This bulletin explores the current status of federal and state, especially Pennsylvania, legislation and recent court decisions pertaining to gifted education. It notes the existence, at the federal level, of only one law related to gifted education, the Jacob Javits Act of 1988 which, however, does not mandate the creation of special programs and fails to provide due process rights. The brief review of legislation in various states finds that all 50 states have formulated policies in the form of legislation, regulations, rules, or guidelines that support education of the gifted and that 33 states mandate gifted education with widely divergent provisions and levels of funding. Pennsylvania currently mandates gifted education and, like 22 other states, places it under the umbrella of special education, thus providing the same procedural safeguards as are provided for children with other exceptionalities. A review of Pennsylvania court cases finds that they support the requirement that services be driven by an individualized education program based on student needs. A Connecticut case is highlighted as illustrating the importance of law that defines giftedness as an exceptionality which requires special programming. Eight recommendations are offered. (Contains 17 references.) (DB)
Gifted Education and the Law

Colleen Willard-Holt, Ph.D.
Assistant Professor, Penn State University, Harrisburg • PAGE Board Member

This Bulletin will explore the current status of federal and state legislation pertaining to gifted education, and review some recent and relevant court decisions.

Federal Legislation

and

Nationwide Status of Gifted Education

At present, only one law related to gifted education exists at the federal level: the Jacob Javits Act of 1988 (Title IV, Part B). The goals of this act are "to provide financial assistance to State and local educational agencies... to initiate a coordinated program of research... designed to build a nationwide capability in elementary and secondary schools to meet the special educational needs of gifted and talented students" (Sec. 3062 (b)).

This act, while welcomed for its recognition of the existence and needs of gifted students, did not mandate the creation of special programs and fails to provide due process rights. These omissions are inconsistent with the National Excellence report (OERI, 1993), which declared that schools must "expand effective educational programs" for the gifted (p. 24). Several years earlier, the National Commission on Excellence in its report entitled A Nation at Risk (1983) stated that more than one-half of gifted students underachieved, and Ford (in press) found that 20% of school dropouts are gifted. To address this problem, both the National Commission on Excellence (1983) and the National Excellence report (1993) recommended that these students be provided with enriched and accelerated curricula. In a 1992 Gallup Poll (Education Week), the public at large agreed: 61 percent of respondents believed that schools should do more to challenge the "very smartest" students. However, less than half of the nation's gifted students participate in special programs designed to meet their needs (Zirkel & Stevens, 1987) and only about two cents out of every one hundred dollars of federal education money is spent on this population (OERI, 1993). In addition, those programs which do exist are plagued by problems: narrow definitions of giftedness, offerings restricted to certain grade levels and/or subject areas, superficial provisions (characterized by limited time frames, discontinuity, and fragmentation (Cox, Daniel, & Boston, 1985)) rather than comprehensive programs, and failure to address specific needs of gifted students (Gallagher, 1988). The conclusion to be drawn is that even with the support of the Javits Act and the recommendations of the National Commission on Excellence, our nation's gifted students are not receiving the educational services they need and to which they are entitled.
All 50 states have formulated policies in the form of legislation, regulations, rules, or guidelines that support education of the gifted (Passow & Rudnitski, 1993). Currently 33 states mandate gifted education, with widely divergent provisions and levels of funding (Coleman & Gallagher, 1992). The following components are contained in some or all of the various state policies pertaining to the gifted: state mandated services, district plans for the gifted, gifted education as part of special education, philosophy or rationale, definitions of gifted and/or talented, identification procedures, programs for the gifted, differentiated curriculum and instruction, counseling and other support services, program evaluations, and funding (Passow & Rudnitski, 1993).

A study conducted by the National Research Center on the Gifted and Talented (Purcell, 1994) reported that gifted programs were "intact" and "expanded" in only those states which had mandates and were in sound economic status. Respondents from those states attributed the health of gifted programs to the existence of the mandate and to advocacy efforts. In states which had mandates but were in poor economic condition and in states with no mandates, gifted programs were "threatened, reduced, or eliminated" in high numbers. Additionally, the study found that gifted programs served only certain grade levels. Approximately 75% of gifted students in grades 3 to 8 received program services; 50% of students in grades 1-2 and 9-12 received services; and services for students in Pre-K and K were virtually nonexistent.

