

**CHAPTER 13. [Reserved]****Source**

The provisions of this Chapter 13 adopted June 12, 1975, effective June 13, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (133101).

**Notes of Decisions**

It was proper for the Secretary of Education to require a school district to provide an individualized education program to a mentally gifted child, beyond that of the usual "enrichment" program offered by the district. *Centennial School District v. Department of Education*, 539 A.2d 785 (Pa. 1988).

The State Board of Education did not exceed its statutory authority by promulgating regulations which require school districts to provide individualized education programs to mentally gifted children. *Centennial School District v. Department of Education*, 539 A.2d 785 (Pa. 1988).

**§ 13.1. [Reserved].****Source**

The provisions of this § 13.1 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at (133102) and (135541) to (135542).

**Notes of Decisions**

Unisensory hearing therapy sessions were found to be an "appropriate program" by the Department of Education for which the school district was required to provide free transportation. *Philadelphia School District v. Department of Education*, 547 A.2d 520 (Pa. Cmwlth. 1988).

Individualized Educational Program for mathematically gifted students which did not provide for a math course was appropriate where student had already been provided several advanced math courses and it was the educational staff's opinion that the student had gone "too far too fast" in math, to the detriment of his education in other subject areas, and where the IEP was otherwise appropriate. *Scott S. v. Department of Education*, 512 A.2d 790 (Pa. Cmwlth. 1986).

Parental preference for classroom instruction over independent ability was not sufficient to establish that instruction provided under Individualized Educational Program must be in a classroom setting. *Scott S. v. Department of Education*, 512 A.2d 790 (Pa. Cmwlth. 1986).

The bare assertion by a special school director that his institution would be able to implement an Individualized Education Plan formulated in accordance with 22 Pa. Code § 341.15, thereby providing an appropriate program of education as defined in this section is insufficient to support a recommended assignment regarding the ability of an institution to implement an IEP and cannot constitute substantial evidence for placing a student who is brain-damaged as defined by 22 Pa. Code § 341.1(i) and speech and language impaired as defined by 22 Pa. Code § 341.1(ix) in that particular school. *Murphy v. Department of Education*, 460 A.2d 398 (Pa. Cmwlth. 1983); affirmed 504 A.2d 382 (Pa. Cmwlth. 1986).

The definition of "gifted and talented school aged persons" identifies children who deviate from the norm mentally and creatively and, as such, fall well within the parameters of the legislative definition of "exceptional children" which is contained in 24 P. S. § 13-1371(1). *Lisa H. v. State Board of Education*, 447 A.2d 669 (Pa. Cmwlth. 1982); affirmed 467 A.2d 1127 (Pa. 1983).

Gifted and talented students are included within this definition of exceptional persons. *Central York School District v. Department of Education*, 399 A.2d 167 (Pa. Cmwlth. 1979).

### § 13.2. [Reserved].

#### Source

The provisions of this § 13.2 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; amended November 20, 1981, effective November 21, 1981, 11 Pa.B. 4111; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (135542) to (135543).

#### Notes of Decisions

Once an appeal to determine an appropriate program is filed, the Secretary of Education reviews competent testimony relating to a child's needs and decides upon an appropriate program of education or training accordingly. *Murphy v. Department of Education*, 504 A.2d 382 (Pa. Cmwlth. 1986).

Department's statistical data on racial composition of special education programs, compiled under 22 Pa. Code § 13.2(c), represents a decision of the Department and is a "public record" subject to public examination under 65 P. S. § 66.2. *Pennsylvania Association for Children and Adults with Learning Disabilities v. Department of Education*, 498 A.2d 16 (Pa. Cmwlth. 1985).

Statistical data on the racial and ethnic composition of exceptional children programs is a matter of public record under the "Right to Know Act" and does not fall within the investigation exception of that act. *Pennsylvania Association for Children and Adults with Learning Disabilities v. Department of Education*, 498 A.2d 16 (Pa. Cmwlth. 1985).

Within § 13.2(a), the Commonwealth has adopted a policy, required by the Federal Education for All Handicapped Children Act, which guarantees for all handicapped children a free public education which would leave them as independent as possible from dependency on others. *Armstrong v. Kline*, 513 F. Supp. 425 (E. D. Pa. 1980).

In order to assure that all students who require special educational services receive appropriate training, the district must adopt procedures calculated to isolate the entire population of learning disabled students and to evaluate the need of these pupils for special educational services. *Frederick L. v. Thomas*, 557 F.2d 373 (3rd Cir. 1977).

