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Due Process Hearing

B.M. (#6652/05-06 AS)

Date of Birth: xx/xx/xx

Date of Hearing: August 1, 2006

Open Hearing

Parties to the Hearing

Parent

Mr. and Mrs.

Representative

pro se

Transcript Received

August 7, 2006

Date of Decision

August 14, 2006

School District

Ambridge Area

Representative

Jocelyn Perry, Esq.

Hearing Officer

David Y. K. Lee

II. BACKGROUND

Student is a xx-year-old student in the Ambridge Area School District (hereafter District). He was identified as a Mentally Gifted student toward the end of his first grade year. During the 2005-2006 school year, Student was a third grade student receiving Gifted Support (hereafter GS) at the Elementary School (hereafter Elementary). The parents were dissatisfied with the GS program and requested a due process hearing. Furthermore, the parents were also of the opinion that Student should skip fourth grade and be placed in fifth grade for the 2006-2007 school year.

III. FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, was a third grade student in the District during the 2005-2006 school year. (S.D. #2.)

2. At the beginning of third grade, Student continued in GS with a Gifted Individualized Education Program (GIEP) developed in second grade.¹ (N.T. 33-34, 41. S.D. #1.)

3. The GIEP contained two annual goals focusing on problem-solving and written communication skills. (N.T. 36. S.D. #1 @ 2.)

4. The GIEP was carried over into third grade where it was delivered in an inclusive setting for about three months. (N.T. 47, 56, 60-61.)

5. Subsequently, it was reverted back to a pull-out model for two hours per week in December, 2005. (N.T. 36-37, 57.)

6. The District stipulated that Student's third grade GIEP was not revised until four months after the anticipated revision date of October 24, 2005. (N.T. 8-10. S.D. #1 @ 6 & #2 @ 2.)

¹ The date on p. 33 line 24 should read 2004 and not 2005. See p. 34 line 7 and p. 41 line 7.

7. Student's revised third grade GIEP contained annual goals in mathematical problem-solving, creative writing, and completion of the fourth grade Reading curriculum.

(N.T. 38-39. S.D. #2 @ 4-7.)

8. Student went to the fourth grade classroom for Reading instruction in the middle of the third marking period. (N.T. 75-76, 96, 105-106. S.D. #6 & #7.)

9. Student did not score sufficiently high on his Mathematics assessment to be considered as having mastered the fourth grade curriculum. (N.T. 12-15, 42-44, 80-81.

S.D. #7.)

10. A request for Due Process Hearing was received in the Office for Dispute Resolution on June 7, 2006. (ODR file.)

11. A Due Process Hearing was held on August 1, 2006.²

IV. ISSUES

² The session was rescheduled from July 24th due to a scheduling conflict.

1. Did Student receive appropriate GS during his 2005-2006 third grade year?

(N.T. 5.)

2. Is Student entitled to compensatory education? (N.T. 7.)

3. Is the District's proposed placement in fourth grade with GS for the 2006-2007 school year appropriate? (N.T. 6.)

V. DISCUSSION AND CONCLUSIONS OF LAW

Student was evaluated toward the end of his first grade year upon parent request to determine his eligibility for the GS program. He was determined to be so eligible and the question of his eligibility is not at issue. This Hearing Officer notes the differential³ between the obtained Verbal Comprehension Index and Perceptual Reasoning Index when Student was evaluated with the Wechsler Intelligence Scale for Children - Fourth Edition. (S.D. #5.)

³ VCI 108, PRI 133, VMI 129, PSI 118, FSIQ 128. (S.D. #5 @ 1.)

2005-2006 third grade

Student's GIEP was developed on October 25, 2004,⁴ and carried over into third grade. (F.F. #2.) It was to be in a pull-out format with a group of around 10 students. (N.T. 59-60. S.D. #1 @ 4 & 5.) The format, however, was changed during the first three months to that of an inclusion model with the GS teacher circulating in the regular education classroom. (F.F. #4.) It was not clear as to how the GIEP goals were assessed when it was changed from a pull-out to an inclusion format. (N.T. 46-47, 56-57, 58-59.) The parents opined that the goals as written were not specific to Student's needs and confusing as to how it was implemented in third grade. (N.T. 11, 47-52.) This Hearing Officer agrees.

