

# POLICY, LEGAL ISSUES, AND TRENDS IN THE EDUCATION OF GIFTED STUDENTS

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In the absence of a federal mandate, policies and funding for the identification of and service options for gifted students are left to the discretion of individual states. Therefore, there is inconsistency in how the educational needs of gifted students are addressed across the nation. This chapter provides a national snapshot of the history and current status of gifted education as it relates to identification, programming, personnel preparation, and funding. Emerging trends that influence gifted education policy development at the state and local levels will also be examined with focus given to those policies intended to remedy equity issues.

Following a discussion on the history and current condition of gifted education policy, legal issues that have resulted from a lack of coherent policy are explored. Seminal court cases, due process proceedings, and letters of findings from the U.S. Department of Education's Office for Civil Rights pertaining to gifted education are also examined.

The chapter concludes with a discussion on the future direction of gifted education policy. Advocating for strong state and local gifted education policies requires informed advocates, influence, consensus, partnerships, and public relations.

## HISTORICAL AND CONTEMPORARY PERSPECTIVES: A PORTRAIT OF FEDERAL AND STATE POLICY IN GIFTED EDUCATION

National focus on gifted and talented programs has waxed and waned across the decades. The

1950s and 1970s saw the enactment of significant pieces of legislation drawing attention to the educational needs of gifted students, whereas the 1960s and early 1980s were marked by a decline in national concern. Times of strong momentum followed by lengthy stalls in action have typified the last 80 years in the federal legislative history of gifted education. The only consistency has been the relative inconsistency characterized by a lack of stability and sustainability of gifted education policy.

### 1930s–1950s

The U.S. Department of Education, through administrative action, first addressed gifted students with the establishment of an exceptional children and youth section in 1931 (Russo, 2001; Siemer, 2009). Twenty years later, Congress passed the National Science Foundation Act (1950) that again focused attention on gifted and talented students. Shortly thereafter, the National Defense Education Act (NDEA) of 1958 was enacted in direct response to the Soviet Union's launching of Sputnik, the first artificial satellite. Unlike the National Science Foundation Act, the NDEA did not specifically address gifted students, but did emphasize high achievement in math, science, and foreign languages, and served to support subsequent programs for the gifted. The 1950s can be categorized as a largely "reactive" period—with gifted education legislation driven by a sense of urgency, fear, and competition between the Soviet Union and the United States (Stephens, 2008).

## 1960s

Just as the push for educational excellence was building momentum, the tide began to shift with the *Brown v. Board of Education* (1954) decision, turning national attention to the desegregation of schools and equity of educational opportunity. Thus began the dichotomy between equity and excellence, and the pervasive belief that one of these pursuits must be sacrificed for the other (Gallagher, 2002; Stephens, 2011). With the passage of the Elementary and Secondary Act (ESEA) of 1965 and President Johnson's war on poverty, federal resources were increasingly diverted away from gifted students and toward fulfilling the pressing needs of economically disadvantaged students (Cicciaro, 2014; Russo, 2001). This decade closed with relative silence around the educational concerns of gifted students.

## 1970s

In the 1970s, the federal role in gifted education once again intensified with the passage of Section 806 of the ESEA (1969)—the Gifted and Talented Children's Education Act (1978). This act provided the first statutory definition of gifted students and called for model programs to address the educational needs of gifted learners with federal financial assistance available under Titles III (Supplementary Educational Centers and Services) and IV (Educational Research and Training). In 1972, in his report to Congress, Sidney Marland, then Commissioner of Education, pushed for the development of gifted programs. Due in large part to his efforts, the Office of Gifted and Talented was created in the U.S. Department of Education, and funds (not to exceed \$12.5 million per year) were made available to educational agencies for projects in gifted education. In 1978, the Gifted and Talented Children's Education Act became law providing discretionary funding to states to develop new or improve existing gifted education programs (Cicciaro, 2014; Russo, 2001).

