



Advocacy for Gifted and Talented in New York

Laws Governing Our Gifted Children

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Parents and educators concerned with gifted advocacy often make inquiry regarding the laws, which provide entitlement to a free and appropriate education for gifted learners. It is generally conceded that statutes pertaining to gifted education compare unfavorably with mandates defining requirements for other special needs populations such as disabled students; the provisions are few. Be apprised also that laws differ broadly from state to state.

Following is a compilation of New York State laws and definitions, Board of Regents provisions, and Federal statutes, which currently govern the education of our most able learners in New York.
New York State Laws and Provisions

In New York State, if school districts accept funds to help underwrite gifted programs, they must provide services to these students. Recommended and mandated services include identification, instructional programs, planning, in-service education, and program evaluation. (Chapter 740, Article 90, Section 4452.c of Education Law)

The following is actually mandated: Chapter 740 of the Laws of 1982:

All students entering New York State schools for the first time must be screened by qualified individuals for giftedness using appropriate screening tools, which are also language relevant. Thus, screening should begin in Kindergarten and be offered to any new entrants, at any grade level, who have not been formally evaluated according to their records. A list of all identified gifted students must be reported to the Superintendent of schools. See also Chapter 28 of the Laws of 1993 (below) which was added subsequently.

If a school includes a child in a gifted program, parents must be notified, and permission must be obtained. If the parent denies approval, the student cannot be placed in the program*. (Article 90, Section 4452.e. and 4452.f.)

*NOTE: Parents can be told, but there are no guarantees of programming unless gifted monies have been accepted. However, the selected program is always the choice of the district.

A pupil attending a private school has the right to participate in the gifted program in the public school district in which the private school is located (or the home district if they are home-schooled). The school district must provide transportation between schools, if the distance is greater than one-fourth of a mile. (Article 73, Section 3602.c.)

Modification.

Chapter 28 of the Laws of 1993: (Article 65, Section 3208)

(2)d. If such screening indicates a possible gifted child, the name and finding shall be reported to the Superintendent of schools of such district and to the parent or legal guardian of such child. Such

notification shall not be construed as an entitlement for services for any such child identified as possibly gifted*.

The Regents Bill of Rights for Children: March 1989: (Goals and Policy)

Each child has the right to an education appropriate for his or her individual needs.

Eighth Grade Acceleration and Credit through Examination:

(Sections 100.4 and 100.5, respectively, of the Regulations of the Commissioner of Education). In the case of eighth grade acceleration, schools are permitted to accelerate students in one or more disciplines (e.g., math, English, science, foreign language, history) in the middle school, before entering grade 9. Credit through examination refers to students challenging a regents exam in which they did not officially complete all of the required class work (class credit is not usually given). If a student earns a grade of 65 or higher on the regent's exam, they will receive regents credit. Some districts will also give course credit for the regents, but students usually have to demonstrate mastery (85 or higher), make provisions beforehand, and be interviewed or do an additional project.

Definition of "Gifted"- NYSED

According to NYS Education law, "gifted pupils" shall mean those pupils who show evidence of high performance capability, and exceptional potential in areas such as general intellectual ability, special academic aptitude and outstanding ability in visual and performing arts. Such definition shall include those pupils who require educational programs or services beyond those normally provided by the regular school program in order to realize their full potential. (Chapter 740 Article 90, Section 4452.a)

Definition of "Gifted"-USOE

U.S.O.E. (United States' Office of Education) Marland Definition of 1972 PL 91-230, Section 806: Gifted and talented children are those identified by professionally qualified persons who by virtue of outstanding abilities are capable of high performance. These are children who require differentiated educational programs and service beyond those normally provided by the regular school program in order to realize their contribution to self and society.

Children capable of high performance include those with demonstrated achievement and or potential in any of the following areas:

1. General intellectual ability
2. Specific academic aptitude
3. Creative or productive thinking
4. Leadership ability
5. Visual and performing arts
6. Psychomotor ability**

The U.S.O.E. Revised Definition of 1978:

The gifted and talented are "...children and, whenever applicable, youth who are identified at the pre-school, elementary, or secondary level as possessing demonstrated or potential abilities that give evidence of high performance capability in areas such as intellectual, creative, specific academic, or leadership ability or in the performing and visual arts, and who by reason thereof require services or activities not ordinarily provided by the school." (U.S. Congress, Educational Amendment of 1978 [P.L. 95-561, IX (A)] (In Education of the Gifted and Talented, Davis & Rimm, 1989, p.12)

**The major difference from the 1972 definition is that psychomotor ability is omitted because some reason schools already have a gifted program for athletes which is articulated in team sports and competitions

The U.S.O.E. Definition of 1993 based on Javits Gifted and Talented Education Act of 1988:

Children and youth with outstanding talent perform or show the potential for performing at remarkable high levels of accomplishment when compared with others of their age, experience, or environment.

These children and youth exhibit high performance capability in intellectual, creative, and/or artistic areas, possess an unusual leadership capacity, or excel in specific academic fields. They require services or activities not ordinarily provided by the schools.

Outstanding talents are present in children and youth from all cultural groups, across all economic strata, and in all areas of human endeavor. (In National Excellence: A Case for Developing America's Talent; Pat O'Connell Ross, Project Director; Office of Educational Research and Improvement, U.S. Dept. of Education, 1993)

***All laws have been excerpted and cited from federal and state statutes, except where noted. For the actual legislation, readers are encouraged to research the statutes, at local law libraries, based on the years and numbers provided in the citations.

For additional information contact Dr. Abbey Block Cash at acash@berk.com noting that it is a G/T legislative inquiry.