

PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

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This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

DECISION

Child's Name: K.S.

Date of Birth: [redacted]

Date of Hearing: February 4, 2015

OPEN HEARING

ODR No. 15770 / 14-15 KE

Parties to the Hearing:

Representative:

Parent[s]

Megan Halter, Esq.
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Solanco School District
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Date Record Closed:

February 13, 2015

Date of Decision:

February 20, 2015

Hearing Officer:

Shawn D. Lochinger, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student currently resides in the Solanco School District (the "District"). The Student was originally deemed a gifted student by [another] School District in 2011 due, in large part, to the Student achieving an IQ score of 132. The Student then moved to [another state] and was

educated there as a gifted student during the 2012/2013 school year. The Student was educated in a specialized Creative Learning School (also in [the other state]) during the 2013/2014 school year. The Student returned to Pennsylvania and enrolled in the School District for the 2014/2015 school year. Because the Student had previously been recognized as gifted, the District agreed to place the Student in the gifted program at [the District] while evaluating the Student to determine the Student's then current status and needs. The evaluation, however, revealed an IQ of 104. Because of the precipitous drop in scores, the District performed a second IQ evaluation on the Student using a different test. In the second assessment, the Student's IQ was found to be 108. Based upon this testing, as well as achievement testing, teacher input, and classroom observation, the District recommended that the Student be removed from the gifted program. The Student's Parent disagreed and asked for a Due Process hearing in order to keep the Student in the District's gifted program. The issue thus before the Hearing Officer in this case is whether the Student remains eligible for the District's gifted program. Based upon the facts, evidence, and law presented below, I will find that the Student is eligible to continue in the District's gifted program.

ISSUE

Is the Student eligible for the District's gifted program?

FINDINGS OF FACT

- 1) The Student originally resided in [another] School District (District Exhibit ("S") – 1) (Notes of Testimony ("NT") at pages 124-125).
- 2) In June of 2010, the Student was referred for a gifted evaluation (S-2).
- 3) On June 8 and June 13, 2010, the Student was tested using the Wechsler Intelligence Scale for Children – Fourth Edition ("WISC-IV") (S-2) (NT 153, 154, and 156).
- 4) The June 2010 WISC-IV reported that the Student had a full scale IQ of 132 (NT 127) (S-2) (S-3).

- 5) In May of 2011, Student was subjected to a neuropsychological evaluation, which culminated in a neuropsychological report dated June 24, 2011 (NT 126 and 147) (S-1).
- 6) As part of the neuropsychological evaluation, the Student was given the WISC-IV *Integrated* assessment. The Student achieved a full scale IQ score of 135 on the WISC-IV *Integrated* (S-1).
- 7) On August 22, 2011, a Gifted Written Report (“GWR”) was issued by the [other] School District indicating that the Student was eligible for the [other] School District’s gifted program (NT 124 and 126) (S-2).
- 8) Subsequently, the [other] School District issued a GIEP for the Student that provided for gifted support services for the Student beginning on September 22, 2011 (NT 125, 146-7, 167, and 169) (S-3).
- 9) The Student moved to [another state] Public Schools for the 2012-2013 school year (NT 52 and 53) (Parent’s Exhibit (“P”) – 11).
- 10) Using the 132 full scale IQ reported on the GWR/GIEP issued by [the previous] School District, the [other state] Public Schools found the Student to be eligible for gifted services in [redacted other state] for the 2012-2013 school year (P-11).
- 11) [The other state’s school] developed an Exceptional Student Educational Plan for the Student dated September 12, 2012 (P-11).
- 12) The Student was educated in the [other state] Public Schools during the 2012-2013 school year (P-11 and P-12).
- 13) The Student attended [a] Creative Learning School ([Redacted] “Center”) during the 2013-2014 school year (NT 53 and 54) (P-10).
- 14) The Student’s final evaluation (grade report) from Center (dated June 2014) is very good. The noted areas of relative weakness (such as the Student’s preparedness for class and the

Student's attentiveness when in the classroom) are generally (although not exclusively) behavioral in nature (P-10).