## 1980s

The 1980s began with the pendulum swinging yet again, this time away from support for gifted education. Under President Reagan's Omnibus Budget Reconciliation Act (1983), the Gifted and Talented Children's Education Act was repealed and the Office

of the Gifted and Talented closed. Interestingly, this decade also marked a reduced focus on educational equity and a renewed energy around educational excellence, prompted in part by the publication of *A Nation at Risk* (National Commission on Educational Excellence, 1983), a landmark report that incited public assertions that U.S. schools were failing. As the decade closed, support for gifted education began to surge again with the passage of the Jacob K. Javits Gifted and Talented Students Education Act (Javits, 1988), part of ESEA. Although other federal efforts in gifted education had existed under ESEA with different titles (e.g., The Gifted and Talented Children's Education Act), Javits restored separate categorical support for gifted programs and increased the national visibility of this population. Javits is still included in ESEA today and supports a national research center in gifted education and competitive grants focusing on underrepresented gifted students and program implementation. Annual funding available through Javits is set by Congress and has fluctuated greatly over the years—with a low of \$0 in 2011 to 2013 and a high of \$11.2 million in 2002. In recent years, funding has been reinstated and doubled (i.e., \$5 million in 2014, \$10 million in 2015).

## 1990s

In the 1990s, concerns mounted regarding the "rising tide of mediocrity" conveyed in *A Nation at Risk* (National Commission on Educational Excellence, 1983, p. 5). As in the 1950s, U.S. competitiveness and fear of falling behind other countries triggered broad sweeping educational reform. In 1994, Javits was reauthorized due in part to the Office of Educational Research and Improvement's (1993) report, *National Excellence: A Case for Developing America's Talent*. The report highlighted a "quiet crisis" in which students were not reaching their full potential, impeding America's progress to compete in a global economy. Comparisons between the United States and other countries on international tests spurred a call to action for higher expectations for students.

## 2000s to Present

**Federal status.** In the 50 years since its enactment, the ESEA has been re-signed or reauthorized

six times by six different presidents (Nixon, Ford, Carter, Reagan, Clinton, G. W. Bush). Though the name of the legislation has been modified in some reauthorizations—Improving America’s Schools Act (Clinton), No Child Left Behind Act (NCLB; G. W. Bush)—the main emphases of the law have remained intact (i.e., equal access to education, high standards, accountability).

The effects of the last reauthorization of ESEA in 2001 (NCLB) and the requirement that 100% of students reach proficiency in reading and mathematics by 2014 still reverberate today. The unintentional consequences of NCLB created a climate where the educational needs of gifted learners were largely ignored to intensify focus around those students struggling to meet grade-level standards. Concerns over mediocrity and minimum competency thresholds were reignited, and these concerns have prompted policymakers to begin considering significant changes to the current legislation.

Typically, federal laws undergo a reauthorization process every 6 to 7 years (National Association for Gifted Children [NAGC], 2015a), so reauthorization of ESEA is long overdue. At the time of this writing, the House of Representatives and the Senate have passed their respective versions of the ESEA reauthorization. The two bills will now go to conference committee where a compromise bill will be drafted, which both houses of Congress will accept and then send to the president. The Senate’s version of the ESEA—S. 1177 (Every Child Achieves Act) has garnered the most support among gifted education advocates as it contains many of the provisions outlined in the TALENT Act (NAGC, 2015b). The bill requires states to disaggregate achievement data by subgroup, allows federal funds to be used to train teachers in the best ways to teach gifted students, and requires districts receiving Title I funds to report how these funds are used to identify gifted and talented students. Javits is offered as an amendment to the bill to ensure its continued existence, though it does not set aside funding for the program. The House of Representatives proposal—The Student Success Act (H.R. 5)—does not contain provisions from the TALENT Act or retain Javits (NAGC, 2015a). In fact, the provisions addressed by the Student Success Act ignore high-ability students

and has been widely opposed by many education advocacy organizations (i.e., Council for Exceptional Children, National Education Association, etc.). It is expected that the journey to compromise will be contentious as the two bills are significantly different.

In addition to some movement around the reauthorization of ESEA, several nationally disseminated reports—*A Nation Deceived* (Colangelo, Assouline, & Gross, 2004), *High Achieving Students in an Era of NCLB* (Thomas B. Fordham Institute, 2008), *Mind the (Other) Gap* (Plucker, Burroughs, & Song, 2010), and *Preparing the Next Generation of STEM Innovators: Identifying and Developing Our Nation’s Human Capital* (National Science Board, 2010)—have brought national attention to the needs of gifted students.

