

581-022-1940-97-2

Appeal to the Superintendent of Public Education

against the Portland Public School District

for failure to deliver services required under Oregon State Law

Dear Superintendent Paulus:

We are parents of children in the Portland Public School District, and wish to exercise our right to appeal to the State Superintendent of Public Instruction as provided by ORS ch. 326 and OAR 581-22-805. We believe that the school district has violated the requirements of the Oregon TAG mandate (OAR 581-22-403), which defines programs and services for Talented and Gifted Students, and OAR 581-22-602 which requires that school districts "Adapt instruction and curriculum when the needs, interests and learning styles of each student indicate an adaptation is needed." In addition, the district has repeatedly violated its own written policies concerning TAG services and complaint procedures.

(1) Our principal complaint is that the district is not providing instruction to identified TAG students that addresses their assessed levels of learning and their accelerated rates of learning. 1.

(2) In addition, we are complaining that the district has not followed its own written process for addressing issues, providing services in a timely manner, and resolving complaints. 2.

(3) In addition we are complaining because we have already pursued a remedy with the Portland School Board and had believed that we had obtained an agreement with all parties to resolve many of these issues. This agreement took the form of a written policy and a timeline for implementation. However, when one of our members wrote the superintendent to complain that this agreement was not being implemented, he responded with a letter that 3

Attachment A

renounces an important part of the agreed policy, misinterprets state law, and shows no willingness to take any further measures to implement the mandate or correct existing problems.

The district is not identifying students at all grade levels in both academic and intellectual areas, does not assess each student's level of learning in all curriculum areas and accelerated rates of learning in all curriculum areas, does not address each student's assessed level of learning and accelerated rate of learning in its instruction, does not inform parents at the time of identification of the programs and services available, does not provide an opportunity for parents to provide input to and discuss the programs and services to be received by their child, does not notify parents of their right to request the withdrawal of their child, and does not notify them of their right to file a complaint under OAS 581-22-805. We believe that the significant delays in providing services in many cases amount to an effective denial of service. 4

1) Failure to implement the mandate requiring identification, assessment, and appropriate instruction for TAG students

With respect to (1), as parents, we have been dissatisfied with the instruction our own children have been receiving for many years. The problems include:

**Problems with identification:**

-An identification process that is not clearly explained to parents, including a failure to notify parents before individualized testing, or explain what tests will be used, a failure to clearly identify the members of the TAG committee ("team") at each school or describe its responsibilities (making it difficult for parents to supply relevant information), a failure to communicate the timeline for the process to parents, and a failure to communicate testing results to parents in a timely manner so that they can participate in an informed way in the planning process. Some parents have complained that they were not informed that they had a right to nominate their children.(D/2, D/8-9, D-16, D/24, D/28, D/38, A/3, I/9, I/31, I/45-7, S/3, S/47-8, PP/4-5, PP/22)

–Failure to notify parents of their right to appeal denial of TAG status.(D/5, D/8, PP/4, PP/14, PP/22, PP/25)

–Excessive delays in testing and/or identifying nominated children amounting in some cases to nearly an entire school year.(D/38, A/3, A/12, A/15, I/9, I/31, I/45-7, S/47-8, PP/4, PP/22)

–Failure to systematically offer students in grades k-2 and 9-12 the opportunity to qualify as "academically talented" and students in grades 4-8 the opportunity to qualify as "intellectually gifted."(D/8, D/37, PP/4 cf. PP/22)

The new district policy requires that parents be notified in writing before testing, that testing be completed in a timely manner, generally within 30-60 days; that the school "Leadership Team" meet on an on-going basis to determine identification, and that the team notify parents within ten days of the decision. This agreement is not being honored.

**Problems with assessment:**

–An assessment process that is not clearly explained to parents, even when they request more information. (D/8, D/28, D/36, I/31, S/30, S/37, S/43, S/49, PP/1)

–Assessments that are vague and do not yield information about rate and/or level. (D/1-2, D/8, D/28, I/30, I/33, I/41, I/48, S/14, S/21, S/25, S/43, PP/1, PP/5, PP/23)

–No testing or assessment for subjects aside from math and language arts. (D/21, S/12-13, S/21, S/23, PP/27, S/35, S/49, PP/1, PP/5 cf. PP/23)

– Failure to define "level of instruction" or to relate it to existing instructional "grade levels" in any meaningful way ("we used to measure instructional level in terms of "grade level" norms or expectations...[now] we express level in terms of states of development in a subject or outcome area"). (D/1, D/28, D/36-7, D/42-3, A/3-4, A-17, S/37, I/14, PP/1, PP/7, PP/23)

-Failure to evaluate appropriate rate of learning as well as level. (D/2, D/7, D/16, D/19, D/21, I/14, I/22, I/41-2, I/48-9, A/17)