Pennsylvania currently mandates gifted education and defines giftedness under state statute (22 Pa. Code Section 342.1). Like 22 other states, Pennsylvania places gifted education under the umbrella of special education. Since 1974, gifted children in Pennsylvania have been protected by the same mandatory procedural safeguards as children with other exceptionalities. Chapter 16, which is presently under consideration by the State Board of Education, would separate gifted education from special education for students with disabilities. There is no special certification for teachers of the gifted in Pennsylvania, but such certification is required in 21 other states.

Recent Court Decisions

In Pennsylvania, several court decisions hold implications for gifted students. In the case of Central York School District v. Department of Education (1979), the court found that provisions of programs for gifted students were not contingent upon receipt of state subsidies. In Centennial School District v. Department of Education (1986), parents were upheld in their request for accelerated instruction above and beyond the gifted enrichment program. The guiding principle in Pennsylvania is that services must be driven by an IEP which is based on student needs.

A recent decision in Connecticut points out the importance of a statutory definition of giftedness as an exceptionality. Connecticut's gifted education provisions are not protected by statute, as they are in Pennsylvania. In the case of Broadley v. Board of Education of the City of Meriden (1994), the Supreme Court of Connecticut held that the state constitutional right to a free public education does not afford gifted children the right to a special education program.

The details of the Broadley case are as follows. In 1986, kindergartner Neil Broadley was identified as gifted by his school district but denied special education programming designed to meet his individual needs. He was provided with some individualized work, but under no systematic and comprehensive program. His case was damaged four years later when the state of Connecticut removed gifted education from the umbrella of special education and simultaneously severely cut funding for gifted programs. The Broadleys lost by summary judgment without going to trial and again on appeal to the Supreme Court of Connecticut because neither court found a state constitutional
right to special programming. The state law on special education defined an *exceptional* child as one who "deviates either intellectually, physically, socially, or emotionally so markedly from normally expected growth and development patterns that he or she will be unable to progress effectively in a regular school program and needs a special class, special instruction, or special services..." (Conn. Gen. Stat. 10-76a(c), 1994). The law goes on to state that

(e) Children requiring special education include any exceptional child who (1) is mentally retarded, physically handicapped, autistic,... or suffering an identifiable learning disability which impedes such child's rate of development... or (2) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in regular school programs... (Conn. Gen. Stat. 10-76a(e), 1994).

However, while the statute states that children covered under subdivision (1) are entitled to special education, "(c) Each local or regional board of education may (emphasis added) provide special education for children requiring it who are described by subdivision (2) of subsection (e) of section 10-76a" (Conn. Gen. Stat. 10-76d(c), 1994). In other words, special programs for gifted students were permissive but *not mandatory* according to the statute. The state only requires that gifted students be identified, and local districts may or may not choose to provide for their needs. [It should be noted that this decision occurred eight years after the initial filing; Neil had reached the seventh grade.]

The difference between *Broadley* and *Centennial* is that Pennsylvania Statutory Law *does* define giftedness as an exceptionality which requires special programming. Advocates for gifted students must be vigilant in maintaining such a definition.

### Recommendations

The cost of neglecting our gifted students is both incalculable and unconscionable. In reviewing the current legal status of gifted education, Ford, Russo, and Harris (1994) put forth the following challenges to advocates of gifted programs so that "all gifted students receive an excellent, appropriate, and equitable education" (p. 227).

**Challenge 1:**
All school personnel will receive systematic and continuous training in working with gifted learners.

**Challenge 2:**
All teachers of the gifted will have specialized preparation in gifted education.

**Challenge 3:**
All teachers must be empowered to recognize and work with gifted learners.

**Challenge 4:**
All educators—regardless of the level at which they teach—must be prepared to recognize giftedness in non-traditional or under-represented groups.

