

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.

Pennsylvania

Gifted Education Hearing Officer

FINAL DECISION AND ORDER

Student's Name: [redacted]

Date of Birth: [redacted]

ODR No. 17219-1516AS

OPEN HEARING

Parties to the Hearing:

Parent[s]

Representative:

Pro se

State College Area School District
131 West Nittany Avenue
State College, PA 16801

Scott Etter, Esq.
Michael Levandoski, Esq.
Etter Law Firm, LLC
216 Circle Drive
State College, PA 1680

Dates of Hearing: 02/18/2016, 02/26/2016, 03/02/2016, 03/30/2016

Record Closed: 04/18/2016¹

Date of Decision: 05/02/2016

Hearing Officer: Brian Jason Ford, JD, CHO

¹ The record closed upon receipt of written closing briefs from the parties.

Introduction

The Parent requested this due process hearing on behalf of the Student, raising claims against the State College Area School District (District) under Pennsylvania's gifted education regulations, 22 Pa. Code § 16 *et seq.* (Chapter 16). The District concedes that the Student is gifted. The Parent alleges that the Student is gifted in areas that have not been recognized by the District, that the District's evaluations of the Student violate Chapter 16 and that the Gifted Individualized Education Plan (GIEP) that the District has offered is inadequate.

For reasons discussed below, I find mostly in the District's favor, but I will require the District to modify the Student's proposed GIEP to accurately reflect the gifted education that the Student is actually receiving.

Issues

The issues presented in this matter were phrased in a variety of ways throughout the hearing. I cannot decide issues that are not properly raised but, given the record, some analysis is required just to determine what issues were actually presented.

At various times, the Parent raised the question of whether the Student is gifted in certain domains (e.g. whether the Student is gifted in math). For reasons discussed below, under Pennsylvania law, a student is either gifted or not. This, and the fact that the District concedes that the Student is gifted, reduces the entire scope of this case to a question of what sort of gifted education the Student needs in order to receive an appropriate education in accordance with Chapter 16. In other words, what must the Student's GIEP contain?

This inquiry subsumes all of the Parent's objections to the District's evaluations. Particularly in light of the District's concession, the purpose of those evaluations was to determine what programming the Student requires. Even so, for the sake of clarity, I will address the appropriateness of the District's evaluations as a separate issue.

Finally, the Parent demands compensatory education. Consequently, all of the various phrasings of the issues boil down to these:

1. Did the District's evaluation comply with Chapter 16?
2. Is the GIEP that the District proposed for the Student appropriate and, if not, how must it be modified?²
3. Is the Student owed compensatory education?

The Parent also demanded instruction to address the relative weaknesses in cursive writing and keyboarding. Those demands fall outside of the Complaint and were raised only through the Parent's opening statement and testimony. Those issues, therefore, are not properly presented.

² At various times during the hearing, the Parent demanded specific modifications to the proposed GIEP, including particular enrichment and acceleration in language arts, math, and Science. The specific modifications that the Parent demanded are captured in the transcript and, to a much lesser extent, in the Complaint. As I find the proposed GIEP appropriate except as indicated herein, a detailed account of all of the Parent's demanded edits is not necessary.

The Parent's claim of predetermination (that the District refused to consider parental input in the GIEP development process) is also not properly pled. Moreover, I have some doubts as to whether that claim is recognizable under Chapter 16. In an abundance of caution, however, I will address this while discussing the appropriateness of the District's evaluations and GIEP.

Findings of Fact

This hearing convened over four sessions, during which a voluminous record was made. In special education due process hearings, it has recently become a standard practice for hearing officers to allocate a set amount of time per witness. Prior to this case, my practice has been to not allocate time per witness when parents are *pro se*. This case causes me to reconsider that practice. Some witnesses were examined for hours on end, producing barely useable, mostly irrelevant testimony. My frequent admonitions to the Parent to focus the questioning, and my instructions to the Parent about what sort of evidence is probative, were almost completely disregarded.³ This, combined with a general absence of objections by the District, turned the record in this case into a haystack in which I searched for needles.