-Failure by the district to use "out of level" test information when it is available for individual students. When parents provide information and it is ignored, parents have not had an opportunity to give input into the planning for their child and the plans are not appropriately addressing assessment information relevant to level and rate. (D/36, D/40, D/43-4, I/42, S/8, S/12-13, PP/5 cf. PP/23)

-Inappropriate assessments and planning for exceptionally gifted students. (I/12-13, D/26, D/34, D/40, ACC/5, PP/10-11, PP/25)

-Failure to establish appropriate achievement tests for students in grades k-2 and 9-12 (the years not covered by the PALT tests) for both identification and assessment. (D/37-8, PP/4 cf. PP/22)

-Failure to communicate testing and assessment results to parents in a timely manner, as called for in the new district policy. This makes it impossible for parents effectively "to provide input to and discuss with the district the programs and services to be received by their child," as required by OAR 581-22-404 sect. 2. (D/2, D/5, D/38, I/9, I/31, I/41, I/46-7, S/2-3, S/31, PP/4-5, PP/8 cf. PP/22 and PP/24)

**Problems with the planning process:**

-Nonexistent, late, unsigned, or inappropriate instructional plans. If plans are late, nonexistent or inappropriate, the district has not documented that it is providing appropriate services in a timely manner. If they are unsigned, the district has not provided an opportunity for parents to provide input into their child's instruction. (D/3, D/16, D/29, A/2-4, A/7-8, A/9, A/11-12, A/13-16, A/17, I/10-11, I/13-16, I/21-23, I/30, I/32, I/36, I/42, I/48-9, I/51, Sect. S, esp. S/8, S-9, S/11-12, S/15, S/25-8, S/34-36, S/43, S/49, Sect. PS, PP/1, PP/6, PP/8, PP/23, PP/27-28).

-A process that has consistently failed to generate timely plans for many students. (D/3, A/3, A/7, A/9, A/12, A/13-16, A/17, I/14-16, I/21, I/36, S/19, S/22, S/23, S/33, Sect. PS, PP/6, PP/8, PP/23-4, PP/27-8)

-Failure by school principals to establish a process for ensuring timely plans, or to honor promises to create more timely and appropriate plans. This makes it impossible for many students to enroll in appropriate classes at the start of the year, and frequently prevents them from taking an appropriate class. (A/11, A/14-15, S/1-7, S/21, S/26-8, S/31, S/36-7, S/39, S/43, PP/6, PP/8, PP/23-4, PP/27-8)

-Complaints by parents that plans are "boilerplates," "tokens," "ambiguous," "vague" or just a rewriting of existing classroom activities and instruction without any significant adjustment for gifted children. (D/37, A/17, I/10, I/15-16, I/30, I/46-7, S/12, S/34-36, PS/3-5, PP/6, PP/23)

-Plans that do not specify or address assessed rate and level of learning. (D/36-7, D/44, A/2, A/4, I/15-16, I/30, I/33-34, I/41-2, I/48-9, S/12-13, S/15, S/18, S/21, S/25, S/34-6, S/49, PP/6, PP/23)

-Plans that do not include specific information about materials or curriculum, as required in the district policy. If this information is not provided, parents do not have a real opportunity to provide input into and discuss the programs to be provided for their child. Moreover they also indicate that the school has not "adapted... curriculum when the needs ... of each student indicate an adaptation is needed," contrary to ORS 581-22-602. (I/15-16, I/21-23, I/30, I/34, I/41, I/48-9, S/12-13, S/25, S/32, S/37, S/49, PP/6, PP/23)

-No specific appeal process for parents dissatisfied with their plans. (D/5, D/9, D/29, A/2-3, S/34, PP/14-15, PP/24-5, and see below, sect. on "school district administration and authority").

-No process to ensure that plans are appropriate. (D/9, A/3, A/16, PS/1-2)

-No process to verify that plans are signed, or to follow up when parents refuse to do so because of dissatisfaction with the plans. (D/9, D/16, D/28, A/15, S/34, S/38, S/39, PS/4, PP/6, PP/8, PP/24-5)

-Failure of the District to adhere to the agreement that this year draft plans would be sent home to parents by October 1 and formalized at conferences during the first week of November. We feel that planning and placement for the school year should be initiated

before the end of the prior school year. (A/2-4, A/7-8, A/9-10, A/11-12, A/14-15, A/17, I/13-16, I/51, S/6, S/43, S/46, S/49, PP/8, PP/15, PP/23, PP/27-8).

-A written refusal by the superintendent in his most recent letter to take steps to correct these problems ("helping teachers and schools improve instruction")...is a much higher priority for me than asking them to audit files." (A/20, cf. PP/8, PP/34).

