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Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: CN

Date of Birth: XX-XX-XXXX

Date of Hearing: January 13, 2010

OPEN HEARING

ODR Case 00574-09-10-LS

Parties to the Hearing:

Ms.
Mr.

Mrs. Connie Fiorante
Neshannock Township School District
3834 Mitchell Road
New Castle, PA 16105

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

James Clark, Esq.
277 Millwood Road
Lancaster, PA 17603

Jonathan Solomon, Esq.
421 E. Moody Avenue
New Castle, PA 16101

January 13, 2010

January 27, 2010

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

“Student” is a 7-year old student (“student”) residing in the Neshannock Township School District (“District”) who has been identified as gifted under the provisions of 22 PA CODE §§16.1-65 (“Chapter 16”). Parents claim that the District has denied the student an appropriate gifted education due to alleged failures in the student’s gifted individualized education plan (“GIEP”).

ISSUE

Has the District provided an appropriate gifted education plan to the student?

If not, what remedy/remedies are owed to the student?

STIPULATIONS

The parties stipulate that the GIEP of December 2008, entered into the record as parents’ exhibit #3, does not meet the requirements of 22 PA Code §16.32(d).

FINDINGS OF FACT

1. The student entered 1st grade in District schools in the fall of 2008. (Parents' Exhibit ["P"]-2, P-4).
2. In the fall of 2008, the student was evaluated for giftedness. A gifted written report ("GWR") was issued in November 2008. (P-2).
3. The GWR found that the student's full-scale IQ was 136, placing "student" in the very superior range of intellectual functioning. "Student" was identified as a student qualified to receive gifted education. (P-2).
4. A GIEP was drafted in December 2008. The parties stipulated that this GIEP was inappropriate, in that the GIEP did not meet the requirements of 22 PA Code §16.32(d). (See Stipulation above; P-3).
5. The December 2008 GIEP contains four goals. In their entirety, the goals read (1) "basics of Spanish", (2) "mathematics", (3) "literature review", and (4) "technology and other assignments throughout the year". There was no specially designed instruction in the GIEP. (P-3)
6. The GIEP went into effect in January 2009. The student met with the District's gifted education teacher once per week for 1.5-2 hours. (Notes of Testimony ["NT"] at 48, 88-89, 103).
7. By February 2009, the student's mother requested that she be accelerated into 2nd grade. The school-based team- her 1st grade teacher, the gifted support teacher, and administrators--were not

- enthused with the request but met to discuss the request. In February 2009, after six weeks of gifted services, the school-based team agreed that the student would be accelerated to 2nd grade. (P-4, P-5; NT at 103, 154-155, 183-185).
8. The student began 2nd grade in February 2009 and remained in 2nd grade through June 2009. (P-5; NT at 126-127).
 9. The student continued to meet weekly with the gifted support teacher. (NT at 59, 88-89).
 10. The student, having missed the second half of the 1st grade curriculum and the first half of the 2nd grade curriculum, transitioned with some degree of complication into the 2nd grade curriculum. By the end of 2nd grade, however, “student” was in a position to begin 3rd grade. (P-5; NT at 136-137).
 11. In effect, then, the student completed 1st and 2nd grade over the course of the 2008-2009 school year.
 12. The student began the 2009-2010 school year in 3rd grade. (P-6).
 13. The gifted support teacher met with the student on a similar schedule in 3rd grade. (NT at 88-89).
 14. In the fall of 2009, the student’s mother wondered about the student’s education in the 3rd grade classroom. (NT at 84-85, 233-238).
 15. In October 2009, the student’s GIEP was revised. (P-7).

16. In November 2009, the student took the 3rd grade math final that she would normally have taken at the end of the school year. She earned an 86% on the final exam (43 out of 50). (P-8).
17. The student did not return from the holiday break in January 2010. At the time of the hearing, the student had enrolled in a private school. (NT at 92-93).

DISCUSSION AND CONCLUSION OF LAW

The provision of a gifted education is governed by Pennsylvania law as set forth in 22 PA CODE §§16.1-65. The purpose of gifted education is to provide gifted education to each identified student based on the unique needs of the student including acceleration and/or enrichment programs and services according to the student's intellectual/academic needs and abilities.¹

In this case, the parties recognize that the GIEP in effect for most of the student's educational programming is inappropriate. (FF 4). Without concrete, measurable goals, there is nothing to guide the student's gifted instruction. Without any specially designed instruction, there is no gifted instruction. (FF 5).

The District argues, however, that the student's education program was enriched, even if it was not guided by a GIEP. The result, it

¹ 22 PA CODE §16.2.

continues, is that the student received an appropriate gifted education notwithstanding a flawed GIEP.

The student made progress. Indeed, “student” completed with strong grades the requirements of two grades levels in one year. (FF 7, 8). After having been instructed in the 3rd grade curriculum for approximately ten weeks, “student” scored an 86% on the 3rd grade math final exam. (FF 16). The record clearly supports the generalized finding that the student has a remarkable intellect and that “student” made academic progress.

The larger question, though, is whether any of this was the result of specially designed gifted instruction. Here, the answer is “no”. In effect, the District “bumped into” the student’s progress. Because of the recognized flaws in the GIEPs (FF 4, 5, 15), nothing in the GIEPs was guiding instruction (the goals are not individualized, concrete, or measurable; for example, “mathematics” is not a goal). There was no specially designed instruction at all. Whatever progress there was for the student was not made under the auspices of any GIEP.

Accordingly, the record supports the conclusion that the District did not provide an appropriate gifted education to the student. In the 2008-2009 school year, or in the 2009-2010 school year.

Parents claim remedies for compensatory education. The remedy of compensatory education is governed primarily by B.C. v. Penn Manor School District, 906 A.2d 642 (Pa. Cmwlth. 2006), where the

Pennsylvania Commonwealth Court held that an award of compensatory education in gifted education cases is not to be calculated on an hour-for-hour calculation of denial. Instead, the amount of a compensatory education award must be reasonably calculated to bring a student to the position that he/she would have occupied but for the school district's failure to provide an appropriate program.

The District's acceleration of the student (engendered by the student's mother: FF 7, 14) would not have proceeded any quicker had an appropriate GIEP been in place. But the student may well not have had struggles when "student" accelerated from 1st to 2nd grade. (FF 10). And it may well be that the student might have been selectively accelerated—for example, in mathematics where the student performed very strongly on the 3rd grade final exam when she took it in November. (FF 16).

It is the considered opinion of this hearing officer that the student would recoup most of the lost ground in "student" achievement with approximately three hours of instruction weekly for the course of what amounts to a school year.² Therefore, 108 hours of compensatory education will be awarded.

The provision of compensatory education must be provided within the District's programming, curriculum or other academic/extra-curricular offerings, although its use is under the control of the parent

² Three hours per week for a 36-week instructional period = 108 hours.

and may be used for services after school and/or during summers.

Centennial School District v. Pennsylvania Department of Education, 539

A.2d 785 (1988).

CONCLUSION

The District denied the student an appropriate gifted education from the period roughly from January 2009 through December 2009. The student is entitled to compensatory education.

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ORDER

In accord with the findings of fact and conclusions of law set forth above, the student is awarded 108 of compensatory education.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

January 27, 2010