15) The Student moved back to Pennsylvania and to the School District for the start of the 2014-2015 school year (NT 23, 81, and 141).¹

16) In this regard, Student's mother signed a document dated July 31, 2014 to release certain educational records to the District from [the other schools] (P-13).

17) For the start of the 2014-2015 school year, the District agreed to initially place the Student in the District's gifted program (NT 22, 24, 36, 47, 48, and 71).

18) However, the District also indicated that it would perform a full evaluation on the Student to determine, *inter alia*, the Student's "academic development" (NT 29, 97, and 125) (S-4).

19) A Permission to Evaluate Form was thus issued and was signed by the Student's mother on September 3, 2014 (NT 118, 119, and 149) (S-4).

20) While awaiting the results of the evaluation, a GIEP meeting was held on September 17, 2014 to develop an educational plan for the Student (S-5).

21) Using prior records, the GIEP Team found the Student to have strengths in science, reading, and writing and developed a GIEP that placed the Student in the District's gifted program (S-5).

22) The Student presently attends the gifted program once per week for approximately 80 total minutes per session (NT 24, 36, and 50).

¹ It should be noted that this was the Student's fourth different school in four years.

- 23) The District's psychologist testified that she reviewed the records and previous testing for the Student, including the two prior IQ tests (from 2010 and 2011) (NT 125 – 127, 165, and 167).
- 24) As part of her evaluation, the District psychologist tested the Student using the WISC-IV on October 24, 2014 (NT 127, 154, and 158) (S-7).
- 25) The Student's full scale IQ score from the District's 2014 WISC-IV assessment was 108 (NT 127) (S-7).
- 26) Because of the large difference in the score as compared to the Student's earlier IQ scores, the District's psychologist gave the Student a second IQ test (NT 153 and 160) (S-7). That test, the Stanford Binet-5 ("SB5") was administered on October 29, 2014 (NT 153) (S-7).
- 27) The Student's full scale IQ score on the SB5 was 104 (S-7).
- 28) Other testing showed that the Student was performing at an "average" level for the Student's grade. Specifically, classroom diagnostic testing showed that the Student was "average" in math, science, and language arts (NT 138, 139, 159, 163, and 164) (S-6 and S-7).
- 29) The psychologist's report thus concludes as follows: "In total, based on qualitative reporting, behavioral assessment results, and intellectual and academic achievement assessment results, it is suggested that [Student's] current intellectual and academic development are appropriately matched to [Student's] current grade level curriculum. As a result, it is suggested that [Student] is not a gifted student and [Student] is not in need of Specially Designed Instruction. It is recommended that [Student] continue within the general education programming" (S-7).

- 30) Parent was told (for the first time) at a meeting² that the Student was no longer eligible for gifted services (NT 22, 23, 28, and 29).
- 31) A Notice of Recommended Educational Placement (“NOREP”) was issued on November 3, 2014 indicating that the Student was “not eligible...for gifted support services” (NT 145) (S-8).
- 32) Student’s grades for the first half of the school year were mostly A’s, with only several exceptions (NT 44, 90, and 109) (S-10) (P-4).
- 33) Student was on the Honor Roll during the first marking period (P-5).
- 34) Student admits to not working as hard as possible due to the fact that it is “easy” to get “A’s” and “B’s” (NT 36 and 37).
- 35) Student claims to be “bored” and uninterested in some classes (NT 21 and 34).
- 36) Student earned 55 of 68 points (81%) on the first marking period project in the Student’s gifted class (NT 93 and 99) (P-1).
- 37) Student earned 45 of 48 points (94%) on the second marking period project in the Student’s gifted class (NT 94 and 99) (P-1 and P-2).
- 38) There are written comments from the Student’s teachers in the evaluation report that indicate that the Student has “strong problem solving skills,” is a “strong writer,” has “intense interests of a gifted student,” and shows “higher level thinking skills” (S-7).
- 39) Other written comments from the Student’s teachers, however, indicate that the Student is not “a leader,” “does not perform at an exceptionally high level,” and “will get off task” (S-7).
- 40) Testimony from two teachers indicated that the Student performs in the “high average” range (NT 78 and 84).