As a result, the majority of the record is not cited in this decision. I carefully reviewed the record in its entirety and pulled from it the probative evidence. I rely only on that evidence to make the findings of fact below.⁴

Further, many facts are not in dispute, particularly concerning the chronology of events. Any fact found below that does not include a citation to the record, or references "NT *passim*," is both derived from the entirety of the record and is not in dispute.

Background

1. The Student enrolled in the District at the beginning of the 2015-16 school year as a [redacted] student.

Mathematics

2. During a school orientation day, prior to the first day of school, the Student's classroom teacher administered a math assessment, focusing on addition and subtraction. NT 829-830.
3. The Student performed very well on the math assessment, but not as well as other students. NT 833-834.

³ I believe that the Parent was capable of understanding and following my directions but, on the whole, did not do so. I do not believe that the Parent intentionally disregarded my instructions. Rather, for the most part, it appears that the Parent had difficulty adjusting not only to my instructions, but to testimony as the Parent asked questions. Questions were asked and answered countless times when answers were not what the Parent expected. At the same time, the District's general lack of objections was strange.

⁴ Similarly, nearly all of the Parent's probative evidence is duplicative of the District's evidence. As the District's exhibit book was properly tabbed, marked and paginated, I mostly cite to the District's copy of the evidence.

4. The Student's class breaks into groups for math based on abilities on a per-unit basis. As such, the class's math groups can change unit by unit depending on each student's ability in whatever math concept is instructed. See NT 747.
5. To determine groupings for each unit, the Student's classroom teacher administers a pre-test. S-6, S-7, S-14, S-38; NT 747, 842.
6. While the record does not reveal an exact date, the Student was placed into an advanced math group [redacted] early on in the school year and remained in that group based on per-unit pre-testing until February 2016. See, e.g. NT 855.
7. In February 2016, the Student's classroom teacher administered a multiplication unit pre-test. S-38. The Student performed poorly on that pre-test, and was moved into a lower grouping for the multiplication unit. NT 897.
8. The [redacted] other students in the advanced math group remained in the advanced group for the multiplication unit, based on their pre-tests. See NT 855. To date, the Student is the only student to have been removed from the advanced math group for any math unit after the initial grouping. *Id.*
9. After the multiplication unit, the Student was moved back into the advanced group based on the next unit's pre-test, and has remained in the advanced group for all subsequent math units. NT 900.
10. In the classroom teacher's opinion, the Student is appropriately grouped in math, performs in the average range as compared to the other students in the advanced math group, and is challenged in that grouping.⁵
11. In addition to the regular (albeit grouped) classroom math instruction, the Student also participates in a Learning Enrichment (LE) program.
12. The District categorizes LE instruction as regular education, as opposed to special education. NT *passim*.
13. Specifically, the Student's LE math program includes weekly "pull-out" sessions, during which the Student receives advanced math instruction as well as several "minicourses" of various topics in a small group. NT 464.
14. The Student was placed into the LE program based on both the Student's scores on district-wide screenings, and parental request. NT 478, 482-483, 544.
15. The Student's performance in the LE program is average relative to the other students in the program, indicating that the Student's participation in the LE program is appropriate and the program is challenging. *Id, passim*.

English and Language Arts (ELA)

16. The District assessed the Student's reading ability. Bluntly, the record is ambiguous at best regarding whether the testing started as part of the Student's gifted evaluation (described

⁵ Given the size of the group, I take this to mean that the Student is neither the highest or lowest performer [redacted].

below), or as part of District-wide universal screening, or as part of the general classroom curriculum.

17. The District used “running records” to determine the Student’s “Guided Reading Level.” NT 133-134. This testing determined that the Student could read at the 4th grade level. S-31, S-33, S-43, H-1, H-2, H-3, H-4, NT 799.
18. The Guided Reading Level is a progressive assessment, meaning that the Student can go on and try the next reading level until the Student is no longer able to read the test. At the point that the District stopped testing the Student, the District could have gone onto the next level based on the Student’s performance but the evaluator chose to stop. See *id.*
19. The District’s decision to stop the Guided Reading Level testing at the 4th grade level was based on the evaluator’s professional judgment that more testing would [not] have produced more useful information about the Student’s ability to read. NT *passim*.
20. In addition to the running records, the District also tested the Student’s reading fluency. Those tests determined that the Student’s fluency was at the 4th grade level. NT 1168-1169, S-33.
21. Handwriting and spelling are comparative weaknesses for the Student, but that weakness is comparative. The Student’s writing mechanics are typical for [redacted]
22. While the Student scored in the “above average” range on a standardized, normative reading comprehension assessment during the gifted evaluation described below, the Student does not regularly exhibit a great depth of understanding when presented higher-level texts in school. NT 718-720, 872-873.