The GIEP of each gifted student shall be based on the GMDT's recommendations and shall contain the following:

⁴ In second grade, GS was in a pull-out format for one hour per week. (N.T. 59.)

- (1) A statement of the student's present levels of educational performance.
- (2) A statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report.
- (3) A statement of the specially designed instruction and support services to be provided to the student.
- (4) Projected dates for initiation and anticipated duration of gifted education.
- (5) Appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning outcomes are being achieved.
- (6) The names and positions of GIEP team participants and the date of the meeting.

22 PA Code §16.32(e)

The GIEP did not provide the requisite information on Student. A reference to standardized percentile scores does not translate to the actual levels of achievement within curriculum areas. The annual goals do not reflect or reference Student's 'average verbal reasoning skills and very superior nonverbal reasoning skills'. (N.T. 34. S.D. #1 @ 3.)

It is uncertain how the study, specifically, of dinosaurs was chosen for Student. (N.T. 36.

S.D. #1 @ 5.) Student's progress in the annual goals, if indeed they were measurable, was not documented. Student's GIEP was not revised until February 27, 2006. (F.F. #6.)

There might have been circumstances resulting in the delay. If so, it would have been appropriate for the GIEP team to make provisions for an interim GIEP. Without such, it cannot be ascertained how GS was provided from October 25, 2005 to February 26, 2006. Simply stated, Student did not have a GS program without a GIEP. The District stated that the GIEP was continued to be implemented. (N.T. 34.) Even so, did Student continue with the dinosaur project and was it still relevant? It seems, however, to have changed from dinosaur to ladybugs. (N.T. 37.) The GS teacher testified to the fact that she was not aware if there was a substitute teacher on occasions when she was absent.

(N.T. 52-53, 61.) This lack of knowledge about the students', and specifically Student's, program is indeed surprising. The only reasonable conclusion is that there was no continuity of GS instruction and assessment.

When Student's GIEP was revised on February 27, 2006, it is noted that the Present Levels of Educational Performance section (hereafter PLEP) is identical, word for word, to the previous PLEP. (S.D. #1 @ 3 & #2 @ 3.) After almost two years of instruction in GS, current descriptors of Student are expected. There is little, if any, relevance in referencing readiness information from Kindergarten. Nevertheless, the annual goals show more focus in the areas of mathematics and written expression. (N.T. 38-39. S.D. #2 @ 4-6.) Although the general statement of '...problem-solving techniques correlating with various grade levels' would be difficult to identify in terms of skills and measurement, Student apparently was provided with some acceleration in the Mathematics curriculum. (N.T. 77-78. S.D. #7.) Also, the goal of 'will work toward the completion of the fourth grade Reading curriculum' was implemented by having Student go to the fourth grade classroom for Reading instruction. (F.F. #8.) It is curious, however, that the fourth grade teacher did not have the awareness that Student was in her classroom as part of his GIEP. (N.T. 105-106.)

It is the conclusion of this Hearing Officer that there was a denial of FAPE for a large portion of the 2005-2006 school year. From the beginning of the school year to October 24, 2005, the GIEP was inappropriate due to significant flaws in accordance with 22 PA Code §16.32(e) and in its implementation. Subsequently, Student was without a GIEP until February 27, 2006. A GIEP is a written plan describing the education to be provided to a gifted student.⁵

⁵ See 22 PA Code §16.31(a).

Without a GIEP, Student was not provided with FAPE. For the remainder of the 2005-2006 school year, Student made meaningful progress in Mathematics and Reading with GS and enrichment. (N.T. 80-81, 93-94.) Procedural errors and flaws in the 2006 GIEP did not rise to the level of a denial of FAPE. The District is admonished to recognize the importance of teacher input in the development of a GIEP. (N.T. 19, 109-110, 117-118.) Furthermore, there needs to be more transparency and coordination between the pull-out GS and the enrichment components within the regular classroom. (N.T. 52-53, 61, 105-106.) The GIEP is an operational document in the agreed upon instructional goal areas.