**State status.** NAGC released its latest *State of the States in Gifted Education* report in 2013. This is the only report that compiles national data on gifted and talented education. The report, compiled from survey data collected in 2012 through 2013, highlights concerns regarding the unevenness of gifted education policies across states. The report found that eleven of the 44 states responding have no mandate related to gifted education, either for identification or services. Of the 32 states with mandates, only four provide full funding to support the mandate. Furthermore, as in subsequent years, funding for gifted education was cited as the issue in most need of attention.

**Identification policies.** Several findings from the 2012–2013 report pertain to identification and warrant noting:

- Eight states require that gifted students be identified at a specific time; following a teacher or parent referral or during elementary school are the most frequently reported times.
- Thirteen states have policies requiring school districts to accept students’ gifted eligibility from another district within the same state, two states have policies specifically permitting the recognition of gifted eligibility from other states, and
- seven states do not permit gifted eligibility to transfer from another state.

The lack of direction at the state level leaves many identification policies at the discretion of local school systems. Although this affords local systems the opportunity to customize identification policy and procedures to best suit their student population, it also may contribute to a disparity in student access to services between and within states.

*Programming policies.* The 2012–2013 report also brings attention to those state policies that directly affect services for gifted students. The existence of state-level policies regarding academic acceleration, early entrance to kindergarten, and dual enrollment can help ensure consistency in how the educational needs of gifted students are met at the local level. However, just as with identification policies, it seems states have again deferred these decisions to local school systems. With regard to state-level policy pertaining to educational services

- nine states have policies that specifically permit acceleration,
- eight states have policies permitting early entrance to kindergarten,
- ten states have policies allowing dual enrollment in middle and high school, and
- twenty-nine states allow students to be dually enrolled in high school and college/university.

As evidenced from these figures, the lack of state-level policy creates inconsistencies across states—a probable variance in programming opportunities for gifted students.

*Personnel policies.* Qualified teachers and personnel are critical in meeting the academic and social–emotional needs of gifted learners, yet state policy does not seem to acknowledge this important element. Only one state (Kentucky) requires preservice teachers to receive training in gifted and talented education, five states require annual professional development in gifted education for those teachers teaching in gifted programs, and only 17 states require special credentials for teachers working in gifted education (NAGC & Council of State Directors for Programs of the Gifted, 2014).

School counselor and psychologist preparation in gifted education is even more insufficient. In terms of counselor endorsement/certification, only two states (Iowa and Rhode Island) require training in

the needs of gifted students (NAGC & Council of State Directors for Programs of the Gifted, 2014). The Council for Accreditation of Counseling and Related Educational Programs (CACREP) assures that anyone graduating from a CACREP-accredited counseling program has received a wide array of courses designed to ensure they can meet the needs of all students on graduation. Although this is true, specialized coursework in gifted education is not required by those institutions receiving CACREP accreditation (Olenchak, 2001). Therefore, and similar to many teachers, school counselors may graduate without learning about gifted students or how to effectively address the needs of this population. Similarly, psychological services for the gifted are not mentioned in the standards of the National Association of School Psychologists (NASP). In a survey of NASP members, Robertson, Pfeiffer, and Taylor (2011) found that 94% of psychologists received little to no training in screening and assessing gifted students during their graduate studies.

*Impact of federal policy.* The extent to which federal law (NCLB) has affected gifted students was also examined in the 2012–2013 report. Nineteen of the 31 respondents indicated that gifted education in their states had been negatively affected by federal policy. A lack of accountability for annual growth of gifted students, a lack of funding, and an incentivized focus on low performing students were all cited as negatively affecting gifted students and programs. However, most respondents felt that federal policy specifically addressing gifted students would be beneficial.

Overall, the *State of the States in Gifted Education* report (2014) concluded, “while there are pockets of progress, our nation has yet to comprehensively address the lack of consideration of top learners” (p. vii). Brown, Avery, VanTassel-Baska, Worley, and Stambaugh (2006) further acknowledged that variations in state policies “make national reform in gifted education less cohesive, comprehensive, and inclusive” (p. 12).

## RELEVANT THEORY AND PRINCIPLES

In the last 10 years, several policy issues have been driving advocacy efforts in gifted education: identification, acceleration, personnel preparation, and

funding. Just as the last 80 years have been characterized by periods of intense interest followed by prolonged times of apathy, advocates for gifted education have worked tirelessly to ensure concerns around these issues remain in the forefront of public attention rather than relegated to the fringes.

