



SPONSOR: Rep. Smith

HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 627

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO SPECIAL EDUCATION FOR GIFTED OR TALENTED STUDENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 31, Title 14 of the Delaware Code by striking said Subchapter in its entirety.

2 Section 2. Amend Chapter 31, Title 14 of the Delaware Code by redesignating Subchapter V as Subchapter IV.

3 Section 3. Amend Chapter 31, Title 14 of the Delaware Code by adding a new Subchapter V to read as follows:

4 "Subchapter V

5 Gifted or Talented Persons

6 **§3150. Purpose**

7 (a) This Subchapter specifies how the State will meet its obligations to suspected and identified gifted or  
8 talented students who require gifted education to reach their potential. It is the intent of the State Board of  
9 Education that gifted or talented students be provided with quality gifted education services and programs.

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

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

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

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

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

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

24 **§3151. Definitions.**

25 As used in this Subchapter:

26 (a) "Board" means the State Board of Education.

27 (b) "Department" means the Department of Education.

28 (c) "Educational placement" mean the overall educational environment in which gifted education is provided to  
29 a gifted student.

30 (d) "GIEP" means the Gifted Individualized Education Program.

31 (e) "GMDT" means the Gifted Multidisciplinary Team.

32 (f) "Gifted education" means the specially designed instruction to meet the needs of a gifted or talented student  
33 that is:

34 (i) Conducted in an instructional setting.

35 (ii) Provided in an instructional or skill area.

36 (iii) Provided at no cost to the parents.

37 (iv) Provided under the authority of a school district, directly, by referral or by contract.

38 (v) Individualized to meet the educational needs of the student.

39 (vi) Reasonably calculated to yield meaningful educational benefit and student progress.

40 (vii) Provided in conformity with a GIEP.

41 (e) "Gifted Multidisciplinary Evaluation" means a systematic process of testing, assessment, and other  
42 evaluative processes used by a team to develop a recommendation about whether or not a student is gifted or  
43 needs gifted education.

44 (f) "Gifted student" means a student who is exceptional pursuant to §3101(3) of this Chapter.

45 (g) "Instructional setting" means a classroom or other setting in which gifted students are receiving gifted  
46 education.

- 47 (h) "Mentally gifted" means an outstanding intellectual and creative ability the development of which requires  
48 specially designed programs or support services, or both, not ordinarily provided in the regular education  
49 program.
- 50 (i) "Parents" means a natural or adoptive parent or parents, a guardian or guardians, one or more persons acting  
51 as the parent or parents of a student.
- 52 (j) "Party" means a parent or school district.
- 53 (k) "Regular classroom" means a specific instructional grouping within the regular education environment.
- 54 (l) "Regular education environment" means the regular classroom and other instructional settings in which  
55 students without a need for gifted education receive instructional programs and the full range of supportive  
56 services normally provided to these children.
- 57 (m) "Screening and evaluation process" means the systematic determination of whether or not a student is gifted  
58 or needs gifted education.
- 59 (n) "Secretary" means the Secretary of Education.
- 60 (o) "Specially designed instruction" means adaptations or modifications to the general curriculum, instruction,  
61 instructional environments, methods, materials, or a specialized curriculum for students who are gifted.
- 62 (p) "Support services" means to assist a gifted student to benefit from gifted education. Examples of the term  
63 include:
- 64 (i) Psychological services.
  - 65 (ii) Parent counseling and education.
  - 66 (iii) Counseling services.
  - 67 (iv) Transportation to and from gifted programs to classrooms in buildings operated by the school  
68 district.

69 **§3152. Experimental programs.**

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

- 74 (1) Include provision for the involvement of parents, administrators and professionals in the design and  
75 ongoing review of performance.
- 76 (2) Include provisions for annually evaluating the program as to whether it benefits student achievement.
- 77 (3) Demonstrate that it has met the following criteria:
- 78 (i) A definition of the need that exists which necessitates an experimental program.
- 79 (ii) Data to support the existence of the need.
- 80 (iii) A description of the program, including the nature of the program, specific goals and objectives  
81 to be reached, role and function of personnel involved, and timelines for development,  
82 implementation and evaluation.
- 83 (b) When an experimental program has been approved for 3-consecutive years and has resulted in improved  
84 student achievement under subsection (a), annual application is not needed for the program to continue to  
85 operate.
- 86 (c) The Secretary may terminate an experimental program for failing to meet the objectives established in  
87 the application or for noncompliance with State law or regulations not specifically waived in the Secretary's  
88 approval of the experimental program under subsection (a) upon 60 days notice.
- 89 (d) The Secretary will report annually to the Board regarding applications for experimental programs under  
90 this section and the disposition of the applications.

91 **§3153. Special education.**

92 (a) Nothing in this Subchapter is intended to reduce the protections afforded to students who are eligible for  
93 special education as provided for in this Chapters and the Individuals with Disabilities Education Act (20  
94 U.S.C.A. § § 1400—1485).