² The record does not appear to have a specific date for the meeting, although the meeting most likely occurred on November 3, 2014, as that is the date on the NOREP that appears as Exhibit S-8.

41) Testimony from the Student's gifted teacher indicated that the Student performed at essentially the same level as about half of the teacher's other gifted students (NT 95 and 96).

DISCUSSION AND CONCLUSIONS OF LAW

Gifted education in Pennsylvania is governed by Pennsylvania law as set forth at 22 Pa. Code §§ 16.1 – 16.65 (“Chapter 16”). The purpose of Chapter 16 is to provide an education to each identified student that is based upon the unique needs of that student. This education can include acceleration and/or enrichment programs and services that are rendered according to the student's intellectual/academic needs and abilities.³

Chapter 16 also provides for certain procedural safeguards as well as an obligation on the part of the school district to identify an appropriate program for students who are gifted and need specially designed instruction beyond that which is provided in the regular education program. Substantively, school districts must provide gifted students “with a plan of individualized instruction (an ‘appropriate program’) designed to meet ‘the unique needs of the child.’” *Centennial School District v Department of Education*, 517 Pa. 540, 539 A.2d 785 (1988). However, and importantly, a school district's “obligation is not without limits....[T]he instruction to be offered need not ‘maximize’ the student's ability to benefit from an individualized program.” *Id.*

Although Chapter 16 does not speak to the burden of proof in gifted due process proceedings, it has been clearly determined that said burden lies with the party which initiated the request for due process. *E. N. v M. School District*, 928 A.2d 453 (Pa. Commw. 2007). In this case, then, the burden of proof lies with the Parent. Finally, it is the responsibility of the Hearing Officer to make credibility determinations and to assess the weight to be accorded the evidence. *E. N.* at 461. The specific credibility determinations made at this hearing, as relevant, are discussed below.

³ 22 Pa. Code § 16.2.

The Parent in this matter has brought one issue to the attention of the Hearing Officer. Specifically, the Parent's Complaint, as well as the agreement of the parties at the start of the hearing, indicated that the sole issue in this case is whether the Student is eligible to continue in the District's gifted program. I use the word "continue," because the Student is currently participating in the gifted program through a once per week eighty (80) minute pull-out program. The District contends that the Student is not eligible to continue in the program, while the Parent argues that the Student is eligible and should remain in the program.

The Student in this matter has a rather extensive educational history. The Student was originally referred for a gifted evaluation in the [other] School District late in the 2009-2010 school year. The summer following the completion of that school year, the Student was evaluated using the WISC-IV. The Student obtained a full scale IQ score of 132 on the test. The record does not reflect exactly why there was then a delay of over one year, but the [other] School District eventually issued a GWR in August of 2011. In the interim (and possibly this is the reason for the delay), the Student was subjected to a neuropsychological evaluation at the Children's Development Center ("CDC") in [Redacted]. As part of that evaluation, the Student was tested (using the WISC-IV *Integrated* test), and attained a full scale IQ of 134. Other issues, not related to the Student's giftedness, were also mentioned by the CDC Report dated June 24, 2011. [The other school district] did not appear to use the CDC report, but found the Student to be eligible for gifted services for the 2011-2012 school year presumably based on its own testing.

The Student thus received gifted services from the [other] School District under a GIEP for the 2011-2012 school year. The Student, however, was moved to [another state] at the conclusion of the 2011-2012 school year. In [that state], the [school] reviewed the [other school district's] testing and agreed to recognize the Student as eligible for gifted programming. The Student was thus educated under an Exceptional Student Education ("ESE") Education Plan ("EP"). The record is not clear where the services were provided during the 2012-2013 school year. However, it is clear that the Student attended the [Redacted] Center For Creative Learning School during the 2013-2014 school year. For the present matter, the key is that the Student was recognized and educated as a gifted student continuously from the 2011-2012 school year through the end of the 2013-2014 school year by both the [other] School District and the Student's school(s) in [the other state].