Independent Reading Assessment

23. The Parent had the Student’s reading level independently evaluated. The Student’s reading level was assessed by a graduate student as part of the graduate student’s course work in a literacy assessment class.
24. The data collected by the graduate student was analyzed and reported by the graduate student’s professor (Professor) as was a video recording of the testing. S-3, NT 48.
25. The Professor is a professor of language and literacy, who teaches students aspiring to become teachers - particularly those seeking a K-4 teaching certification. The Professor has a master’s degree in reading and a Ph.D. in multicultural and equity studies in education. NT 44-45.
26. The graduate student who tested the Student is pursuing a dual certification in special education and reading. NT 45.
27. The graduate student tested the Student in late January 2016. NT 47.
28. The graduate student’s testing, as interpreted and reported by the Professor, found the Student’s instructional reading level to be at 5th or 6th grade, and the Student’s independent reading level to be approximately 6th grade. NT 51.

29. The Professor was unable to determine the Student's frustrational reading level because of testing errors committed by the graduate student.⁶ NT 51-52.
30. Like the District's Guided Reading Level assessments, the independent testing assessed the Student's ability to decode written language (generally, decoding refers to the ability to translate written words into sounds – the ability to speak text – as opposed to reading comprehension, which generally refers to the ability to derive meaning from text). S-43.

Gifted Evaluation and GIEP Development

31. The District uses a district-wide universal screener to identify students who may be gifted. Based on the District's criteria, the screener did not identify the Student in need of a gifted evaluation. NT *passim*.
32. The Student was evaluated at the Parent's request, resulting in a Gifted Written Report (GWR) dated January 8, 2016. S-43.
33. The GWR includes a detailed description of the Student's presentation in school to the date of the report, as well as significant input from the Parent. S-43 at 1-5, 18-19.
34. The GWR included the Scales for Identifying Gifted Students (SIGS). This is a rating scale in which multiple people rate the Student in various skills, resulting in a "probability of being gifted" in each skill. Importantly, the SIGS is not an assessment of the Student's abilities, but rather a standardized way that people can share their impressions of the Student. S-43 at 5.
35. The SIGS was completed by the Parent and the Student's classroom teacher. The Parent's rating indicates that the Parent sees the Student as likely to be gifted in every domain. The classroom teacher's rating indicates that the classroom teacher sees the Student as likely to be gifted in the domain of language arts only. S-43 at 5.
36. The GWR included information provided directly by the Student. S-43 at 6-7.
37. The GWR included a "total" score from the Otis-Lennon School Ability Test (OLSAT), which placed the Student in the average range with a score of 126 (the average range is 116 to 132). The OLSAT is a "group-administered assessment of abstract thinking and reasoning ability". S-43 at 7.
38. The GWR also reported the current "running record" Guided Reading Level, noted above, corresponding to a 4th grade level of instruction. S-43 at 7-9.
39. The GWR also reported two criterion-referenced math assessments, the NWEA MAP test and the Aims WEB MCAP. On the MAP test, the Student scored in the 99th percentile compared to a population of peers. On the MCAP test, the Student received a score of 8.

⁶ The record suggests that the testing conducted by the graduate student is part of a broader group of tests that graduate students learn to administer and interpret over the course of the Professor's class. There are hints in the record that the testing was out of sequence relative to the Professor's class and rushed at the Parent's request. This does not diminish the validity of the reported results, given the scope of the Professor's review, and because any questionable results were purposefully omitted (e.g. the Student's frustrational reading level).

While a corresponding percentile is not reported, the GWR notes that a score of 9 would correspond to the top 10% of the school population. S-43 at 10.