-We have also expressed concern over the lack of continuity from year to year in the planning process and the high turnover and inadequate training of TAG coordinators in each school. (D/28, A/2-4, A/17, I/21, S/26, S/32, S/50, PS/1-2, PS/4, ACC/31, PP/17, cf. A/10)

**Failure to deliver services:**

-Failure to provide services from September through June. Students should not have to wait two or three months or more to receive appropriate instruction while plans are being drafted and approved. Every student is entitled to instruction throughout the school year. (D/3, A/3-4, A/7, A/11-12, A/15-16, A/17, I/21, I/35, I/49-51, S/22, S/34, PS/1-5, PP/23)

-Failure to provide appropriate instruction to meet each student's level and rate of learning. (D/10, D/15, D/18-22, D/26, D/32, D/34, D/36, D/45, A/1-4, A/14, A/16, I/1, I/10-11, I/12-13, I/21, I/28, S/12-13, S/34, S/37, PS/1-5, ACC/4, ACC/22, ACC/31-33, ACC/35, ACC/40, PP/7, PP/23)

-Failure to make appropriate use of flexible ability grouping and accelerated instruction, as called for in the new written district TAG *Framework*. (D/5, D/7, D/10, D/16, D/24, D/26, D/37, A/4, A/7, A/14, A/17, A/19, I/21, I/28, S/34, S/50, ACC/17, ACC/35, PP/7, PP/10-13, PP/23)

-Failure to substitute advanced work for curriculum already mastered. This indicates a failure to adapt instruction when the needs of each student indicate an adaptation is needed under ORS 581-22-602. (D/26, A/4, I/12, I/48, PS/3, PP/7, PP/23)

-Classroom teachers who are not qualified or certified to teach at a given student's assessed level (for example, an eighth-grade teacher with an elementary teaching certificate who cannot teach High School math to an eighth-grade student who is ready to

learn it.) (D/3, D/28, I/21, PS/4, ACC/6, PP/17 (not included in district Policy, (PP/20-PP/27)

–Classroom teachers who are not informed of the law, are not trained in teaching TAG students, and do not receive appropriate administrative support. (D/3, D/4-5, D/8, D/12-13, D/15, D/20, D/24, D/28, I/13, I/28, I/31, ACC/4, PP/14, PP/17, PP/24-5)

–Failure to carry out plans once they have been completed. (D/29, A/1-4, PS/1-2, PS/4, I/44, ACC/3, PP/6, PP/24, PP/27)

We are concerned that the schools are still distributing TAG students as evenly as possible across all classes at a given grade level, which isolates them and makes flexible grouping extremely difficult. This violates the new district policy which requires "allowing TAG children to be with intellectual peers through flexible grouping patterns." (D/20, A/7, ACC/3, PP/13, PP/17)

The new District policy calls for TAG parent representation on all regional and district committees involved in TAG planning. There is at present no mechanism providing for parent representation on regional TAG committees, and a request that a DTAC representative be permitted to sit on each Regional Advisory Committee has been refused. The lack of a mechanism for regular parent participation at the regional level, which has been assigned responsibility for all aspects of implementation of the mandate, has greatly impaired communication. In most buildings, there is also no systematic mechanism for parent representation for TAG planning, aside from a single annual parent meeting held by the TAG coordinator. This has contributed to confusion and misunderstanding on both sides. (D/16, A/3, A/5, A/7-8, A/9-10, PP/14, PP/34)

We have had difficulty finding out what schools have done with their TAG funding and whether it was appropriately spent. Frequently, inappropriate activities, such as after-school enrichment classes, have been included as part of (or in place of) a TAG program. Our children's teachers have told us that they could not teach at an appropriate rate and level because books, space, and materials were not available. (D/20, D/28, A/3-4, I/17-19, I/20, I/24-6, I/29, I/40, PS/1-2, PS/4, PP/16 cf. PP/26).

In our survey question "is the plan being carried out to your satisfaction?" only 14% of elementary school parents (N = 28) and no middle school parents (N = 17) replied, "yes." This shows that the district is not consistently providing the services required under OAR 581-22-406 (2) and 581-22-602..

## 2) Failure to follow written district policies

We are dissatisfied with the process that the district has used for addressing our concerns. Many of our letters have gone unanswered. The district has often failed to follow its own complaint procedure concerning the deadlines for its responses.

–Written district policy requires a principal to schedule a conference with parents within seven working days of receiving a written complaint and to send a written decision home within seven working days of the conference.