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

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

102       **§3154.       Screening.**

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

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

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

111           (d) Each school district shall establish procedures to determine whether a student is mentally gifted. This  
112 term includes a person who has an IQ of 130 or higher and when multiple criteria as set forth in Department  
113 regulations indicate gifted ability. Determination of gifted ability will not be based on IQ score alone. A person  
114 with an IQ score lower than 130 may be admitted to gifted programs when other educational criteria in the  
115 profile of the person strongly indicate gifted ability. Determination of mentally gifted shall include an  
116 assessment by a certified school psychologist.

117           (e) Multiple criteria indicating gifted ability include:

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

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

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

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

127               (5) Documented, observed, validated or assessed evidence that intervening factors such as English as a  
128 second language, learning disability, physical impairment, emotional disability, gender or race bias, or  
129 socio/cultural deprivation are masking gifted abilities.

130 **§3155. Gifted multidisciplinary evaluation.**

131 (a) Prior to conducting an initial gifted multidisciplinary evaluation, the school district shall comply with the  
132 notice and consent requirements under §3162 and §3163 of this Subchapter.

133 (b) Referral for gifted multidisciplinary evaluation shall be made when the student is suspected by teachers  
134 or parents of being gifted and not receiving an appropriate education under §3101(2) of this Subchapter and one  
135 or more of the following apply:

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

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

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

141 (c) Parents who suspect that their child is gifted may request a gifted multidisciplinary evaluation of their  
142 child at any time, with a limit of one request per school term. The request shall be in writing. If a parental  
143 request is made orally to school personnel, the personnel shall inform the parents that the request shall be made  
144 in writing and shall provide the parents with a form for that purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

176 (i) To recommend that a student who has been evaluated is a gifted student, the GMDT shall conclude that  
177 the student needs specially designed education and meets the criteria for eligibility as defined in §3151 and  
178 §3155 of this Subchapter.

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

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

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

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

188 **§3156. Gifted multidisciplinary reevaluation.**

189 (a) Gifted students shall be reevaluated before a change in educational placement is recommended for the  
190 student and when the conditions under §3155(b)(1) or (3) of this Subchapter are met. In addition, gifted students  
191 may be reevaluated at any time under recommendation by the GIEP team.

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

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

196 **§3157. Gifted Individualized Education Program.**

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

200 (b) If a gifted student moves from one school district in this Commonwealth to another, the new district shall  
201 implement the existing GIEP to the extent possible or shall provide the services and programs specified in an  
202 interim GIEP agreed to by the parents until a new GIEP is developed and implemented in accordance with this  
203 section and §3158 and §3159 of this Subchapter or until the completion of due process proceedings under §3162-  
204 §3166 of this Subchapter.

205 (c) Every student receiving gifted education provided for in an IEP developed prior to September 1, 2002,  
206 shall continue to receive the gifted education under that IEP until the student's GIEP is developed.

207 (d) Every student receiving gifted education prior to September 1, 2002, shall continue to receive gifted  
208 education until the student one of the following conditions exists:

209 (1) The student graduates from high school.

210 (2) The student is no longer of school age.

211 (3) A GIEP team determines that the student no longer needs gifted education.



212 **§3158. Gifted Individualized Education Program Team.**

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

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

222 (c) Each GIEP team shall include persons who meet the following qualifications:

223 (1) One or both of the student's parents.

224 (2) The student if the parents choose to have the student participate.

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

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

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

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

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

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

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

- 240 (4) That a determination will be made at the meeting as to whether or not the student is gifted.
- 241 (5) That if the student is determined to be gifted, a GIEP will be developed.
- 242 (6) Notifying the parent and other persons who will be attending at least 10 calendar days in advance to  
243 ensure that the parent will have an opportunity to attend.
- 244 (e) The GIEP of each gifted student shall be based on the GMDT's recommendations and shall contain the  
245 following:
- 246 (1) A statement of the student's present levels of educational performance.
- 247 (2) A statement of annual goals and short-term learning outcomes which are responsive to the learning  
248 needs identified in the evaluation report.
- 249 (3) A statement of the specially designed instruction and support services to be provided to the student.
- 250 (4) Projected dates for initiation and anticipated duration of gifted education.
- 251 (5) Appropriate objective criteria, assessment procedures and timelines for determining, on at least an  
252 annual basis, whether the goals and learning outcomes are being achieved.
- 253 (6) The names and positions of GIEP team participants and the date of the meeting.
- 254 (f) A copy of the GIEP shall be provided to the parents, along with a notice of parental rights under §3162-  
255 §3166of this Subchapter.
- 256 (g) The following timeline governs the preparation and implementation of GIEPs:
- 257 (1) A GIEP shall be developed within 30 calendar days after issuance of a GMDT's written report.
- 258 (2) The GIEP of each student shall be implemented no more than 10 school days after it is signed or at  
259 the start of the following school year if completed less than 30 days before the last day of scheduled classes  
260 in accordance with §3163(5) of this Subchapter.
- 261 (3) GIEP team meetings shall be convened at least annually, or more frequently if conditions warrant, as  
262 well as following an evaluation or reevaluation. A GIEP team meeting shall also be convened at the request  
263 of a GIEP team member, the parent, the student or the school district.
- 264 **§3159. Support services.**
- 265 (a) The GIEP team, during the development, review or revision of a GIEP, shall determine whether the  
266 gifted student needs one or more support services.