40. The WISC-V was administered as a standardized, normative assessment of the Student's intellectual ability. According to the WISC-V, the Student's full scale IQ was found to be 130. S-43 at 12.
41. The WJ-IV: ACH was administered as a standardized, normative assessment of the Student's academic achievement. On this assessment, in reading, the Student scored in the above average range in letter-word identification, and comprehension, and in the superior range in sentence reading fluency.
42. On the WJ-IV: ACH, in written language, the Student score in the above average range in spelling, and writing samples, and in the superior range in sentence writing fluency. S-43 at 16.
43. On the WJ-IV: ACH, in math, the Student scored in the above average range in applied problems, math facts fluency, but in the average range for calculation. S-43 at 15.
44. Regarding the WJ-IV: ACH testing in math, the evaluator noted, "on the applied problems and calculation tasks [Student] correctly answered items included in the item sets of students beyond [redacted]". S-43 at 15.
45. After completion of the GWR, the District determined that the Student was not gifted in the area of mathematics, but was gifted in the area of ELA. However, the District determined that the Student was not in need of gifted specially-designed instruction (SDI) in ELA and, consequently, did not qualify for a GIEP. S-42.
46. The Parent disagreed with the District's determination. The Parent initiated these proceedings on January 8, 2016. It should be noted that the Complaint was amended twice after the initial filing.
47. After the Parent requested this hearing, the parties participated in further discussions. Ultimately, the District reversed itself in regard to the Student's need for SDI in ELA.
48. On February 5, 2016, a GIEP team meeting convened with this hearing pending.⁷ The Parent and Professor were present at the meeting. S-45.
49. During the meeting, the District presented a draft GIEP. S-46.
50. The GIEP accurately reports the findings of the GWR and the Student's then-current school performance. S-46 at 3-9.
51. The GIEP includes two ELA goals, each with short-term objectives and SDI to enable the Student to achieve the goals. More specifically:
 - a. The first goal calls for the Student to develop 4th grade reading comprehension skills as measured by the 4th Grade Pennsylvania English and Language Arts standards for

⁷ I commend the parties for holding this meeting. Too often, due process terminates communication between parents and schools. I am glad that the parties chose to move forward, even if they did not resolve their differences.

literature. The goal, via short-term objectives, sets a target of 90% mastery of 4th grade reading comprehension skills. SDI includes small group instruction with “like minded” peers, “enrichment based on literacy themes, science or social studies content areas”, independent projects based on the Student’s interests, and acceleration “through the use of above grade level reading resources”. S-46 at 10.

- b. The second goal calls for the Student to develop 3rd grade writing skills as measured by the 3rd and 4th Grade Pennsylvania English and Language Arts standards for writing. The goal, via short-term objectives, sets a target of 90% mastery of 3rd grade writing skills. The only SDI is for the District to provide “challenge and require complex written responses.” The vague nature of that SDI is completely mitigated by the highly specific short-term objectives, which flow directly from Pennsylvania 3rd and 4th grade standards. S-46 at 11.

52. The GIEP also includes support services. These make it clear that the goals will be monitored and SDI will be provided by a learning enrichment teacher and/or a gifted support teacher, working in collaboration with the Student’s classroom teacher. S-46 at 12.

Legal Principles and Discussion

The Burden of Proof

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, the burden of proof lies with the Parent.

Gifted Student

In this case, the District and Parent agree that the Student is a gifted student, as defined by Chapter 16. While discussion of the Student’s status could end there, a significant part of this case concerned whether the Student was “gifted in math” or other subjects. Such arguments went on, even after I explained that Chapter 16 does not support such distinctions. Therefore, I will go on to address the parties, so that they need not get bogged down in this issue in the future.

In Pennsylvania, gifted students are entitled to gifted education, provided in accordance with a GIEP, “which enables them to participate in acceleration or enrichment programs, or both, as appropriate, and to receive services according to their intellectual and academic abilities and needs”. 22 Pa. Code § 16.2(d)(3).