In violation of that policy, a letter sent to the principal of Sellwood Middle School on April 3, 1994 was not addressed until a conference on April 22 (the agreed resolution was not implemented). (S/11, S/19)

The succeeding Principal refused outright to reply to a letter on December 23rd., 1995, detailing numerous problems with the plan proposed for one student. When, following a complaint, the Region Director ordered him to reply, he apologized for his earlier refusal, but refused to address most of the complaints on the grounds that they were "historical in nature." (S/26, S/39, S/41, S/43-4)

He then failed to schedule a follow-up meeting to resolve the relevant issues, although the TAG administrator suggested this in writing. This student has not had an appropriate TAG plan since entering the school in 1995. (S/45)

He further failed to keep a promise made to a group of parents in November and repeated in writing to the Region Director that TAG planning would take place in the spring, so that services for students in the seventh and eighth grades could begin without delay in the fall. (S/43-4)

–Written district policy requires that a Region Director respond to a written complaint within seven working days.

A letter to the Cleveland-Wilson Region Director dated June 4, 1995 was followed by a conference, but no written reply was sent until August 23, 1995.(A/5)



A letter to the Lincoln-Roosevelt Region Director dated April 3, 1995, received no response at all. (I/29)

-The district complaint procedure entitles the superintendent to choose to hold either a conference or a formal hearing after receiving a complaint, and requires him to make a decision within seven working days, and to send his written response to the School Board.

A formal written complaint dated November 17, 1993, received no response. When the parents forwarded their complaint to the State Board of Education more than sixty days later, the district claimed that it had drafted a reply on November 17, but that this was "inadvertently not forwarded to the parents." The action that the parents had requested was denied, but it appears that no consideration was given to the violation of due process. (I/1-8)

The complaint to Dr. Bierwirth that generated this appeal was dated October 18, 1996. Dr. Bierwirth did not attend a conference concerning the letter, although he did discuss the complaint informally over the telephone. He did not reply until January 8, 1997, eighty-two days later. (A/13, A/19)

-Dr. Bierwirth violated a written Board policy when he failed to present a parent proposal for an alternative accelerated school to the School Board in October 1994. (ACC/1, ACC/28)

When this issue was raised with Dr. Bierwirth at a subsequent meeting, he promised to send a letter of explanation. He did not do so. (ACC/34)

A letter from one of the parents who had attended the meeting asking whether the superintendent would reconsider his decision if additional funding could be found received no response. (ACC/30-33)

A letter in February from another parent asking why the written policies of the School Board had not been followed in this instance was never answered. (ACC/37-8)

When this issue was again raised at a spring 1995 meeting of the School Board, the parents again requested a written explanation from the Superintendent. At that meeting, Dr. Bierwirth acknowledged that he had not followed district procedures. (ACC/37, ACC/39-40) In addition, one of the parents also wrote a letter requesting a written reply. A school board member promised that one would be provided. It was not. (ACC/39-42)

At the school board meeting, Dr. Bierwirth described the proposal as "elitist" and criticized the motives of the parents who had prepared it. We feel that comments such as these, made both in private and public, have contributed to the attitude of some

administrators in the district that they do not need to implement the mandate and that TAG students do not need services; they have also discouraged parents from coming forward.

A further written request was sent on January 5, 1996, but received no reply.

(ACC/43)

Finally, another letter to the Superintendent and Board written on August 20, 1996 expressing concerns about the new draft TAG policy also never received a reply. Among other issues, it expressed concerns about the failure of the draft to address existing problems with the process for identification, assessment, and timely communication with parents. (D/35-40)

These "process" issues have created the perception that the district does not place a high priority on implementing state law; administrators at every level have broken their promises or have failed to observe their own written policies and agreements. This has undermined our confidence in their assurances that improvements will be made in the future.

More important, prolonged delays result in an effective denial of services to our children. Frequently, complaint procedures are dragged out over the entire space of a school year; the next year the parent is expected to begin all over again and the district believes that it is beginning with a clean slate even though complaints are still unresolved. Complaints about events the previous year are dismissed as "historical in nature," even when they describe a chronic and continuing pattern of noncompliance.

3) Failure of the Superintendent to resolve these issues, when they were brought to his attention.

Finally, we are concerned about the letter that the Superintendent sent on January 8, 1997, which does not address many of the issues raised in previous discussions, is inaccurate in several respects, and appears to renounce some of the agreements that were just ratified in the new District TAG policy.

### **Belated planning**

The Superintendent claims that the TAG planning cycle coincides with the forecasting cycle, i.e. that student needs are projected for the following year based on the present year's performance. In our experience, this rarely occurs, except to the extent that every student is routinely assigned to a given classroom. Elementary and middle schools do not normally hold spring conferences with parents and students to plan their students' fall placements. We do agree that the high school forecasting process helps ensure that incoming students are appropriately placed in high school classes, but these meetings do not include parents and do not produce written TAG plans. None of our children has had a TAG plan which was written the previous spring, even when plans were specifically requested. When we meet our children's teachers in the fall, we often find that they do not know that the children are TAG students or that they have never seen their TAG folders.(1/45)

### **Problems with identification**

The superintendent has written that the number of TAG students is decreasing in part because "the criteria for academic/intellectual identification became more specific... the definition of potential has also been narrowed." At the time the law was revised we were told that the intent was to make the definitions more inclusive. We are not convinced that the definition of "potential" TAG students has been "narrowed" by the revisions to the TAG mandate. This revision appears to define "potential" for the first time, and the practical implications of that definition are untested. We welcome further discussion and clarification of this from the State Department of Education.