Importantly, this continued when the Student moved (again) and was enrolled in the School District for the 2014-2015 school year. The Student was placed into the District's gifted program due to the fact that the Student was previously recognized as gifted by both [other schools]. However, the District also informed the Parent that it would perform its own evaluation on the Student. A Permission to Evaluate was issued and the Student was placed, under an interim GIEP, into the District's gifted program.

The gifted program consists of the Student being pulled out of class once per week, for a total of eighty (80) minutes per week, to participate in a gifted class under the direction of a gifted teacher. The gifted program for the Student consists mainly of completing a project for the gifted teacher that is generally "beyond" the regular curriculum. During the first marking period, the Student received 55 of 68 possible points on the project and scored an 81%. Despite this score, the gifted teacher wrote in the psychologist's evaluation report (that was being done during the first marking period), that the Student "has the propensity towards higher order thinking, [although] it's not something I've seen in the few weeks I've worked with [the Student]. I'm pretty sure [the Student] has the academic chops" (S-7 at page 3). The Student seemed to live into the teacher's words during the second marking period, when the Student received 45 out of possible 48 points (94%) for a new project in the gifted classroom. The gifted teacher indicated that the Student was "right with" at least half of the students in the teacher's gifted classroom. The gifted teacher also indicated that the second project demonstrated that the Student does, in fact, have the higher level thinking skills that the gifted teacher suspected the Student had (NT 96, 99, 100). The bottom line is that the Student not only participated in the gifted program, the Student did well there.

While the Student attended school and the gifted class, the District was also in the process of performing a full evaluation on the Student. The evaluation was not a "normal" gifted evaluation in the traditional sense of the word, however. In the past, the Student had shown some behavioral issues that caused a neuropsychological evaluation to be performed on the Student in 2011. Due to some of the findings in that report, which the District had in its possession, the District opted to perform an evaluation that looked into the Student's potential eligibility for both Chapter 14 and Chapter 16 services. As such, some of the forms that were used and the matters

that were evaluated were not “gifted only” in nature. While the other issues that caused the District to perform this “two-headed” evaluation are of some importance in a general sense, the crucial fact here is that the evaluation forms and substance of the evaluation were adequate to determine the Student’s gifted status and situation.

The evaluation report itself contains comments from most, if not all, of the Student’s teachers. The comments are generally positive in nature, although there are some “questioning” comments as well concerning the Student’s behaviors and attitude toward class. There are also results from “Classroom Diagnostic Testing” in the evaluation report. The results of these tests indicate that the Student achieved only “average” test scores in math, science, and language arts. Finally, the evaluation report sets forth the results of IQ testing performed on the Student. The Student was tested twice (using both a WISC-IV and SB5) and was credited with a full scale IQ score of 108 and 104 respectively. This was in marked contrast to the Student’s IQ scores in 2010 and 2011, which were 132 and 135 respectively. The Student, according to the report, thus had a remarkable drop of nearly 30 IQ points in four (4) years. The psychologist who administered the tests expressed concern after the first test reported an IQ of 108. In fact, the large drop in the Student’s IQ score prompted the psychologist to give the second assessment (the SB5) to the Student. However, the second assessment, as stated above, also produced a relatively low (relatively low for the Student, that is) full scale IQ score of 104.