Not every bright student is gifted, and it is important to recognize “gifted” as a term of art in these proceedings. The term “gifted student” is defined by Chapter 16 at 22 Pa Code § 16.1. Under that definition, a student is a gifted student if two criteria are met: First, the student must be “mentally gifted” and, second, the student must also need “specially designed instruction beyond that required in Chapter 4 (relating to academic standards and assessment)”. *Id.*

Regarding the first prong of the two-part test for giftedness, Chapter 16 defines a “mentally gifted” student as one who has “outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided

in the regular education program”. 22 Pa Code § 16.1. Unfortunately, this definition is not particularly helpful, as it incorporates the need for specially- designed instruction (SDI), which is the hallmark of the second prong of the test. Fortunately, Chapter 16 includes another definition of “mentally gifted” at 22 Pa Code § 16.21(d), which concerns the screening and evaluation:

Each school district shall establish procedures to determine whether a student is mentally gifted. This term includes a person who has an IQ of 130 or higher or when multiple criteria as set forth in this chapter and in Department Guidelines indicate gifted ability.

Id. Chapter 16 also establishes what the “multiple criteria” are at 22 Pa Code § 16.21(e). Determination of giftedness cannot be based on IQ score alone. Deficits in memory or processing speed, as indicated by testing, cannot be the sole basis upon which a student is determined to be ineligible for gifted special education. A person with an IQ score lower than 130 may still be mentally gifted if multiple criteria are satisfied. See 22 Pa Code § 16.21(d); *A.S. v. North Penn Sch. Dist.*, ODR No. 00720-0910AS.

If a student is mentally gifted, the second prong of the test is whether the Student requires SDI. That question is presented relative to Chapter 4, indicating that the student must need something beyond what can be provided through regular or general education. This is also indicated in Chapter 16’s definition of SDI: “Adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials or a specialized curriculum for students who are gifted”. 22 Pa Code § 16.1.

It must be noted here that differentiated instruction has become a component of teaching practices in regular education classes. SDI, as defined by Chapter 16, indicates something more. Differentiated instruction is not defined by Chapter 16 but, in the lingo of educators, generally refers to adjusting the regular education curriculum to meet the needs of individual students. The District’s regular education math grouping in this case is a good example. SDI goes beyond that to provide enrichment and acceleration in order to meet a Student’s needs.

When both prongs of the test are satisfied, a student is a “gifted student”. Chapter 16 does not differentiate between subject areas for giftedness. Colloquially, it is sometimes said that a student is gifted in particular subjects, but that colloquial expression has no basis in Chapter 16. For example, a student is never “gifted in reading” or “gifted in math”. Rather, a student is either gifted or not. If a student is gifted, the student is entitled to a GIEP that enables participation in acceleration or enrichment programs, or both, in whatever domains are identified by testing. For example, a gifted student may need SDI in math but not in language arts – but that student is not “gifted in math”. That student is simply gifted, and individualized SDIs are developed through a GIEP (as the name implies).

Gifted Multidisciplinary Evaluation

A Gifted Multidisciplinary Evaluation (GME) is “systematic process of testing, assessment, and other evaluative processes used by a team to develop a recommendation about whether or not a student is gifted or needs gifted education”. 22 Pa Code § 16.1. GMEs are conducted by Gifted Multidisciplinary Teams (GMDT). 22 Pa Code § 16.22(d). “Gifted multidisciplinary evaluations must be sufficient in scope and depth to investigate information relevant to the student’s suspected giftedness, including academic functioning, learning strengths and educational needs.” 22 Pa. Code 16.22(e). The process must include parental input. 22 Pa. Code 16.22(f).

Regarding the tests that are used as part of the GME, they all must be:

1. Selected and administered in a manner that is free from racial and cultural bias and bias based on disability.
2. Selected and administered so that the test results accurately reflect the student's aptitude, achievement level or whatever other factor the test purports to measure.
3. Professionally validated for the specific purpose for which they are used.
4. Administered by certified school psychologists under instructions provided by the producer of the tests and sound professional practice.
5. Selected and administered to assess specific areas of educational need and ability and not merely a single general IQ.

22 Pa. Code § 16.22(3)(i)-(v).

In this case, the Parent does not object to the testing on the basis that the people who conducted the testing were not school psychologists. Rather, the Parent raises two objections: First, the Parent claims that the testing was [redacted]. Second, the Parent claims that the testing does not accurately capture the Student's reading level, since the District stopped the reading assessments prematurely.

The Parent's claims of [redacted] are completely unsubstantiated. To be clear, the Parent claims that the testing underestimates the Student's abilities [redacted]. I note that of the various [redacted] that Chapter 16 forbids, [redacted]. Despite this, I agree that there is no place for [redacted] in GMDTs or GWRs. Regardless, there is simply no evidence of [redacted] in this case.

