

Gifted Education in Pennsylvania

Mark W. Voigt, Esquire
LAW OFFICE OF MARK W. VOIGT
Plymouth Meeting Executive Campus
600 W. Germantown Pike
Suite 410
Plymouth Meeting, PA 19422
(610) 940-1709
Mwvoigt2@aol.com

PRESENTATION OUTLINE

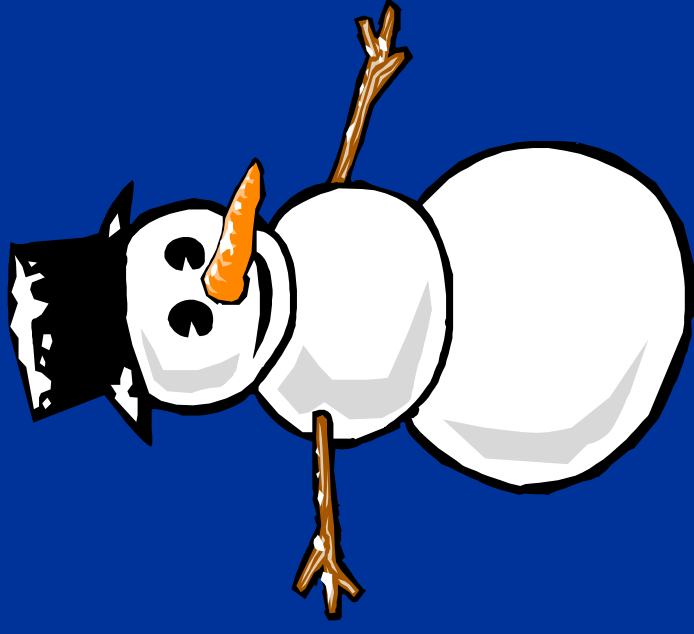
- I. Background of IDEA and Chapter 16
- II. Accessing Services- The Preplacement Evaluation
- III. The GIEP
- IV. Dispute Resolution
- V. Damages

I. Background of IDEA and Chapter 16



Before the IDEA and Chapter 16

- No protections for gifted kids
- No school district funding = no gifted education
- Expel gifted or special needs kids deemed “uneducable”
- Waiting lists for services



1975- IDEA (then EHA) Enacted

- Guaranteed each eligible child a “Free, Appropriate Public Education (“FAPE”)



What about Gifted Kids?

- No federal protection under IDEA
- Pennsylvania responds- Chapters 14 and 16

Obligations of School Districts:

Each school district shall provide:

- (1) Services and programs to identify and evaluate each gifted student;
- (2) Gifted education based on unique needs of each student;
- (3) Acceleration and enrichment programs;
- (4) Appropriate support services.

Elements of a gifted education

- ◆ Specially designed instruction;
- ◆ Conducted in an instructional setting;
- ◆ Provided at no cost to the parents
- ◆ Provided under authority of a school district, directly, by referral or by contract.

Requirements (cont)

- ◆ Individualized to meet the educational needs of the student.
- ◆ Reasonably calculated to yield meaningful educational benefit and student progress.
- ◆ Provided in conformity with a GIEP. 16 Pa. Code Sec. 16.1

Who is a “mentally gifted” student?

- “Outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program.” 22 Pa. Code Sec. 16.1.

What are “support services?”

- Psychological services;
- Parent counseling and education;
- Counseling services; and
- Transportation to and from gifted programs to classrooms in buildings operated by the school district.

Examples of Related Services

- speech-language pathology and audiology;
- psychological services;
- physical therapy and occupational therapy;
- recreation, including therapeutic recreation;
- early identification and assessment of disabilities in children;

Related Services (cont)

- counseling services, including rehabilitation counseling;
- orientation and mobility services; and
- medical services for diagnostic or evaluation purposes only;
- school health services;
- social work services in schools;
- parent counseling and training.

Transition Services

- Definition: services addressing needs of students as they approach graduation from high school;
- Includes employment counseling, further education and independent living assistance

Assistive Technology Devices

- Definition: any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability.
- Goal: assist a child in functioning in mainstream classroom

II. Accessing Services: The Preplacement Evaluation



Preplacement Evaluation: Parents Request

- You may request your child be evaluated
 - ◆ Public agency must evaluate if suspects your child has a disability
 - ◆ Evaluated at no cost to you.
- If public agency refuses:
mediation or due process

Preplacement Evaluation: Public Agency Request

- Based on teacher's recommendation or test results
- Evaluation at no cost to you
- Parental permission required
- School may seek due process if refuse permission
- Notice to parents in writing before testing begins

Evaluation process: a group effort

- You as parents;
- At least one of your child's regular education teachers
- At least one of your child's special education teachers;
- Curriculum supervisor;
- Test interpreter;

Evaluation group (cont)

- Other individuals with special knowledge or expertise;
- Transition services provider;
- Your son or daughter, if appropriate; and
- Other qualified professionals.
- Becomes IEP team

Initial Evaluation Must Be Comprehensive

- Child assessed in all areas related to his or her suspected disability
- Begin by reviewing existing evaluation data
- Perform all necessary additional testing, subject to permission and notice

Questions Presented by Evaluation:

- Specific learning disability or health impairment?
- Present levels of performance;
- Special education and related services required? and
- If so, are any additions or modifications to IEP required?
- Comprehensive Evaluation Report (CER) prepared

How are CER results used?