What the District was left with was an evaluation report that contained internally inconsistent findings. There are several areas in the report where teachers praise the Student’s high level thinking skills (in fact, four (4) different teachers included a statement about the Student’s high level thinking skills in their written statements that are included in the report at S-7)). A sampling of other statements indicates that the Student is “bright,” has “strong problem solving skills,” and that the Student “communicates exceptionally well.” On the other hand, the report (S-7) also indicates that the Student does not display leadership abilities, that the Student can “get lost in [the Student’s] own explanation,” and that the Student can “struggle to be creative when given a specific assignment.” It does seem apparent, however, that for the most part, there are a number of very positive statements about the Student’s abilities, while the negatives tend to focus more (although not exclusively) on the Student’s behaviors. Of course, the report also contains the very “average” scores in Classroom Diagnostic Testing and IQ scores that are in stark

contrast to the Student's earlier IQ scores (from [the other school district]). Finally, the report indicates that the Student was assessed using the Wechsler Individual Achievement Test, 3rd Edition (WIAT-III). On the WIAT-III, the Student scored mainly in the average range, with only two scores in the above average range (S-7).

Based on all of these factors, the District concluded that the Student was not eligible for gifted services in the District and indicated that the Student would be removed from the gifted program. Student's mother disagreed and filed the present action, arguing that the Student should remain in the gifted program. The Parent contends that the Student is gifted based upon past performance and that the Student clearly remains gifted, citing possible factors outside of the school setting as the reason for the drop in performance. Next, the Parent argues that the District did not perform a proper gifted evaluation, in that the evaluation was also done to determine Chapter 14 eligibility. The Parent cites, as support of this argument, that the report does not discuss the multiple criteria set forth at 22 Pa. Code §16.21(e). The Parent also cites the fact that the District psychologist did not appear to even understand questions at the hearing pertaining to the multiple criteria. Finally, the Parent argues that she did not have proper input into the evaluation, as the District had already "made up its mind" to dismiss the Student from the gifted program by the time a meeting was held that included the Parent.⁴

The District, on the other hand, argues that the evaluations performed were done properly and that the clear findings of the Student's IQ, achievement, and classroom diagnostic testing indicate that the Student is simply no longer eligible for gifted services. The District concedes that the Student is bright, but strongly believes that the Student does not meet the eligibility standards and does not, in any case, require specially designed instruction beyond the normal curriculum at the District (*See*, 22 Pa. Code §16.1 ("gifted student")).

⁴ Frankly, I do not find these last two arguments to be precisely on point. While I agree that the District's psychologist was unsure of the gifted regulations, I do not think that it affected her ultimate conclusion in this case (in other words, while the report is clearly lacking in the proper terminology of Chapter 16, the elements that are normally reviewed in order to determine giftedness were actually in the evaluation report). Nor do I find the lack of parental input of import, as it is unclear on the record why the parent rating scales were not included in the report or what the rating scales even indicated. There is also some evidence that the Parent, herself, may be to blame for the lack of inclusion of the rating scales.

Frankly, there is evidence that appears to support both sides of this issue to some degree. For the District, the recent testing appears to make it clear that the Student was *not* (at least on the testing days) performing at a level that one would expect from a gifted student. Moreover, the testimony of several teachers at the hearing indicated that the Student was likely above average, but not in the gifted range. On the Parent's side, the Student did score (twice) above 130 on IQ testing given several years ago. Moreover, the written testimony of the same teachers (set forth in the evaluation report at S-7) indicated that the Student displayed skills that would lead one to believe that the Student was, in fact, gifted. Finally, the Student has been through some difficult times with a divorce, several moves (including one away from the Student's father), and a new school virtually every year for the past 3 years) and admits to being "sad" and to not always being motivated to perform to the Student's best ability on tests and in the classroom.⁵

While I do believe that there are some issues with the Parent's case, I also believe that, overall, the Parent has carried her burden and proven that the Student is eligible for gifted services. First, the Student did, in June of 2010 and May of 2011 achieve scores of 132 and a 135, respectively, during IQ testing. While the District argues that it is not clear as to what conditions and under what circumstances these score were achieved, there is no reason to believe, on the record, that the testing was performed improperly. As such, those scores cannot simply be ignored. The scores were also reviewed and accepted by the Student's schools in [the other state]. Those schools used the scores to declare the Student eligible for gifted services in that State. Finally, it is clear that the Student did, in fact, achieve those IQ scores, and that the scores were achieved nearly one year apart from each other. The scores were thus not a "fluke" or lucky happenstance. They were genuine scores that must be taken into consideration.