[Paragraph redacted]

The Parent avers that the article is evidence of what might have happened. I reject that. But even if I were to accept it, it is completely un-compelling. Due process decisions are not based on what might have happened. It is the Parent's burden to establish what actually happened. This was explained many times in many ways during the hearing. Despite this, no effort was made to establish [redacted]. I very much doubt that such evidence exists. Regardless, I cannot resolve this case on evidence that was never offered.

Regarding the accuracy of the Student's reading level, I agree with the District that it was reasonable for the District's evaluators to halt the testing when it did. Moreover, even if the District had continued the testing, the results would have been substantially similar, as illustrated by the independent testing. Even more importantly, in the context of this case, the Student's ability to decode text is almost completely irrelevant. Both parties agree that the Student can decode text well above Student's grade level. Knowing the Student's exact decoding level is, therefore, not helpful in planning the Student's programming. Neither party suggests that the District should work to improve the Student's decoding. Both argue in favor of programming that will develop the Student's ability to derive meaning from text and express Student's self in written language. In short, the Student can literally read, and so the focus is properly on what the Student can do with the words on the page, or how the Student can craft Student's own writing.

For the foregoing reasons, I find that the District's evaluation and subsequent GWR comply with all Chapter 16 requirements.

Parental Participation

Parents are members of GMDTs and GMDTs must consider parental input. 22 Pa. Code § 16.22(d), (f). Parents are also mandatory members of GIEP teams, and schools must make efforts to ensure parental attendance. 22 Pa. Code § 16.32(b)(1), (c).

The language concerning parental participation in the GMDT and the GIEP team is different. Chapter 16 affirmatively requires LEAs to consider parental input as part of the evaluation process (GMDT). The same language is not included when it comes to actually drafting the GIEP. There, the focus is on getting the parent to the meeting. It would make little sense, however, to make parents part of the GIEP team if they have no voice in GIEP development, but the differences in these parts of Chapter 16 are striking. Ultimately, I need not decide whether Chapter 16 allows parents to bring predetermination claims because I find, below, that the Parent was given a meaningful opportunity to participate in the GIEP development process.

Meaningful parental participation is not evidenced by acquiescence to parental demands. The Parent points to the District's refusal to incorporate all demanded revisions to the GIEP as evidence of predetermination. It is true that the Parent demanded changes to the GIEP after the draft was proposed, and the District did not make those changes. It is not clear whether the District's refusal comes from its belief that the GIEP is sufficient as drafted, or a belief that the Parent's demands are inappropriate if not harmful to the Student, or (most likely) both. What is clear (from the record as a whole) is that the District had a detailed understanding of what the Parent wanted, and affirmatively decided to reject those demands. This indicates that the Parent had an opportunity to present input, did so, and was heard. That the District, after hearing the Parent's input, rejected the Parent's demands does not indicate a lack of parental participation.

Further, the District incorporated parental input into its evaluation in two ways. First, narrative information provided by the Parent is reflected in the GWR. Second, the District had the Parent complete rating scales, and reported the Parent's ratings in the GWR. The District appropriately considered this information in determining that the Student is gifted, and in designing the Student's GIEP. Again, Chapter 16's requirements for parental participation focus on the evaluation process. In this case, the Student's evaluation includes significant parental input.

GIEP

"A GIEP is a written plan describing the education to be provided to a gifted student. The initial GIEP must be based on and be responsive to the results of the evaluation and be developed and implemented in accordance with [Chapter 16]." 22 Pa. Code § 16.31.

Chapter 16 includes a host of procedural requirements for GIEPs and their development. 22 Pa. Code § 16.22. With the exception of parental participation, the Parent does not claim that the proposed GIEP violates any of Chapter 16's procedural requirements. The Parent's objection is more fundamental. The Parent claims that the GIEP does not offer goals and SDI to address the Student's needs.

Above, I have found that the District's evaluation is appropriate. The GIEP's appropriateness, therefore, hinges on whether the GIEP is responsive to the results of the District's evaluation.

Regarding ELA, the GIEP is appropriate. The GWR identifies the Student as an outstanding reader, who would benefit from SDIs targeting reading comprehension and written expression.

