifted in the field of musical arts and stagecraft to study in Puerto Rico or abroad, giving priority to low-income and needy students and requiring the recipients to render the public services that are deemed pertinent pursuant to the standards and criteria established by the General Director of the Musical Arts and Stagecraft Corporation in the formal regulations approved for their selection. 18 P.R. LAWS ANN. § 1160a.

Research Monograph

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