### § 13.3. [Reserved].

#### Source

The provisions of this § 13.3 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135543).

**§ 13.4. [Reserved].****Source**

The provisions of this § 13.4 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135543).

**§ 13.5. [Reserved].****Source**

The provisions of this § 13.5 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135543).

**§ 13.6. [Reserved].****Source**

The provisions of this § 13.6 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135543).

**§ 13.7. [Reserved].****Source**

The provisions of this § 13.7 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135544).

**§ 13.8. [Reserved].****Source**

The provisions of this § 13.8 adopted June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135544).

**§ 13.9. [Reserved].****Source**

The provisions of this § 13.9 adopted June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (135544).

**Notes of Decisions**

Placement of a child at the Vanguard School was proper, since she was not attaining her intellectual potential in a public school, but her behavior had dramatically changed for the better after her placement at Vanguard. *Levy v. Department of Education*, A.2d 159, 163 (1979).

**§ 13.11. [Reserved].****Source**

The provisions of this § 13.11 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; amended June 17, 1977, effective June 18, 1977, 7 Pa.B. 1636; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (135545) to (135546).

**Notes of Decisions***Appropriate Facility*

Where substantial evidence indicates that an appropriate educational or training facility exists within the Commonwealth, an appeal for placement in an out-of-State program will be denied. *Murphy v. Department of Education*, 504 A.2d 382 (Pa. Cmwlth. 1986).

*Appropriate Placement*

Since the parents of a deaf child did not establish that a vocational education was preferable to an academic education for their child and did not establish that the district or intermediate unit could not provide such vocational education, placement of the child in the Pennsylvania School for the Deaf was not justified. *Fitz v. Intermediate Unit Number 29*, 403 A.2d 138 (Pa. Cmwlth. 1979).

There is no duty to use private schools in programs for handicapped school-aged persons. *Summit School, Inc. v. Department of Education*, 402 A.2d 1142 (Pa. Cmwlth. 1979).

Placement of a child at the Vanguard School was proper, since she was not attaining her intellectual potential in a public school, but her behavior had dramatically changed for the better after her placement at Vanguard. *Levy v. Department of Education*, 399 A.2d 159 (Pa. Cmwlth. 1979).

*Appropriate Program*

In light of the provisions in subsection (b) (placing primary responsibility for special education programs on school districts), an intermediate unit was not bound to continue classes for educable mentally retarded students absent a showing that the petitioner itself could not efficiently and effectively provide an appropriate educational program for such students. *Bermudian Springs School District v. Department of Education*, 475 A.2d 943 (Pa. Cmwlth. 1984).

All handicapped school-age persons are entitled to an appropriate program of education or training as defined in this section including the right to due process procedures to determine appropriateness. *Murphy v. Department of Education*, 460 A.2d 398 (Pa. Cmwlth. 1983); affirmed 504 A.2d 382 (Pa. Cmwlth. 1986).

There is nothing which requires a "more appropriate" program when an appropriate educational program exists in the intermediate unit. *Krawitz v. Department of Education*, 408 A.2d 1202 (Pa. Cmwlth. 1979).

*Identification*

Learning disabled students are required to be identified in order to evaluate the need for special educational services. *Frederick L. v. Thomas*, 557 F.2d 373 (3rd Cir. 1977).

**§ 13.12. [Reserved].****Source**

The provisions of this § 13.12 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (135546) to (135547).

**Notes of Decisions***Out-of-State Placement*

Where substantial evidence indicates that an appropriate educational or training facility exists within the Commonwealth, an appeal for placement in an out-of-State program will be denied. *Murphy v. Department of Education*, 504 A.2d 382 (Pa. Cmwlth. 1986).

Where it is conceivable that there is no school within the Commonwealth offering an appropriate program of education for an exceptional student, the Secretary must consider and select out-of-State schools as well as those in-State. *Murphy v. Department of Education*, 460 A.2d 398 (Pa. Cmwlth. 1983); affirmed 504 A.2d 382 (Pa. Cmwlth. 1989).

Regardless of whether a child was or was not multihandicapped, the Department was liable for out-of-State tuition reimbursement since the parents had tried to obtain a Department ruling on the matter but were unable to get such a ruling until 14 months later. *Krawitz v. Department of Education*, 408 A.2d 1202 (Pa. Cmwlth. 1979).