### Identification

In terms of existing gifted education policies, identification is the most cited issue in the literature (Bracken & Brown, 2008) and is the most researched topic in gifted education (Dai, Swanson, & Cheng, 2011). Pursuit of equity has been the central focus of the pervasive and prevalent struggle around identification, specifically the concern around the underrepresentation of certain subgroups in gifted education programs (i.e., African American and Latino students). States and school systems have been reassessing their current identification protocols and practices to combat the issue of underrepresentation.

Scholars have examined possible causes for inequitable representation and potential solutions to the problem (see Chapter 21, this handbook). In terms of causes, some contend that the misuse of IQ scores in determining giftedness has led to the underrepresentation of certain groups in gifted programs (Pfeiffer, 2013). Others have hypothesized that inadequate teacher training, deficit ideologies (Ford, Harris, Tyson, & Trotman 2001), discontinuity paradigms (C. C. Lewis, Perry, Friedkin, & Roth, 2012; Tomlinson & Jarvis, 2014), stereotype threat (Steele & Aronson, 1995), lack of communication between school and home, manifestations of the achievement gap (Erwin & Worrell, 2012), and inadequate policies and practices (Callahan, 2005) are at the root of the issue. Solutions that have been offered to reverse the trend of inequitable representation of underserved students in gifted programs include using measures beyond IQ for identification, such as observing students in learning situations (Passow & Frasier, 1996); using dynamic assessment procedures (Kirschenbaum, 1998), teacher rating scales (Pfeiffer & Jarosewich, 2007), and portfolios (Stephens & Karnes, 2000); replacing standardized, verbally loaded identification instruments with nonverbal assessments (Bracken, 2008;

Naglieri & Ford, 2005); and using local or within group norms to determine cut-off scores for gifted program participation (Lohman, 2005, 2009).

Some of these policy and protocol innovations around identification have been met with success. Research demonstrates that using local or within-group norms can increase representation among underserved students in gifted education (Peters & Gentry, 2012) and numerous scholars have concluded that nonverbal ability measures contribute to the identification of more representative proportions of underserved students in gifted programs (Bracken, 2008; J. D. Lewis, 2001; Mills & Tissot, 1995; Naglieri & Ford, 2005).

### Acceleration

Since the 2004 publication of *A Nation Deceived*, policy discussion around acceleration has intensified and discourse around educational excellence has energized. Consisting of two volumes, this watershed report provided a review of over 50 years of empirical evidence in support of acceleration. The report concluded that acceleration is the most effective curriculum intervention for gifted students, has long-term academic and social benefits for high-ability students, and is especially effective academically and socially for highly gifted students.

In addition to spearheading the dissemination of research and recommendations pertaining to acceleration, the Belin–Blank International Center for Gifted Education and Talent Development at the University of Iowa, formed the Institute for Research and Policy on Acceleration in 2006, with support from the John Templeton Foundation. The institute's primary purpose is to conduct research on the effects of acceleration, synthesize existing research on acceleration in a manner that is useful to practitioners and policymakers, and serve as an international clearinghouse for research and policy on acceleration.

Three years following the release of *A Nation Deceived*, an impact study was conducted to determine if knowledge, attitudes, and school practices had changed and if the report had influenced any policies at the state and district levels (Colangelo, 2008). A total of 5,373 individuals responded to the study's survey—mostly parents and teachers.

Results indicated that the report had a positive impact on attitudes about acceleration (84.6%) and the field of gifted education (76.4%). In addition, 15.3% of respondents ( $n = 655$ ) reported that acceleration policies were written or revised because of the report.

In 2009, in collaboration with NAGC and the Council of State Directors of Programs for the Gifted, the Institute for Research and Policy on Acceleration published guidelines for developing comprehensive, research-based state and local academic acceleration policies (Colangelo et al., 2010). Five key components for acceleration policies were offered.