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

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

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

274 **§3160. Educational Placement.**

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

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

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

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

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

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

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

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

288 (3) Limit the total number of gifted students which can be on an individual gifted teacher's caseload to a  
289 maximum of 75 students.

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

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

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

- 295 (1) Lack of availability of placement alternatives.
- 296 (2) Lack of availability or efforts to make educational or support services available.
- 297 (3) Lack of staff qualified to provide the services set forth in the GIEP.
- 298 (4) Lack of availability of space or of a specific facility.
- 299 (5) Administrative convenience.

300 **§3161. Parental placement in private schools.**

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

303 **§3162. Notice.**

304 (a) A school district shall document the provision of written notice to the parents of a gifted student at least  
305 10 school days prior to one or more of the following events:

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

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

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

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

316 (d) The notice shall include:

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

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

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

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

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

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

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

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

330 (4) The information in §3164 of this Subchapter.

331 **§3163. Consent.**

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

333 (1) Conducting an initial multidisciplinary evaluation.

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

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

336 (4) When completed, the GIEP provided for in §3158 of this Subchapter shall be presented to the parents,  
337 along with a notice of recommended assignment signed by the school district superintendent provided for in  
338 §3157 and a notice of parental right to an impartial due process hearing under §3164. The notice shall be  
339 presented to the parents in person at the conclusion of the GIEP conference or by certified mail within 5-calendar  
340 days after the completion of the GIEP conference.

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

346 **§3164. Impartial due process hearing.**

347 (a) Parents may request in writing an impartial due process hearing concerning the identification, evaluation  
348 or educational placement of, or the provision of a gifted education to, a student who is gifted or who is thought to  
349 be gifted if the parents disagree with the school district's identification, evaluation or placement of, or the  
350 provision of a gifted education to the student.

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

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

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

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

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

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

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

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

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

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

374 (l) The decision of the impartial hearing officer may be appealed to a panel of three appellate hearing  
375 officers. The panel's decision may be appealed further to a court of competent jurisdiction. In notifying the  
376 parties of its decision, the panel shall indicate the courts to which an appeal may be taken.

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

378 (1) The Secretary may contract for coordination services in support of hearings conducted by local  
379 school districts. The coordination services shall be provided on behalf of school districts and may include  
380 arrangements for stenographic services, arrangements for hearing officer services, scheduling of hearings  
381 and other functions in support of procedural consistency and the rights of the parties to hearings.

382 (2) If a school district chooses not to utilize the coordination services under paragraph (1), it may  
383 conduct hearings independent of the services if its procedures similarly provide for procedural consistency  
384 and ensure the rights of the parties. In the absence of its own procedures, a school district which receives a  
385 request for an impartial due process hearing shall forward the request to the agency providing coordination  
386 services under paragraph (1) without delay.

387 (3) A hearing officer may not be an employe or agent of a school district in which the parents or student  
388 resides, or of an agency which is responsible for the education or care of the student. A hearing officer shall  
389 promptly inform the parties of a personal or professional relationship the officer has or has had with any of  
390 the parties.

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

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

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

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

399 **§3165. Mediation.**

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

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

405 "Joint session" means a stage of the mediation conference when the mediator meets with the parties and  
406 participants together and each party is given a reasonable uninterrupted opportunity to present the issues and  
407 concerns.

408 "Mediation agreement" means a written record of agreement reached by the parties.

409 "Mediation conference" means a structured, but informal meeting of the parties and participants with a  
410 mediator. The purpose of the conference is to develop a mutually acceptable, written agreement that is binding  
411 on the parties.

412 "Mediator" means an impartial, neutral person who helps parties involved in a conflict to develop their own  
413 solutions to the dispute. The term does not include a person who makes decisions about the conflict for the  
414 parties.

415 "Participants" means other persons appearing at the mediation conference on behalf of either party, such as  
416 other family members and specialists.

417 "Parties" means the parents and designated agency personnel involved in the conflict.

418 "Private session" means a private meeting between the mediator and only one of the parties to further clarify  
419 that party's position and to explore possible solutions to the conflict. The mediator may not share information  
420 from the private session without consent of the party.

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

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

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

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

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

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

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



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

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

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

438 **§3166. Confidentiality.**

439 Each agency shall protect the confidentiality of personally identifiable information regarding a gifted student  
440 or a student thought to be gifted in accordance with section 13(a) of the Family Educational Rights and Privacy  
441 Act of 1974 (20 U.S.C.A. § 1232g), 34 CFR Part 99 (relating to family educational rights and privacy), Chapter  
442 12 (relating to students) and other applicable law."

443

SYNOPSIS

This provides for educational services for gifted and talented persons.