Furthermore, we are concerned about the implementation of the Frasier "TAB" model. DTAC strongly supported adoption of this model, in the belief that it would assist in identifying students whose ability to excel on standardized testing was impeded by language difficulties, learning disabilities, or economic or educational disadvantages. It should have increased the number of academic TAG students identified, but has, in fact, reduced the number at some schools. Some schools interpret the requirement for a number of identification methods as meaning that each student must clear each of many different hurdles to be identified. The superintendent has not described any specific methods being

taken to resolve this problem. At least one school, Applegate Elementary, with an enrollment of about 250 students, reported that it had no TAG students this fall.

### **Prohibition of advanced classes**

We were particularly concerned by the passage in the letter that states that "honors, advanced and accelerated classes are at odds with Board policy and District practice." There is in fact no Board policy opposing such classes, which are provided in some schools. Moreover, they are specifically included in the newly adopted District TAG policy which recommends "programs which facilitate group acceleration, such as honors, Advanced Placement, International Baccalaureate and college coursework."

The Superintendent claims that these "may appear fair in form but have the potential to discriminate in practice." Even if they did, state law concerning educational discrimination (581-21-045) specifically states that "these rules shall not ... supersede any specific statutory requirement for any educational program."

However, we do not accept the argument that advanced classes are discriminatory. The Superintendent offers no evidence whatsoever that such classes, which we believe should be open to any student that wishes to attempt them, might "discriminate in practice." Discriminate against whom? Students who do not wish to take them? Students who do not need this service? By such logic, all needs-based programs such as ESL, special education, speech therapy, free school lunches, and Title 1 programs would also become "unfair discrimination." Such logic would bar all mixed-age class designations that require mastery of a skill, such as intermediate or advanced P.E., drama, art, language and band classes.

Furthermore, the Superintendent himself admits that high schools do offer advanced classes. If advanced classes are prohibited by Board policy or if they are unfair and discriminatory, then why are they permitted at the High School level?

In fact, it is the existing district practice of rigid age grouping which may appear fair in form but is discriminatory in practice, because it denies to gifted children the same right that ought to be provided to all children: the right to learn new material at an appropriate pace. Confining gifted children to classrooms where they have mastered more than seventy percent of the content at the time they enter, where the level of repetition is typically totally inappropriate to their needs, and where they cannot fully develop their own skills, amounts to imprisonment rather than education. Doing so on no other basis than the year and exact date of their birth is indeed unfair discrimination. Two students born one day apart may receive very different educational services, regardless of

need. In the case of extremely gifted students the practice of rigid age grouping has been associated with severe clinical depression.

The superintendent has written that, "when a student's instructional needs are not being met, flexible grouping options may be employed... in some cases students are advanced to a higher grade...." We agree that this is now district policy. Unfortunately, in most cases, it has not been implemented.

#### **Misinterpretation of state law**

The superintendent is simply mistaken in stating that the state advocates "that TAG students receive appropriate instruction within the regular classroom." State law does not require, or even recommend that instruction be provided only in the classroom to which a student was originally assigned.

#### **Alternative schools as substitutes for services at neighborhood schools.**

The superintendent has written that "alternative schools" allow parents to provide for the interests and needs of their students. However, the superintendent prevented the School Board from even considering creating an alternative accelerated school designed to meet the needs of TAG students. It is difficult to see how alternative schools can meet the need for accelerated instruction any more effectively than an existing neighborhood school when none of them may specifically offer an accelerated curriculum. Moreover, none of them is permitted to give priority to TAG students in admission, or to describe itself as a school intended for TAG students.

However, parents cannot transfer their students from school to school at will: many alternative schools have waiting lists and select new students by lottery or are not admitting transfer students at all. It is often difficult for older students to find places. The high demand for these schools is in itself evidence that many parents are not satisfied with the instruction available at neighborhood schools, but there are not nearly enough alternative school openings to meet the need.(1/52-3) Furthermore, these alternative schools have requirements that some parents may not be able to meet; for example, many require that parents commit significant amounts of their own time to the school and all require that parents provide their own transportation.