1. The policy must be accessible, equitable, and open to all students and across all grade levels, use a fair and objective systematic evaluation, and require written consent of parents.
2. The policy must articulate guidelines for implementation, including specifying categories (e.g., grade-based, content-based) and forms (e.g., curriculum compacting, dual enrollment) of acceleration, explaining the process of implementation (e.g., screening, referral), ensuring decisions are made by a team, communicating decisions in writing, and including a monitored transition period and opportunity for discontinuation.
3. The policy must provide guidelines on administration matters to ensure systematic and fair use of accelerative opportunities, address short- and long-term needs, and specify how students will be awarded credit.
4. The policy must provide guidelines for nonacademic barriers to acceleration, must not deny or withhold extracurricular or intramural activities from accelerated students, and should not negatively affect school funding.
5. The policy must include features that prevent unintended consequences, including an appeals process, which must regularly be evaluated for effectiveness.

The report, *A Nation Empowered: Evidence Trumps the Excuses Holding Back America's Brightest Students* (Assouline, Colangelo, VanTassel-Baska, & Lupkowski-Shopluk, 2015), is a 10-year follow up to *A Nation Deceived*. Although the initial

report informed policymakers of the research supporting acceleration, the new report reveals how schools have applied what has been learned from the research. The titles of these two reports also reflect a shift in the discourse from what schools aren't doing to address the needs of gifted learners (deception) to what schools are doing to nurture and support these students (empowerment).

### Personnel Preparation

In 2013, NAGC in collaboration with the Council for Exceptional Children (CEC), and the Association for the Gifted, released the revised *NAGC-CEC Teacher Preparation Standards in Gifted Education*. Each of the seven standards articulate the knowledge and skills needed by gifted education professionals and serve to guide preservice and in-service preparation of educators. These standards are particularly important because only eight states have written competencies for teachers of the gifted (NAGC & Council of State Directors for Programs of the Gifted, 2014). The NAGC-CEC standards articulate gifted education professionals do the following:

1. understand learner development and individual learning differences, including how language, culture, economic status, family background, and/or disability influence the learning of gifted students;
2. create safe, inclusive, and culturally responsive learning environments that engage gifted learners in rigorous learning activities and social interactions;
3. use curricular content knowledge to advance learning for gifted students (e.g., incorporate central concepts, structures of the discipline, tools of inquiry, creativity, depth and complexity, acceleration);
4. use multiple methods of assessment and data sources to make instructional decisions about gifted learners including technically sound formal and informal assessments that minimize bias;
5. select, adapt, and use a repertoire of evidence-based instructional strategies to enhance the critical and creative thinking and problem-solving skills and affective development of gifted learners;

6. use foundational knowledge of the field and professional ethical principles to inform practice, engage in lifelong learning, and advance the profession (e.g., model respect for diversity, participate in professional activities and learning communities, engage in advocacy and mentoring); and
7. collaborate with families, other educators, related-service providers, and community agencies, among others.

The success of gifted programs is dependent on the availability of qualified teachers (NAGC & Council of State Directors for Programs of the Gifted, 2014). It is up to states and local school districts to ensure that teachers working with gifted students are well prepared. Because most gifted students are primarily served by general education teachers, it is essential that efforts be made to inform these teachers about the academic and social–emotional characteristics of gifted learners and introduce them to appropriate pedagogies for challenging these students. The issue must be tackled during preservice teacher preparation and through ongoing professional development opportunities for inservice teachers. The *State of the States in Gifted Education* (NAGC & Council of State Directors for Programs of the Gifted, 2014) noted that funding for advanced training for teachers in gifted education, preservice training in gifted education at the undergraduate level, and professional training for general education teachers in gifted instruction were the areas in most need of attention across states.

In terms of school counselors, the American School Counselor Association (ASCA; 2013) recommends specific roles that school counselors might have in addressing the needs of gifted students. These include assisting with identification; advocating for counseling activities that support the academic, career, and social–emotional needs of gifted students; and engaging in professional development activities that support an understanding of the developmental needs of gifted students. Regardless of these recommendations, Wood (2010) noted that little is known about whether and how much school counselors intentionally work with gifted students in school settings. Carlson (2004) and Earle (1998)

found that counselor preparation and perceptions all affect services that are afforded to gifted students. Additional research pertaining to school counselors is vital if effective counseling policies and programs are to be implemented for gifted students (Wood, 2010), and to better ascertain how the knowledge and role of the school counselor associates with beneficial academic and social–emotional outcomes for gifted students.