**Challenge 5:**
The number of advocacy groups for gifted students must be increased.

**Challenge 6:**
Support on behalf of gifted learners by lobbyists must be increased.

**Challenge 7:**
Comprehensive programs (rather than provisions) must become the rule rather than the exception.

**Challenge 8:**
Legislative commitment to gifted education must be increased (pp. 227-228).

### References


Education Week (1992, December 9). Gallup poll finds public support for programs for gifted students, 2.


I. DOCUMENT IDENTIFICATION:

Title: Gifted Education and the Law

Author(s): Colleen Willard-Holt

Corporate Source: PA Assn for Gifted Education

Publication Date: March, 1997

II. REPRODUCTION RELEASE:

In order to disseminate as widely as possible timely and significant materials of interest to the educational community, documents announced in the monthly abstract journal of the ERIC system, Resources in Education (RIE), are usually made available to users in microfiche, reproduced paper copy, and electronic media, and sold through the ERIC Document Reproduction Service (EDRS). Credit is given to the source of each document, and, if reproduction release is granted, one of the following notices is affixed to the document.

If permission is granted to reproduce and disseminate the identified document, please CHECK ONE of the following three options and sign at the bottom of the page.

The sample sticker shown below will be affixed to all Level 1 documents:

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Level 1

Check here for Level 1 release, permitting reproduction and dissemination in microfiche or other ERIC archival media (e.g., electronic) and paper copy.

The sample sticker shown below will be affixed to all Level 2A documents:

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE, AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Level 2A

Check here for Level 2A release, permitting reproduction and dissemination in microfiche and in electronic media for ERIC archival collection subscribers only.

The sample sticker shown below will be affixed to all Level 2B documents:

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Level 2B

Check here for Level 2B release, permitting reproduction and dissemination in microfiche only.

Documents will be processed as indicated provided reproduction quality permits.

If permission to reproduce is granted, but no box is checked, documents will be processed at Level 1.

I hereby grant to the Educational Resources Information Center (ERIC) nonexclusive permission to reproduce and disseminate this document as indicated above. Reproduction from the ERIC microfiche or electronic media by persons other than ERIC employees and its system contractors requires permission from the copyright holder. Exception is made for non-profit reproduction by libraries and other service agencies to satisfy information needs of educators in response to discrete inquiries.

Sign here, please

Colleen Willard-Holt

Organization/Address: Penn State Harrisburg

Middletown, PA 17057

Printed Name/Position/Title: Colleen Willard-Holt, Asst Prof of Ed

Telephone: 717-848-6208

Fax: 717-848-6064

E-Mail Address: cwh20@psu.edu

Date: 3/17/98

(over)
III. DOCUMENT AVAILABILITY INFORMATION (FROM NON-ERIC SOURCE):

If permission to reproduce is not granted to ERIC, or, if you wish ERIC to cite the availability of the document from another source, please provide the following information regarding the availability of the document. (ERIC will not announce a document unless it is publicly available, and a dependable source can be specified. Contributors should also be aware that ERIC selection criteria are significantly more stringent for documents that cannot be made available through EDRS.)

<table>
<thead>
<tr>
<th>Publisher/Distributor:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Price:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

IV. REFERRAL OF ERIC TO COPYRIGHT/REPRODUCTION RIGHTS HOLDER:

If the right to grant this reproduction release is held by someone other than the addressee, please provide the appropriate name and address:

<table>
<thead>
<tr>
<th>Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

V. WHERE TO SEND THIS FORM:

Send this form to the following ERIC Clearinghouse:

However, if solicited by the ERIC Facility, or if making an unsolicited contribution to ERIC, return this form (and the document being contributed) to:

ERIC Processing and Reference Facility
1100 West Street, 2nd Floor
Laurel, Maryland 20707-3598

Telephone: 301-497-4080
Toll Free: 800-799-3742
FAX: 301-953-0263
e-mail: ericfac@inet.ed.gov
WWW: http://ericfac.piccard.csc.com