This, of course, begs the question as to why the Student's scores dropped so dramatically in the most recent set of testing. The Parent posits that the District's evaluation was flawed, in that it did not specifically take into account the requirements that are set forth in Chapter 16. This argument fails, however, as there is no evidence that the evaluation was performed improperly or under improper conditions. Moreover, the evaluation as a whole has more than enough

⁵ The record contains very little specific information on the Student's home life, but there are clear indications that the Student has been through some difficult situations over the past several years, including moving away from the State where the Student's father currently resides. Parent's counsel also implied, through questioning, that these factors may have played a role in the Student's performance at [the District].

information concerning the Student's abilities to pass muster. And, more importantly, the argument (that the evaluation was somehow improper) has no real bearing on the question of why the Student's scores dropped so precipitously. The Parent also argues that the Student's life situation (and thus the Student's emotional state) may have contributed to the drop in scores. This is much more plausible given the testimony of the Student and the Student's home factors that were revealed in the record.

The District, on the other hand, argued at the hearing that there is research that shows that Students who achieve a high IQ score at a relatively young age sometimes attain that score due to influences outside of the Student's actual, native intelligence. For example, if a student is subjected to an exceptional preschool education or if a student is subjected to a high level of informal "education" in the home (through reading, educational games, parental training, etc.), that student could seem to have a higher IQ early in life than the other students around him/her. However, after the other students have a chance to "catch up" with a student in this situation through classroom education, the original "high" IQ scores seem to fall. This is because, in reality, the initial scores were not accurate and were more reflective of the student's "head start" on the other students that he/she was being compared to when scores were calculated than on the student's actual intelligence.

While such *could* be the case here, I find it highly unlikely that the early IQ scores were inaccurate or inflated. I base this on the Student's actual performance over the past several years. The Student performed well in [the other state], in a gifted setting, thus leading one to believe that the Student is capable of high level work (*see*, Exhibit P-10). This is supported by the *early* testimony (via the evaluation report), of the Student's teachers at [[the District]. In the evaluation report (S-7), which was compiled *before* there was any litigation filed, the teachers praised the Student's "high level thinking skills" and "problem solving" abilities. These statements are consistent with the Student's past record and performance as a gifted student. In contrast, many of the same teachers' testimony changed *after* litigation was filed. While I realize that there was more time for each teacher to evaluate the Student on a regular basis after the evaluation report was done, I rely more heavily on the comments that were made *before* litigation was filed. It was also my distinct impression that several of the teachers were guarded with their responses at the

hearing, leading, again, to the conclusion that the unguarded written remarks made before litigation ensued are more credible.

More importantly, the testimony of the Student's gifted teacher (who sees the Student in a setting with other gifted students, as opposed to a regular classroom where the Student admits to being bored at times), was similar in both the written evaluation report (S-7) and at the hearing. The gifted teacher indicated that there are approximately 8 students (including the Student here) in [the] gifted classroom. The teacher stated that perhaps 4 of the students performed better than the Student during the most recent marking period. However, the teacher also indicated that the Student was, essentially, at the same level as the remaining gifted students in the program. Given the complexity and difficulty of the project that the gifted teacher had the Student carrying out in the classroom, this testimony indicates that the Student does, indeed, perform at the high level one would expect from a gifted student. It would be remarkable if the Student was able to perform at such a high level with a true IQ of 104.

Instead, the Student's recent relatively poor performance on IQ testing (and on achievement and classroom testing) is most likely the result of several factors. First, there is a history of behavioral issues that does not seem to have been explored beyond the original 2011 report from CDC (S-1). Second, the Student has recently moved (again), this time away from the Student's father and into yet another new school. There are clearly emotional and psychological consequences to a child who is being raised in such circumstances. Finally, the Student testified very credibly that the Student does not always put forth a complete effort, as the Student believes that it is "easy" to score well on tests and in the classroom. Such behavior, while not preferred, is *not* unusual in gifted children and could easily skew the results of the recent tests performed on the Student.