We do believe that the creation of a school specifically offering accelerated instruction would provide a good option for many students, particularly those who are exceptionally gifted or are unhappy at their home schools, but we do not believe that the existence of alternative schools in any way relieves existing neighborhood schools from their responsibility to provide an appropriate rate and level of education to every one of their own students.

### **Insufficient resources**

The superintendent has implied that budget cuts and inadequate staffing are preventing him from providing appropriate TAG services. We agree that the staff in the TAG office are overburdened, but the superintendent himself is responsible for ensuring that the mandate is implemented and that the office is appropriately staffed. A conscious decision not to allocate staff is no excuse for noncompliance.

Budget cuts do not excuse the failure to provide advanced classes or to offer acceleration: teachers and classrooms cost the same amount per hour whether they are providing advanced or regular classes. In fact, since frustrated and bored students tend to take up a great deal of teacher time and energy, (and since frustrated and angry parents take up a great deal of administrative time and energy), developing more effective programs would probably result in a more productive use of existing resources. It is the refusal of the district to facilitate appropriate grouping and acceleration that has made the TAG program burdensome and expensive, not only for district administrators but also for classroom teachers.

### **Benchmark standards**

Finally, the superintendent has referred to the performance standards and benchmarks adopted under the School Reform Act. We believe this is irrelevant to the issues at hand. The district and the state are still creating assessments based on those benchmarks. Our children have waited long enough, they should not be expected to wait for several more years for full implementation of the Oregon Education Act. Even when the Act is implemented, we expect that TAG students will exceed the benchmarks, and will thus be entitled to the "special services" the Act envisions.

## Conclusion

We are appealing the superintendent's policies as reflected in his letter because it misstates State Law, misrepresents the existing state of affairs in the district, offers no new measures to address the concerns we have raised, and renounces certain provisions of the policy that the School Board adopted to resolve existing problems with the implementation of the mandate.

If the state is seeking reasonable guidelines to adopt in assessing implementation of the TAG mandate, we believe that the position paper developed over more than six months of regular discussion by DTAC could be adopted as a standard for appropriate service and implementation. At a minimum, School district administrators and the School Board have agreed that the newly adopted district Framework, an edited version of the position paper, represents a reasonable standard of appropriate implementation. Another standard for what might constitute a reasonable level of service and timeline for service delivery can be found in the rules concerning Special Education. If state law requires school districts to create written policies, we believe that that requirement creates a presumption that parents have a right to expect districts to make an effort to follow those policies.

We are requesting that the state address this issue, because we believe that misinterpretation, misunderstanding, and misrepresentation of the law are barriers to appropriate implementation by the district administration. In addition, we would appreciate a clarification of the requirements of the law in cases where the interpretation is in dispute. Before districts can implement a law they must understand it.

The superintendent's letter reveals that he is not giving a high priority to ensuring that every student within the district receives the appropriate instruction that is promised by state law. We believe that this is his most important responsibility.

### (4)Background: school district administration and authority

It may be helpful to outline the existing TAG administrative structure in the PPS. There are two separate TAG chains of command under the Superintendent. PPS has nearly 100 schools. These are organized into geographic "clusters" consisting of a high school, all the middle schools that "feed" into the high school, and all the elementary schools that "feed" into the middle school. Originally, each cluster had a "Director of Instruction."

A few years ago, the clusters were grouped into "Regions," headed by a "Region Director" and the position of Director of Instruction was eliminated.

The superintendent has delegated responsibility for implementation to the regions (clusters) and the individual schools. In 1993, each cluster was required to develop its own TAG implementation plan, developed by committees that included parents, teachers, and principals. However, when the clusters were reorganized into regions, the cluster plans were rewritten as regional TAG plans without further consultation with the original committees. Parents were not given an opportunity to comment on the new regional plans.

For example, the Cleveland Cluster had agreed to reconvene several months after creating its plan to evaluate its success. This never occurred, and no regional TAG meeting including parents has ever taken place in the region, despite requests from parents. This year, some of the regions were combined again under one director. The Cleveland Cluster, which had already become the Cleveland/Wilson Region now became the Cleveland/Wilson/Jefferson Region.

It is not clear whether the district believes that the new TAG policy supersedes the regional TAG plans, but schools are still being told that their building plans should conform to regional plans.

One Region Director was given responsibility for all the alternative schools, but each alternative program co-exists with a regular school in the same building and shares a principal. The result is that principals of these buildings may report to two different Region Directors.

In addition, there is a separate TAG department, headed by a Region Director. The TAG department advises the schools, and assists with testing and logistics, but does not have responsibility for ensuring that schools carry out the mandate. Implementation is the responsibility of the principals, who report to their Region Director(s), who report to the Superintendent. Although we have on occasion communicated our concerns to the School Board, the written PPS complaint process ends with the Superintendent, without providing for a further appeal to the Board.