Since the parents of a socially and emotionally disturbed child would not agree to placement other than in a specific out-of-State school and would not make their child available so that it could be determined whether there was an appropriate in-State program, the Secretary of Education may not be compelled to approve the out-of-State placement and tuition reimbursement by the Commonwealth. *Welsch v. Department of Education*, 400 A.2d 234 (Pa. Cmwlth. 1979).

**§ 13.13. [Reserved].****Source**

The provisions of this § 13.13 adopted May 15, 1970; amended November 31, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (135547) to (135548) and (108423).

**§ 13.14. [Reserved].****Source**

The provisions of this § 13.14 adopted June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (108423).

**Notes of Decisions**

There is no duty to approve private schools, and the limitation "as necessary" which appears in 22 Pa. Code § 13.14(d) (relating to approved private schools) indicates an intention that the Department need not act so long as it uses other alternatives in providing education for exceptional students. *Summit School, Inc. v. Department of Education*, 402 A.2d 1142 (Pa. Cmwlth. 1979).

**§ 13.15. [Reserved].****Source**

The provisions of this § 13.15 adopted June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (108424).

**§ 13.16. [Reserved].****Source**

The provisions of this § 13.16 adopted June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (108424).

**§ 13.21. [Reserved].****Source**

The provisions of this § 13.21 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; amended June 25, 1976, effective July 1, 1976, 6 Pa.B. 1491; amended June 17, 1977, effective June 18, 1977, 7 Pa.B. 1636; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (108424) to (108425).

**§ 13.22. [Reserved].****Source**

The provisions of this § 13.22 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial page (108425).

**Notes of Decisions**

Existence of an approved district program for gifted children does not necessarily mean that the program, without some individual modifications, satisfies the district's duty to provide an appropriate education to each exceptional student. *Centennial School District v. Department of Education*, 503 A.2d 1090 (Pa. Cmwlth. 1986); appeal granted 527 A.2d 545 (Pa. 1987); affirmed 539 A.2d 785 (Pa. 1988).

**§ 13.23. [Reserved].****Source**

The provisions of this § 13.23 adopted June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (108425) and (117065).

**§ 13.31. [Reserved].****Source**

The provisions of this § 13.31 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; amended June 17, 1977, effective June 18, 1977, 7 Pa.B. 1636; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (117065) to (117066).

**Notes of Decisions***Due Process*

Parental presentation of written evidence that a child is exceptional or thought to be exceptional is necessary to trigger the right to request due process procedures. *Lisa H. v. State Board of Education*, 447 A.2d 669 (Pa. Cmwlth. 1982); affirmed 467 A.2d 1127 (Pa. 1983).

There is nothing in the language of 22 Pa. Code § 13.31(c) which limits the authority of the Secretary such that the Secretary may not delay the date of a child's transfer to an intermediate unit until the start of the following school year. *Savka v. Department of Education*, 403 A.2d 142 (Pa. Cmwlth. 1979).

22 Pa. Code § 13.31(b) (relating to opportunity for due process procedures) together with 22 Pa. Code §§ 13.32(24) and 13.33(7) (relating to school district initiated due process procedures; and parent-initiated due process procedures), confers standing on parents to litigate matters involving a school district's obligation to provide their child with an education, even though the child is temporarily committed to the custody of an institution. *O'Grady v. Centennial School District*, 401 A.2d 1388 (Pa. Cmwlth. 1979).

**§ 13.32. [Reserved].****Source**

The provisions of this § 13.32 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; amended December 16, 1977, effective December 17, 1977, 7 Pa.B. 3783; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (117066), (74611) to (74612) and (114199) to (114200).

**Notes of Decisions***Burden of Proof*

Under paragraph (15) the school district had the burden of showing the discontinuance of student's eligibility for extended school year programming was supported by substantial evidence. *Conway v. Wilburn*, 488 A.2d 92 (Pa. Cmwlth. 1985).

*Due Process*

22 Pa. Code § 13.31(b) (relating to opportunity for due process procedures) together with § 13.32(24) (relating to school district initiated due process procedures), confers standing on parents to litigate matters involving a school district's obligation to provide their child with an education, even though the child is temporarily committed to the custody of an institution. *O'Grady v. Centennial School District*, 401 A.2d 1388 (Pa. Cmwlth. 1979).