Finally, while I am not basing my decision on this particular issue, I must also mildly question why the District felt it necessary to complete a full evaluation in this matter in the first place. Chapter 16 is silent concerning a "break in service" from Pennsylvania public school education (when the student leaves to attend a private school or goes out of State). The Pennsylvania Department of Education ("PDE") does have Frequently Asked Questions (a "FAQ") that were revised in December of 2014 concerning gifted services. That FAQ (PDE Gifted

FAQ, "Evaluation Process," Question 30) does not shed any real light on this situation.⁶ However, the previous FAQ did, in fact, deals more directly with this matter. Under the prior FAQ, the following appears:

Q: If a child has a break in service of a year or more, does the student have to be re-evaluated?

A: Yes. For instance, if a student moves out of public schools and attends a private school for a year and then returns, a re-evaluation must be conducted. It is important to note that the student does not need a new psychological, the re-evaluation should be a review of records to assure that current present levels are used to develop goals in the GIEP.

PDE Gifted FAQ, "Evaluation Process," Question 10.

The FAQ (which I understand does not have the full force or effect of a law or regulation), clearly calls for a re-evaluation. However, it also indicates that a full psychological evaluation is not needed, and that only a records review is necessary. The District was within its rights to conduct a full evaluation. However, such a full gifted evaluation was not necessary in this case. There is also nothing on the record to indicate why a full evaluation was thought to be necessary beyond the idea that the District was looking at Chapter 14 as well as Chapter 16. Given the Student's continuous acceptance as a gifted student in both [other schools], and given the difficult circumstances faced by the Student with yet another move and being away from the Student's father, it is simply not clear why the District proceeded to subject the Student to further evaluations.

Accordingly, based upon all that is set forth above, I find that the Parent has, in fact, fulfilled the task of proving that the Student is, indeed, eligible for gifted services. I also find that the Student does, in fact, need specialized instruction beyond the normal curriculum. The Student testified very credibly that the gifted program is very important to the Student. The Student indicated that the program causes the Student to be challenged and to think outside of the box. As such, I find that the Student should continue in the gifted program. I also strongly believe that it is in the Student's best interest to remain in the gifted program at this time.⁷ I will thus order the District to maintain the status quo and keep the Student in the gifted program. Because a GIEP

⁶ Although the FAQ does *suggest* (but certainly does not state directly) that while a full re-evaluation is permitted, a records review would have been acceptable in the present situation.

⁷ The Student testified being "sad" and later "depressed" about the news of leaving the gifted program. While this is not, strictly speaking, a legal reason to keep the child in the program (and is not being used as such here), it is certainly something that needs to be stated, given the difficulties that the Student has endured over the past years.

already exists, there is no need for a GIEP meeting unless one party or the other wants to have such a meeting, as is their right under Chapter 16.

Finally, a close and constant watch should be kept on the Student in this matter. Something is causing the Student to perform inconsistently in the course of the Student's studies. Perhaps this is purely based on the Student's interests (performing better with more interesting subjects and vice versa). Or, perhaps, it is something deeper, such as boredom, family stressors, a poor attitude, or other issues related to the earlier behavioral matters. Regardless, I would urge all parties involved with the Student to ensure that the Student is monitored moving forward with these factors in mind.

Finding that the Parent has satisfied her burden of proof, I find that the Student remains eligible for the District's gifted program. As a GIEP is already in place, there is no need for further meetings unless desired by either party.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, it is hereby ORDERED that the Student is eligible for gifted services and should remain in the District's gifted program under the current GIEP developed for the Student.

Shawn D. Lochinger
HEARING OFFICER

Date of Decision: February 20, 2015