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CAN A SCHOOL DISTRICT DECLINE TO CONDUCT A GIFTED MULTIDISCIPLINARY EVALUATION UNDER PENNSYLVANIA'S CHAPTER 16 REGULATIONS FOR GIFTED EDUCATION?

Pennsylvania's gifted education regulations provide limited conditions under which a district may decline to conduct a gifted multidisciplinary evaluation (GMDE) of a student whom parents or teachers suspect to be gifted and not receiving an appropriate education under Chapter 4. At 22 Pa. Code §16.22(b) it states:

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

- (1) A request for evaluation has been made by the student's parents under subsection (c).
- (2) The student is thought to be gifted because the school district's screening of the student indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom.
- (3) A hearing officer or judicial decision orders a gifted multidisciplinary evaluation.” (Emphasis added.)

Subsection (c) of §16.22 reads:

“Parents who suspect that their child is gifted may request a gifted multidisciplinary evaluation at any time, with a limit of one request per school term. The request must be in writing. The school district shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school district, that individual shall provide a copy of the permission to evaluate form to the parents within 10 calendar days of the oral request.”¹

The Pennsylvania Department of Education (PDE) has issued Chapter 16 regulatory interpretation and guidance in the form of Gifted Education Guidelines (May 2014)². PDE's Guidelines state, “When a parent's request for a Gifted Multidisciplinary Evaluation is received by the school district, regardless of the school's screening policy, the evaluation must be completed within the regulatory timelines.” (See Guidelines at page 12.) Thus, PDE's position is that parents may bypass a district's screening process and a district must conduct a GMDE upon parent request so long as parents' requests do not exceed one per school term.

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According to the plain language of §16.22(c), districts can decline to conduct a GMDE when and if parents' requests exceed more than one request per school term. The Pennsylvania School Code defines a school term as "the period of time elapsing between the opening of the public schools in the fall of one year and the closing of the public schools in the spring of the following year." 24 P.S. §1-102(3). Thus, it is possible for parents to request two GMDEs in a calendar year if one request is made in the spring and another request is made in the fall of two different school terms. In the context of Procedural Safeguards, at §16.61(a)(2), the regulations specify that a district must provide written notice when "it refuses to initiate or change the identification, evaluation or educational placement of the student." (Emphasis added.)

A recent administrative hearing officer decision, however, stands for the proposition that districts have some discretion for denying parents' requests for a GMDE beyond the regulatory prohibition against more than one GMDE per school term. The hearing officer in ODR No.15522-1415AS declared there is ambiguity in the regulatory language at §16.22(b) and that parents' suspicion that their child is gifted must be reasonable and must also apply to whether they suspect their child is not receiving an appropriate education under Chapter 4. In a footnote, the hearing officer wrote, "I also agree with the District that it should not be burdened with every single parental request made to evaluate a student. Instead, there is a clear implication in the regulation that there must be an element of reasonableness to the parental suspicions that a student may be gifted and not receiving an appropriate education under Chapter 4. For example, parents requesting evaluations for students who have very poor test scores and below average grades would not, obviously, have a 'reasonable suspicion' of student giftedness. The regulations therefore allow the District some limited discretion when determining if parental suspicions concerning giftedness are reasonable or not."

Accordingly, Pennsylvania's gifted education regulations and this recent hearing officer decision support the conclusion that districts have discretion when responding parents' requests for GMDE's, however, whether a parent's request for a GMDE is based upon a reasonable suspicion must be determined by an individualized, fact-intensive inquiry.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

1. The language of §16.22(c) is almost identical to that of 22 Pa. §14.123(c) ("Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents within 10-calendar days of the oral request."), however, the Department of Education has not created or promulgated a Chapter 16 parallel Permission to Evaluate-Evaluation Request Form as it has done under Chapter 14 with almost identical regulatory language. (See <http://pattan.net-website.s3.amazonaws.com/files/materials/forms/PER-070108.pdf>. last accessed January 28, 2015) Therefore, when a parent makes an oral request for an evaluation to professional school personnel under Chapter 16, the professional must present a permission to evaluate form, but when a parent makes the same oral request for an evaluation under Chapter 14, the Department merely allows for the oral request to be transformed to a written request via the Permission to Evaluate-Evaluation Request Form despite almost identical regulatory language.
2. Available at <http://www.giftedpage.org/docs/PDE%20Gifted%20Program%20Guidelines%202014.pdf> last accessed January 28, 2015.

331 East Butler Avenue, New Britain, PA 18901 phone 215 345 9111

2 South Main Street, Suite 303, Pittston, PA 18640 phone 570 654 2210

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