- Is your child a "child with a disability?" (see slides #7-8)
- If so, does your child need special education and related services?
- Parental input required
- Parents entitled to copy of CER

Independent Educational Evaluation (IEE)

- Evaluation conducted by qualified, independent examiner
- School must provide information re: IEE providers
- School must pay for IEE or initiate due process if refuse

Reevaluations

- At least every three years
- Same procedures as initial evaluation
- School must send copy of reevaluation to you
- If you disagree, may request a reassessment

III. The Individualized Educational Program (IEP)



General Purposes of IEP

- Establish measurable annual goals, including benchmarks;
- Set short-term objectives;
- State the special education, related services and supplementary aids and services that school district will provide

IEP: Clear, Easily Understood Statements of:

- Present levels of educational performance
- Measurable annual goals, including benchmarks;
- Short-term goals;
- Special education and related services and supplementary aids and services to be provided;
- Program modifications or supports for school personnel;

IEP Requirements (cont)

- Individual modifications in the administration of standardized tests;
- When and where services will be provided;
- How long and how frequently they will be provided;
- How progress will be measured and how parents will be informed;
- Transition services needed (beginning at age 14)

“Special factors” in IEP

- Behavioral considerations;
- English language proficiency;
- Braille services;
- Communication/ sign language services;
- Assistive technology

Parental Rights at IEP Meeting

- Timely notice;
- Meet at convenient date/ time;
- Notice must include:
 - ◆ Time and location;
 - ◆ Who will attend;
 - ◆ Purpose of meeting.
- Interpreter provided, if necessary

Assistive Technology Services

- IEP must consider need for such services
- If so, school district must supply such items free of charge
- Training, technical assistance also supplied

How is placement determined?

- To maximum extent appropriate, children with disabilities educated with nondisabled children (“Least Restrictive Environment”)
- special classes only if nature or severity of disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily.

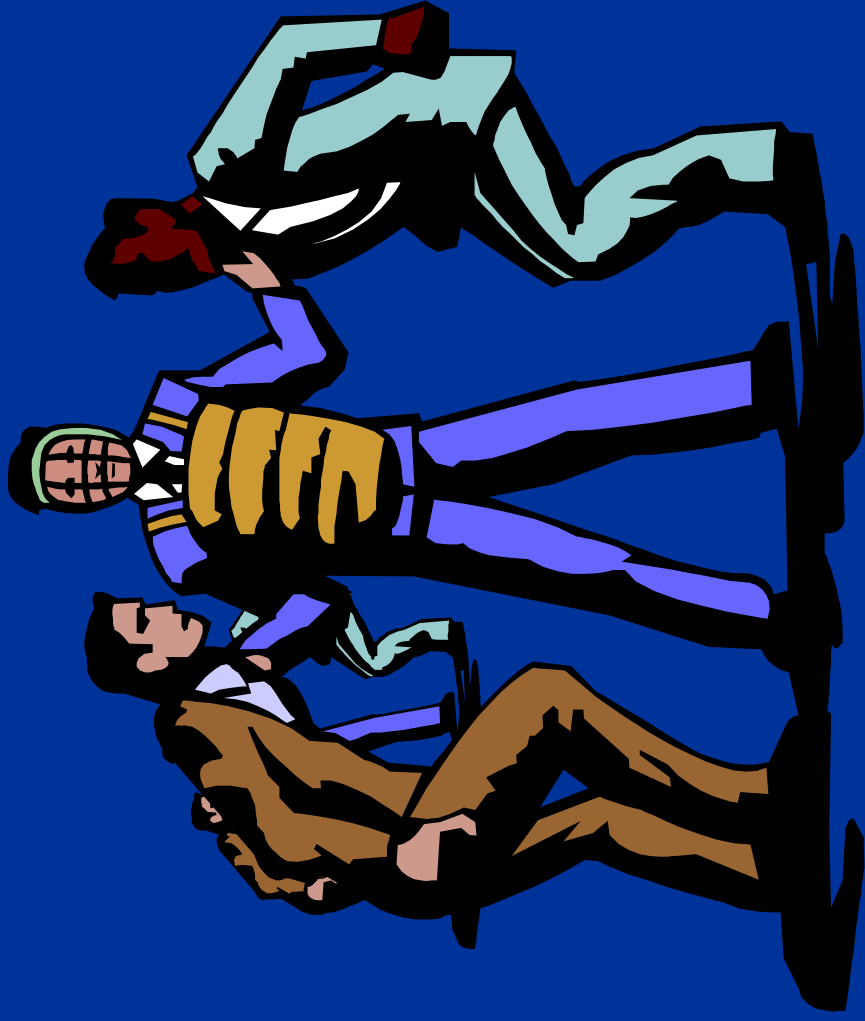
“Placement continuum” - Examples:

- Regular classes;
- Special classes or schools;
- Home instruction;
- Instruction in hospitals and institutions;
- Supplementary services (e.g.: resource room or itinerant instruction)

Periodic Review of IEP

- At least once per year
- Parents may request review at any time
- Topics:
 - ◆ progress toward annual goals;
 - ◆ results of reevaluations;
 - ◆ information provided by parents;
 - ◆ anticipated needs of child

IV. Dispute Resolution



What is Due Process?

- State-administered proceedings
- Office of Dispute Resolution (“ODR”)
- ODR hearing officers preside over formal hearings
- Parents initiate due process by rejecting IEP

Pre-hearing Conference

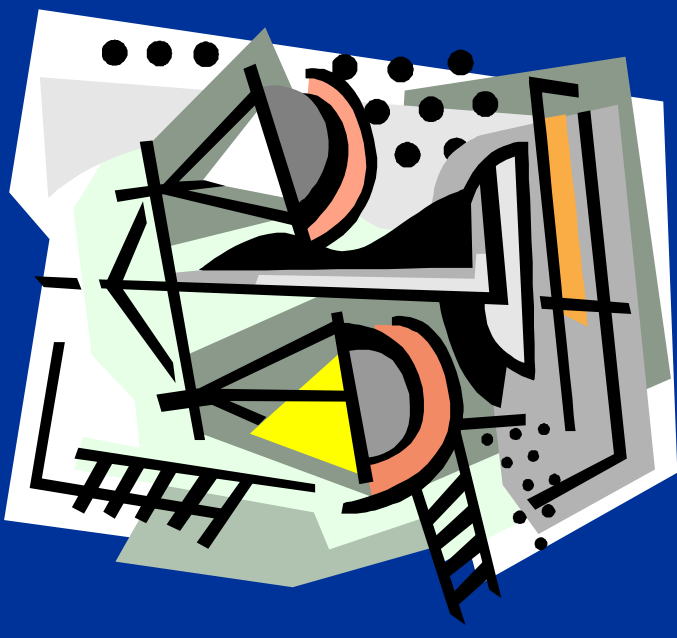
- Optional step (may become mandatory)
- School District must hold within 10 days of request
- Superintendent or his designee presides
- If no agreement, 5 days to request formal hearing

Mediation

- Voluntary step (may become mandatory)
- Arranged through ODR
- Attorneys not permitted
- Held at convenience of parties
- Discussions confidential, inadmissible at due process hearing

Due Process Hearing- parents request

- Issues:
 - ◆ Identification
 - ◆ Evaluation
 - ◆ Placement
 - ◆ providing FAPE
 - ◆ Gifted IEP



Due Process Hearing- School District request

- Issues:
 - ◆ Proceed with initial evaluation
 - ◆ Consent to re-evaluate
 - ◆ Parents reject proposed identification or programming

Hearing procedures

- Before impartial hearing officer
- Formal rules of evidence do not apply
- Parents have right to counsel
- Witness testimony under oath
- Recorded/ transcribed hearing
- Closed/ open hearing

Hearing procedures (cont)

- Hearings held within 30 days
- Continuances only for good cause
- Hearings often take several sessions
- Hearing officer issues written decision within 15 days

Appeals

- 3-member Appeals Panel
- Issues decision within 30 days
- Appeal to federal or state court
(only state court if gifted case)

Exceptions to due process

- Students with dangerous weapons
- Students with drugs
- “danger to self/ others = expedited hearing

V. Damages



Compensatory Education

- Remedy for past denial of FAPE
- Extends disabled student's entitlement to services
- One-year statute of limitations (sometimes two)
- Examples:
 - ◆ Summer school
 - ◆ Tutoring
 - ◆ Services past age 21

Tuition Reimbursement

- Ten day notice before placement
- Must demonstrate lack of meaningful educational progress
- One-year statute of limitations
- Generally requires expert testimony

Other reimbursement

- Occupational therapy
- Transportation and related expenses
- Speech therapy
- Psychotherapy
- Dietary services
- Independent Educational Evaluation (IEE)

Attorneys fees

- American Rule- each party pays own attorneys fees
- IDEA- school pays if parents “prevail”
- *Buckhannon* limits school liability
 - ◆ Court order
 - ◆ Consent decree

Money damages

- Hearing officers may not award personal injury damages
- Money damages may be awarded in federal court