Region Directors delegate responsibility for implementing the TAG plan to building principals. In turn, principals may delegate the task to building TAG committees (whose personnel and duties have not been clearly defined), TAG coordinators, and/or the site councils charged with implementing the Education Reform Act. In a few cases, the Local School Advisory Committees have also established TAG committees or debated TAG issues.

The result of this complex chain of authority, with responsibilities divided between the TAG department and the regions has been that parents who wish to suggest improvements or file complaints face an endless and confusing maze. Within each each school, authority



may be divided among a TAG coordinator, TAG committee, Leadership Team, site council, and principal. Within the District, authority is divided among the TAG department, the Region Director, the "curriculum specialists" within the Regional Office, and the Superintendent. In some cases it is not even clear who has written a given TAG plan, even when it has been signed by the student's teacher.

Requests to the school district that it clarify the chain of command and the appeals process have not adequately been addressed, and these problems greatly complicated earlier efforts to appeal. It is not clear how the district complaint procedure, with its timelines for each level of complaint, meshes with the appeal procedure outlined in the TAG mandate, with its forty-five day limit for completing the complaint process at the local level. It is also not clear whether appeal to a Region Director or the TAG department is sufficient to initiate the forty-five day process. It seems probable that PPS is the only district in the state with this intermediate level of administration between the principals and the Superintendent. It appears that there is no district process for addressing complaints that affect an entire group of students spread across the district, or even across a region. A parent who complained directly to the Superintendent was told to go back to the Region Director.

It is our position that the Superintendent remains responsible for the implementation of the TAG mandate, that the rules and procedures should be uniform throughout the district, and that the Superintendent cannot disclaim responsibility for implementation by delegating it to the Region Directors.

### History of this appeal

#### **Earlier efforts to address the problem**

Parents who wish to complain about systematic problems in implementation of the TAG mandate are handicapped by the fact that they have no formal method to identify or communicate with other TAG parents: the district maintains the TAG mailing list and takes responsibility for all mailings that must be sent to each TAG family. Parents can only discover other TAG parents through informal means. Parents who complained were often told that they were the only ones who were dissatisfied, or that they could not raise TAG issues beyond those that affected their own children individually.

Some of us have served on the District Talented and Gifted Advisory Committee (DTAC): the comments made during DTAC meetings, and the telephone calls that we have received from other concerned parents gave us every reason to believe that these problems are widespread throughout the district.

Shortly after Dr. Bierwirth became Superintendent in 1992, he met with a large group of TAG parents who expressed their frustration about the instruction provided to their children. So many complaints were raised that the Superintendent grew agitated. Further meetings with a smaller group of DTAC members took place in 1993 and 1994. At these meetings the parents pointed out that the district was in violation of the mandate in several respects. The district appointed a committee to look into the situation, but no effective steps were taken to ensure that schools actually provided appropriate instruction.

In June of 1995, a group of four parents in the Cleveland/Wilson Region sent a letter to Ms. Harriet Adair, the Region Director, raising concerns about the planning process, the delivery of services, and the failure to resolve complaints at the building level. This letter was followed by a long meeting on June 6, 1995, between Ms. Adair and the parents to discuss region-wide problems. One of these parents has left the country and has not been involved in any further discussions.

Mrs. Adair sent a written reply on August 23, 1995, stating that although she did not agree with all the suggestions in the letter, the principals would make improvements that addressed many of the concerns. She also promised that there would be a region-wide meeting for parents. This did not occur. The problems in our own neighborhood schools that led us to approach Ms. Adair have not been corrected.

### **Survey results**

On several occasions, members of DTAC have requested that the district survey parents to assess its TAG program. A survey was written, and the TAG department agreed to send it out, but the Superintendent ordered that it be killed at the last minute. (D/33, ACC/33, ACC/35) DTAC then decided to carry out its own survey by circulating a questionnaire to parents who were present at its best-attended meeting. The results of that informal survey do indeed suggest that our concerns are shared by other parents. After seeing that survey, the district has finally agreed to complete its own survey with a proper sampling procedure. However, we believe that the results of our own survey are sufficient to

demonstrate that the district is not providing appropriate services to a significant number of students.

For example, although 80% of 43 respondents received a Gifted Student Plan last year:

- Fewer than half of all families received a written plan by the end of October.
- Only about half of elementary school parents and one-fifth of middle school parents participated in developing the plan.
- Only a quarter of elementary school parents and one middle school parent were satisfied with a plan.
- Only 14% of elementary school parents and no middle school parents felt the plan was being carried out.
- Only 7% believed that it addressed their child's rate of learning.
- The overwhelming majority of parents felt that their child was not being appropriately challenged in one or more subjects.