Compensatory Education

Compensatory education is a remedy for a denial of FAPE for a gifted education program.⁶ For the period in question, GS consisted of two hours of instruction per week. From the beginning of the school year to February 27, 2006, there were 115 days or 23 weeks of school. (H.O. #1.) The calculus for compensatory education is therefore 23 weeks x 2 hours per week = 46 hours. The 46 hours of enrichment activities are to be provided outside of the regular school day.

2006-2007 school year

Districts may use administrative and instructional strategies and techniques in the provision of gifted education for gifted students which do not require, but which may include, categorical grouping of students. The placement shall:

...

(3) Provide opportunities to participate in acceleration or enrichment, or both, as appropriate for the student's needs. These opportunities shall go beyond the program that the student would receive as part of a general education.

⁶ Centennial School Dist. V. Dept. Of Educ., 517 Pa. 540, 539 A.2d 785 (1988); Brownsville Area Scho. Dist. V. Student X., Pa. Commonwlth., 729 A.2d 198 (1999).

The parents opined that Student's program should be accelerated. For the parents, acceleration means Student should skip fourth grade and be a fifth grade student for the upcoming 2006-2007 school year. The disagreement between the parties seemed to focus on the results of the tests that Student took to determine his achievement in mathematics.

(F.F. #9.) The understanding was if Student had scored above 90%, he would then be able to be in fifth grade for mathematics. It was presumably inferred that Student would be placed in fifth grade for Reading since he was already in fourth grade for such last year.

The parents felt that Student can be tutored in the areas that he missed and can then take the test again after tutoring. (N.T. 18, 72.)

The District opined that, although Student indeed did very well in his academics, his overall maturity factor is a concern for him to be with an older age group of students.

Student's teachers referenced factors such as frustration, self-motivation. (N.T. 46, 58, 79-80, 91-92, 96-99.) These were, however, general conclusions without specific anecdotal record in terms of frequency, or evaluation data. The District considered appropriate for Student to be enriched and accelerated as a fourth grade student. (N.T. 45, 64.)

The parents' desire for Student to achieve at a higher level is understandable. However, their perspective of specifically tutoring Student in order for him to retake a test within a short period of time would suggest a misunderstanding of the purpose of an achievement measure. (N.T. 18.) The implicit desire to push Student to achieve higher may not necessarily be beneficial to his overall development. The acknowledgment of the possible need for intervention as a result of adverse consequences cannot be viewed as a positive approach to Student's educational programming. (N.T. 119.)

Although both parties presented limited evidence, it is the opinion of this Hearing Officer, on balance, that the parents did not meet the burden of proof of appropriateness in having Student skip fourth grade for the 2006-2007 school year as part of his GIEP. Student is a high achieving student among his cohorts. Indications and expectations are that he should continue to do well in school. There is no mandate under 22 PA Code §16 for the District to maximize Student's potential or to provide a program to make the best use of his abilities.⁷ Furthermore, it is not within the purview of this Hearing Officer to determine the adequacy of the District's policy in relation to grade advancement within the regular education curriculum. (N.T. 64.)

⁷ Shanberg v. Commonwealth of Pa., 426 A.2d 232 (Pa. Commonwealth 1981).

Finally, in order for the GIEP team to have a fuller understanding of Student's strengths in the development of individualized goals, the District should conduct a gifted multidisciplinary evaluation in accordance with 22 PA Code §16.22. The GIEP shall then be revised accordingly.

Therefore, it is hereby ordered:

VI. ORDER

The LEA is ordered to take the following action:

1. The District is to provide Student with 46 hours of compensatory education in enrichment activities outside of normal school hours. The nature of the activities are to be determined in consultation with the parents. The cost of the activities is not to exceed the equivalent of 46 instructional hours.

2. The District is to conduct a gifted multidisciplinary evaluation of Student within 15 calendar days from the start of school. (see 22 PA Code §16.22(3).) The Gifted Written Report and GIEP shall be completed during the subsequent 30 calendar days.

The LEA is not ordered to taken the following action.

1. The District is not ordered to place Student in fifth grade for the 2006-2007 school year.

___August 14, 2006___
Date

___David Y. K. Lee___
David Y. K. Lee
Hearing Officer