## Funding

According to the *State of the States in Gifted Education* report (NAGC & Council of State Directors for Programs of the Gifted, 2014), the “long-term stability of gifted programs and services are tied to the degree to which states dedicate a reliable funding stream to districts to meet student needs” (p. 7). Wide disparities in gifted education funding exist across states with four states (Georgia, Louisiana, North Carolina, and Texas) spending more than \$50 million on gifted education, whereas others allocate nothing. Between 2010 and 2013, six states decreased their funding in gifted education, whereas 12 states slightly increased their funding. In terms of funding mechanisms, most states determine funding through a formula allocation, although a small number (three states) make funding available to local districts through grants.

Baker and McIntire (2003) evaluated how states distribute supplemental aid to local school districts for gifted education programs. They reported the following methods: (a) weighted funding, where funding is allocated per student on the basis of a predetermined funding weight associated with each student; (b) flat grant funding, where a fixed funding amount is allocated per student on the basis of the number of identified students or total student population; (c) resource-based funding, where funding allocated on the basis of resources like teaching staff or classroom units; (d) percentage reimbursement funding, where funding is allocated on the basis of prior year expenditures for the program; and (e) discretionary grants (rare), where funding is allocated through grants for which school districts apply.

To further complicate the issue, Baker and Friedman-Nimz (2004) found that across all states an increase in state funding tended to decrease

equity, leading to significant wealth-related disparities in gifted program opportunities. Examining state aid allocation for gifted education, Baker and Friedman-Nimz determined that state aid might be allocated neutrally (vary randomly with respect to local fiscal capacity), progressively (higher levels of state aid provided to districts with lower fiscal capacity), or regressively (higher levels of state aid provided to districts with higher fiscal capacity). The findings of their study revealed that states with gifted education mandates and those states using either discretionary or flat grant funding, allocated resources more regressively.

In terms of policy implications for gifted education funding, Baker and McIntire (2003) recommended that policymakers and advocates monitor state aid allocations to ensure they foster access and quality of opportunity for all gifted students—including those from low wealth districts. Model policies should then be developed on the basis of an evolving understanding of the effectiveness of existing finance policies. In other words, careful monitoring of state and local finance policies is needed to determine their effectiveness and to identify potential negative consequences for specific subgroups of gifted learners (e.g., gifted students in high poverty districts).

## PRACTICE AND POLICY ISSUES

Court cases and administrative hearings are another source of policy development in gifted education (Gallagher, 2002). With permissive state regulations, and in the absence of federal protections, parents and other advocates have been forced to seek legal recourse through state and federal court systems in securing appropriate programs and services for gifted students (Karnes & Stephens, 2010). Furthermore, without coherent gifted education policies, due process and litigation may be the only means of securing appropriate educational accommodations for gifted students.

Education clauses within each state's constitution have served as a foundation for challenging state methods for serving gifted students (Haney, 2013). Though variations exist across states, each state's constitution calls for a public

education system and acknowledges—to some degree—expectations for this system. Claims that use state education clauses to challenge the system's response to gifted students, have had varying degrees of success, as courts have typically “interpreted these provisions as asserting a minimum standard of education” (Haney, 2013, p. 295).

Haney (2013) contended that claims based on education clauses have several advantages. First, successful claims have a strong likelihood of leading to state-level changes and solutions in addressing the educational needs of gifted learners. Second, such claims produce legislative mandates that serve to impact many students, beyond those involved in the case. In addition, courts prefer to identify constitutional violations rather than make legislative or policy decisions.

Courts are usually reluctant to rule on issues regarding the quality of education especially because state constitutional clauses often convey minimal provisions using terms like “*thorough, adequate, efficient, general, or uniform*” (Herring, 1991, p. 1037). However, Haney (2013) encouraged use of the “thorough and efficient” clause in seeking provisions for gifted students. Many states use some version of this clause and it may serve as a constitutional basis for ensuring states address the needs of gifted learners—particularly in the absence of a state mandate.

## Litigation

Court cases pertaining to gifted students have addressed a wide variety of issues including tuition reimbursement, early entrance to kindergarten, admissions, and appropriate programming. In nearly all cases, school systems have prevailed resulting in a lack of legal precedence for gifted students, which is “critical in securing appropriate programs and services for the gifted” (Karnes & Stephens, 2010, p. 1338). An overview of selected state cases can be found in Stephens (2008); Karnes & Stephens (2010); and Stephens, Dudley, and Karnes (2012).