The comments that parents added to the form, if anything, indicated an even higher level of dissatisfaction, because even when parents indicated that a given option was available they commented that it was inappropriate, insufficient, or infrequent.

#### **Position Paper and adoption of new District policy**

DTAC also established a steering committee to write a position paper listing the measures that we felt were necessary if our children were to receive appropriate instruction. The position paper was unanimously adopted at a meeting of the full DTAC. This was then edited by the TAG department and the edited version was considered by a subcommittee of the School Board. The subcommittee presented a draft of this version to the full School Board this June (1996).(PP/3-19) The Board approved the draft. It was then considered by the Superintendent and the Region Directors, who agreed to the policy and who also agreed on a schedule for implementation.(PP/20-27) There is thus widespread agreement within the District that the new policy represents a reasonable standard for appropriate implementation of the mandate. It was agreed that instructional services would begin at the start of the school year, and that draft plans would be sent home for parents to review by October 1.(PP/27-8)

## Complaint Process

It became evident this fall that many schools had failed to comply with the schedule for implementation, and that many TAG students were still not receiving appropriate instruction. It was this problem that generated the current complaint.

In compliance with the District complaint procedure, a parent brought problems with specific schools to the attention of the Region Director, in a letter dated October 11, 1996, reminding her that the problems raised two years earlier still remained. However, we feel that the problems are prevalent throughout the district, and are not confined to a single school or a single region. For example, a parent from another region did not receive a Gifted Student Plan until December (1/15-16). At a December DTAC meeting, it appeared that a significant number of the parents attending still had not received plans and several expressed dissatisfaction with their children's programs.

When the Region Director failed to resolve the concerns raised in this letter, the parent sent a letter dated October 18 to the Superintendent, noting that the Region Director had had similar concerns brought to her attention in writing and at a meeting with a group of parents eighteen months earlier, and these problems were still unresolved. We believe that this letter initiated the forty-five day waiting period for completion of the process at the local level.

The letter requested that the Superintendent reply by listing the steps he intended to take to ensure that every student within the district received the appropriate education guaranteed under state law and that every school in the district complied with the law and the school district's own written policies.

As a result of this letter, a meeting was arranged that included the Chair of DTAC, Marilyn Johnson; the parent who signed the complaint, Margaret DeLacy; the TAG director, Sue Parker; and the TAG administrator, Amy Welch. Neither the Region Director nor the Superintendent was present. (A/17-18) The parents at the meeting requested a written response to these concerns from the Superintendent.

At the meeting with Mrs. Parker, Dr. DeLacy took in three virtually identical plans: the plan written for her daughter last year (1995-6) which she had refused to sign and had objected to at length and in writing, the plan written for her daughter this year (1996-7), which she had also refused to sign, and a plan for another, very different child in the same class, whose parent had also refused to sign. In addition, she brought in correspondence with the school on this issue dating back to 1994, showing a clear pattern of noncompliance.

Mrs. Parker agreed that these plans did not represent acceptable district practice and promised that she would take steps to correct the situation at that school. However, the situation has not been corrected; although the school has initiated a process to develop "pilot" plans for some students next year, Dr. DeLacy has not received a revised plan, despite follow-up calls to both Mrs. Parker and the TAG coordinator at the school. More important, no steps have been taken to improve the programming at that school.

On October 31, the Superintendent unexpectedly telephoned Dr. DeLacy to discuss her concerns. She explained to him that she was not prepared for such a call, but discussed some of her concerns and made some suggestions for improving implementation. She offered to send him information concerning research on "best practices" for gifted students but he said he was too busy to read such materials. She again requested a written reply. This reply was not received until January 8, and, instead of resolving the issue, only confirmed the impression that the Superintendent does not understand the TAG mandate and is not seriously committed to implementing it. It is on that basis that we are now appealing to the State.

Our appeal is on behalf of all the gifted children in our district. We are appealing because we believe that the problems that we have discussed above are not limited to our own children, individual teachers or schools, or a single region, but that they are pervasive throughout the district.

Most families cannot afford to send their children to private school, or to keep one parent at home to educate their children full time. The law requires that all children attend school; if they are not in school, their parents may be held liable for negligence. The only legitimate reason for compelling children to remain in school is their need for education. If students are consistently assigned to classes where they already know nearly everything that is to be taught, if they are not permitted to learn while they are in school, nor provided with appropriate instruction, they are being confined without due cause. It is simply wrong to treat gifted children as unpaid teachers' aides, to expect them to teach themselves, or to confine them in a system that impedes their progress instead of respecting their diverse needs and abilities.

Our children entered school ready to learn. We believe that they should enter schools that are ready to teach them, without having to wait months, years, or even decades, for appropriate instruction to begin. We are asking that our children, like all children, receive the appropriate instruction that is promised to them by state law.