*Evaluation*

Since the parent did not request the intermediate unit to perform an evaluation of the child under 22 Pa. Code § 13.32(4) (relating to school district initiated due process procedures) and since the current school of the child had supplied evaluation records, the intermediate unit was not obligated to perform another evaluation. *Savka v. Department of Education*, 403 A.2d 142 (Pa. Cmwlth. 1979).

*Hearing Officer*

Assignment of a state college professor as a hearing officer does not violate the provisions of 22 Pa. Code § 13.32(12) and does not violate the right to an impartial hearing. *Silvio v. Department of Education*, 439 A.2d 893 (Pa. Cmwlth. 1982); affirmed 456 A.2d 1366 (Pa. 1983).

*Notice*

A school is required to give notice to the student and parent only when it is proposing a change in the student's educational status; the provisions of 22 Pa. Code § 13.32(1) do not apply to students who are merely recommended for consideration as possible candidates for admission to a special program. *Lisa H. v. State Board of Education*, 447 A.2d 669 (Pa. Cmwlth. 1982); affirmed 467 A.2d 1127 (Pa. 1983).

*Requirements*

An IEP team cannot require implementation of a plan that imposes requirements beyond those provided in the relevant regulations. *Saucon Valley School District v. Robert O.*, 785 A.2d 1069 (Pa. Cmwlth. 2001).

**§ 13.33. [Reserved].****Source**

The provisions of this § 13.33 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; amended June 17, 1977, effective June 18, 1977, 7 Pa.B. 1636; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (114200) and (98923).

**Notes of Decisions***Confidentiality of Records*

Appellants provided no justifiable rationale to substantiate their discovery requests for the school records of other students. The decisions of the Board and trial court to deny access to those records were, therefore, not an abuse of discretion. *T. S. v. Penn Manor School District*, 798 A.2d 837 (Pa. Cmwlth. 2002).

*Due Process Procedures*

Parental presentation of written evidence that a child is exceptional or thought to be exceptional is necessary to trigger the right to a school district-initiated program placement conference. *Lisa H. v. State Board of Education*, 447 A.2d 669 (Pa. Cmwlth. 1982); affirmed 467 A.2d 1127 (Pa. 1983).

22 Pa. Code § 13.31(b) (relating to opportunity for due process procedures) together with § 13.33(7) (relating to parent-initiated due process procedures) and § 13.32(24) (relating to school district initiated due process procedures), confers standing of parents to litigate matters involving a school district's obligation to provide their child with an education, even though the child is temporarily committed to the custody of an institution. *O'Grady v. Centennial School District*, 401 A.2d 1388 (Pa. Cmwlth. 1979).

**§ 13.41. [Reserved].****Source**

The provisions of this § 13.41 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (13992).



**§ 13.42. [Reserved].****Source**

The provisions of this § 13.42 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial pages (13992) to (13993).

**§ 13.43. [Reserved].****Source**

The provisions of this § 13.43 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (13993).

**§ 13.44. [Reserved].****Source**

The provisions of this § 13.44 adopted May 15, 1970; reserved November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (2977).

**§ 13.51. [Reserved].****Source**

The provisions of this § 13.51 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (13993).

**§ 13.52. [Reserved].****Source**

The provisions of this § 13.52 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (13993).

**§ 13.53. [Reserved].****Source**

The provisions of this § 13.53 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (13994).

**§ 13.54. [Reserved].****Source**

The provisions of this § 13.54 adopted May 15, 1970; amended November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial page (13995).

**§ 13.61. [Reserved].****Source**

The provisions of this § 13.61 adopted November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; amended June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541; reserved June 17, 1977, effective June 18, 1977, 7 Pa.B. 1636.

**§ 13.62. [Reserved].****Source**

The provisions of this § 13.62 adopted June 17, 1977, effective June 18, 1977, 7 Pa.B. 1636; reserved June 15, 1990, effective July 1, 1990, 20 Pa.B. 3339. Immediately preceding text appears at serial pages (53259) to (53260) and (140985).

**Notes of Decisions***Applicability*

This section applies only to mentally retarded children and does not apply to learning disabled and emotionally disturbed children. *Krawitz v. Department of Education*, 408 A.2d 1202 (Pa. Cmwlth. 1979).

**§ 13.71. [Reserved].****Source**

The provisions of this § 13.71 adopted November 30, 1973, effective December 1, 1973, 3 Pa.B. 2763; reserved June 13, 1975, effective June 14, 1975, 5 Pa.B. 1541. Immediately preceding text appears at serial pages (13998) to (14001).

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