**Federal court decisions.** The federal courts address matters that involve constitutional or statutory challenges, like those pertaining to discrimination under the 14th Amendment's equal

protection and due process clauses (Stephens, 2008). Complainants have unsuccessfully challenged minimum cut-off scores used for entry into gifted programs (e.g., *Student Doe v. Commonwealth of Pennsylvania*, 1984; *Student Roe v. Commonwealth of Pennsylvania*, 1987).

**State high court decisions.** Two seminal cases with contradictory rulings involve programming and services for gifted students. In *Centennial School District v. Commonwealth Department of Education* (1988), the court found the school district was not relieved of the responsibility to provide an appropriate academic education to a gifted student (Stephens, 2000), whereas in *Broadley v. Board of Education* (1994), the court concluded that the state's constitutional right to a free public education does not afford gifted students the right to special education.

The decisions of these two cases reflect the importance of state statutes in protecting the rights of gifted students. In Pennsylvania, where the *Centennial* case originated, gifted students are afforded similar protections as other exceptional students who qualify for services under the Individuals With Disabilities Education Improvement Act (IDEIA, 2004). However, the *Broadley* case hailed from Connecticut, a state without a mandate for programming and services for gifted students (Stephens, 2000, 2011).

### Due Process Hearings

Unlike students who qualify for special education services under IDEIA (2004), due process hearings are not widely used to resolve disputes pertaining to gifted education. Karnes, Stephens, and McCard (2008) found that only 11 of 40 responding states reported due process hearings between 1990 and 2006 that pertained to gifted education. Furthermore, locating hearing officer decisions is difficult. The collection of such information is not federally mandated (Ahearn, 2002), most states retain confidentiality of proceedings, and many due process records are destroyed after a certain period of time (Stephens, 2011; Stephens et al., 2012).

When due process hearings do address gifted education issues, they most often involve disputes around identification, and hearing officers are more

likely to side with the school district (Stephens et al., 2012). When hearings are appealed to the district court level, courts generally defer to the original decisions of hearing officers. Because of the confidentiality surrounding most due process proceedings, determining how many parents decide to pursue further action through litigation is difficult. Regardless, parents do report the need for increased information and support with regard to complaint procedures (Opuda, 1999), as well as assurances that their relationships with schools will not be damaged as a result of filing a complaint. For a more specific overview of selected due process hearings involving gifted students, see Stephens et al. (2012).

### Letters of Findings From the Office for Civil Rights

The Office for Civil Rights (OCR) works to ensure equal access to education across the United States. Several studies have analyzed OCR letters of findings or the resolutions of administrative complaints pertaining to gifted education (Karnes et al., 2008; Karnes, Troxclair, & Marquardt, 1998; Marquardt & Karnes, 1994). These studies have revealed that most complaints filed with OCR pertain to the underrepresentation of minorities in gifted education programs—noncompliance of Title VI of the Civil Rights Act of 1964 or discrimination on the basis of race, color, or national origin (Stephens, 2011).

In 2012, the author contacted 10 OCR regional offices of the U.S. Department of Education requesting letters of findings involving gifted students between 2006 and 2012. Complaints were requested pertaining to gifted students and (a) Title VI of the Civil Rights Act of 1964 (i.e., discrimination on the basis of race), (b) Title IX of the Civil Rights Act of 1964 (i.e., discrimination on the basis of sex), (c) Section 504 of the Rehabilitation Act of 1973 (i.e., discrimination on the basis of disability), and (d) the Age Discrimination Act of 1975 (i.e., discrimination on the basis of age). Nine of the 10 regional offices supplied information.

Review of these letters reveal that a total of 25 cases dealt specifically with gifted and talented education issues. The most active regions were Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) and

Region IX (Arizona, California, Hawaii, Nevada, Guam, and American Samoa). California was the most active state, and 2011 was the most active year. The protected classes represented in the letters included English language learners, students with disabilities, age, race, and national origin. Of these complaints, only three found the school system noncompliant. Two of these were from Connecticut (one dealing with discrimination on the basis of age, and the other a violation of Title VI and Section 504, discrimination on the basis of national origin and disability). The third was from Washington where the screening procedure for participation in the gifted program was found to be noncompliant to Section 504 (specifically the district did not pay the cost for the student to be evaluated).

Because gifted students are not a protected class in and of themselves, it can be difficult to sift through all the letters of findings available through OCR to determine which ones are most pertinent to gifted education issues. However, in the absence of federal, state, and local protections, many have resorted to a focus on gifted issues as they pertain to protected groups to seek resolution. As with due process and litigation, letters of findings from OCR have largely favored school systems.

## FUTURE CONSIDERATIONS AND DIRECTIONS

According to Resnick and Goodman (1994),

Gifted young people have emerged over the past century and a half, more as a challenge to the organization of the American system of education than as a special resource to be developed. . . . A way must be found to turn the constraints of the past into the opportunities of the present. (p. 118)

Supporters of gifted education have been working under the constraints of past policy (or lack of policy) for some time, and this work has required considerable persistence and effort. Though the road has been long, those passionate about addressing the educational and social–emotional needs of gifted learners have endured.

As teachers, counselors, psychologists, administrators, parents, and other stakeholders continue their efforts on behalf of gifted students, five areas must be considered to enhance existing or create new policy in gifted education:

- **Informed advocates**—To be an effective advocate for the gifted, individuals must be knowledgeable about the educational and social–emotional needs of gifted students. Teachers, administrators, psychologists, school counselors, and other educational professionals must receive preservice training and ongoing in-service professional development to enhance their knowledge and skills in working with gifted students.
- **Influence**—Gifted education does not occur in a vacuum. The larger, broad sweeping education reform initiatives occurring within the nation’s public school systems have influenced identification and services for gifted students. Just as was learned with the implementation of NCLB, gifted education advocates must to be mindful of the negative (or positive) consequences of education reform efforts and be proactive in ensuring gifted students are not negatively impacted.
- **Consensus**—Scholars in the field of gifted education have yet to reach consensus on many areas, but perhaps the most critical absence of compromise can be seen in how the field defines gifted students. Without an agreement around the question “Who are gifted students?”, it becomes increasingly difficult to communicate with others and advocate on behalf of gifted learners. Instead of reaching consensus and striving for clarity around capturing the essence of gifted learners, supporters of gifted students continue to exhaustively deliberate the issue. Subotnik, Olszewski-Kubilius, and Worrell (2011) attempted to advance the argument over conceptions of giftedness and talent by proposing a comprehensive definition that addressed several prevalent perspectives in the field, but even this definition spurred considerable debate. The competing desires of those educators and psychologists who engage in scholarly work in gifted education also have implications for policy development (McBee, McCoach, Peters, & Matthews, 2012),

with educators having an intervention-oriented ideology and psychologists holding a more psychologically oriented perspective around gifted education (Coleman, 2006). Such division has prevented the field from reaching consensus on a “common set of theoretical constructs” (McBee et al., 2012, p. 213), which would be a beneficial first step in establishing empirically supported policies and practices.

- Strategic partnerships—To change existing or initiate new policies in gifted education, a critical mass is needed to ensure the voices of supporters are heard. There is no need to go at this hard work alone. Gifted education advocates should locate and partner with other groups and organizations with similar missions. As Haney (2013) noted, “gifted education appeals to a narrow political constituency” (p. 280), so it is imperative that the base of supporters be expanded by seeking strategic and sustained partnerships, especially with groups who may have broader public appeal and support.
- Public relations—Changing public perception of the gifted is a challenging yet essential task. Gifted students are often perceived as “privileged” or “elite,” and policymakers may be reluctant to address their needs. Sternberg (1996) suggested ways to enhance public perception of gifted students including promoting gifted students as a valuable national resource and acknowledging the multiple ways in which students can be gifted, both of which may be more palatable for those who have typically opposed gifted education programs.

What will the next 80 years bring for gifted education in the United States? If the past provides a clue, public interest will more than likely continue to fluctuate. The goal of advocates should be to keep the educational and social–emotional interests of gifted students from gravitating too far toward the fringes. Although gifted education may never be the number one issue facing public school systems, it must be kept on the radar of policymakers to ensure the needs of gifted students are not precluded from those important educational conversations yet to come.

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