The goals, short-term objectives, and SDI in the offered GIEP are, therefore, completely responsive to the GWR's findings. They offer both enrichment and acceleration in those domains. There is no compelling evidence that the Student requires more than what is offered in regard to ELA.

The same is not true for math. All math testing conducted as part of the GWR indicates that the Student has exceptional math abilities. The District does not argue to the contrary. Rather, the District argues that the Student's needs are being satisfied in regular education math, and therefore the Student does not require gifted math SDIs via a GIEP.

I accept the District's argument that the Student's math needs are satisfied by the math instruction that Student currently receives. That instruction, however, is not regular education. All evidence indicates that the Student is appropriately grouped and challenged for math in the classroom. All evidence also indicates that the Student is properly placed and benefiting from the math LE pull out. The District has declared that the math LE pull out is regular education. I reject this.

I have had occasion to consider the District's LE programming before. In *R.C. v. State College Area Sch. Dist.*, I concluded that the District's categorization of all LE programming as regular education was acceptable only because of a pilot program that the Pennsylvania Department of Education approved pursuant to 22 Pa. Code § 16.3. That experimental program has ended, and so the District cannot simply declare programs that meet Chapter 16's definition of SDI are regular education.

As noted above, Chapter 16's definition of SDI includes "adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials or a specialized curriculum for students who are gifted". 22 Pa Code § 16.1. The District's own description of the Student's LE program illustrates that the program consists of a specialized curriculum. Since that curriculum is appropriate for the gifted Student in this case (and similar – perhaps even brighter – students), it is a specialized curriculum for students who are gifted. The District cannot make it otherwise by edict.

I understand that the District offers an enormous range of LE programs. I highly commend the District for this. This decision concerns only the LE program that the Student participates in. It is possible that other LE programs would fall outside of Chapter 16 definition of SDI, but that must be determined on a case-by-case basis.

For this case, the GWR indicates that the Student is in need of gifted SDI in math. The Student is actually receiving appropriate SDI in math. Now, the GIEP must be modified to reflect the services that the Student is actually receiving. An order requiring this follows.

Compensatory Education

The Commonwealth Court in *Brownsville Area School District v. Student X*, 729 A.2d 198 (Pa. Commonwealth Ct. 1999) held that compensatory education is an appropriate remedy for gifted children when a district fails to provide an adequate program. *See also, Carlynton School District v. D.S.*, 815 A.2d 666 (Pa. Commonwealth Ct. 2003); *Saucon Valley School District v. Robert O.*, 785 A.2d 1069 (Pa. Commonwealth Ct. 2001).

In this case, the Parent has not proven that the Student's program is inadequate. The Parent has proven that the Student requires SDI in math, but only to reflect the program that the

Student actually receives. The Parent has not proven an inadequacy with the offered gifted ELA program, or the actual math program (including both the classroom and LE math programs). While the Student's GIEP must be corrected, compensatory education is not owed.

ORDER

Now, May 2, 2016, it is hereby **ORDERED** as follows:

1. The GWR is appropriate.
2. The District shall amend the Student's GIEP to clearly indicate that the Student receives a Learning Enrichment (LE) math program as SDI to meet the Student's needs as a gifted student who requires SDI in mathematics.
3. The District shall amend the Student's GIEP to include a math goal. That math goal may be relative to the Learning Enrichment (LE) math program in which the Student participates, but must comply with all Chapter 16 requirements for GIEP goals.
4. The proposed GIEP is otherwise appropriate.
5. The District shall propose an amended GIEP to the Parent with a Notice of Recommended Educational Assignment (NORA) no less than 15 calendar days from the date of this Order, either by mail, email, or in person, at the District's discretion, but otherwise in accordance with 22 Pa. Code § 16.62(4).
6. The Parent shall respond by returning the NORA to the District no less than 10 calendar days from receipt, either by mail, email, or in person, at the Parent's discretion.
7. If the Parent approves the GIEP, or fails to respond in accordance with this Order, the District shall implement the GIEP.
8. If the Parent rejects the GIEP, the District shall not implement the GIEP, and shall bear no liability for failure to provide gifted education to the Student until the end of the term of the proposed GIEP, had it been accepted.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER