

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: T. G.
Date of Birth: [redacted]
Date of Hearing: August 18, 2011
OPEN HEARING
ODR No. 1806 / 10-11 AS

Parties to the Hearing:

Parent[s]

Abington School District

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Pro Se

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August 25, 2011

September 7, 2011

Shawn D. Lochinger, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student is [a preteenage] student ("Student") residing in the Abington School District ("District"), who has been identified as gifted under the provisions of 22 Pa. Code §§ 16.1 – 16.65. Parents claim that the District is denying the Student an appropriate gifted education in that the District has proposed an inappropriate gifted education plan for the 2011/2012 school year by forcing the Student to take an accelerated math class at the District's junior high building as opposed to the Student's home elementary school location.

ISSUE

Has the District provided an appropriate gifted education plan to the Student for the 2011/2012 school year despite requiring the Student to take an accelerated math class at the junior high building instead of the Student's home elementary building?

FINDINGS OF FACT

- 1) Student attends District and was evaluated for giftedness in the third grade (Notes of Testimony ("NT") 112).
- 2) Student was evaluated for giftedness by the District and a Gifted Written Report ("GWR") was issued on January 22, 2008 (School District Exhibit ["S"] – 1).
- 3) The GWR indicates that the Student is gifted under the terms of Pa. Code Chapter 16 (S-1). The GWR makes special note of the Student's abilities "in mathematics," as well as [the Student's] "leadership and social skills" (S-1).
- 4) There was and is no dispute that Student is in need of accelerated learning in the area of mathematics (NT 61).
- 5) Student has been included in an accelerated mathematics program since the fourth grade (NT 72).
- 6) Essentially, the District's accelerated math program allows students, including Student in this case, to take a math class that is one full grade level above the Student's current grade. For example, fourth graders take fifth grade math, fifth graders take sixth grade math, etc. (NT 79-80).
- 7) The Student is entering the sixth grade for the 2011/2012 school year (NT 16, 25, 36).
- 8) The District maintains kindergarten through sixth grade in its elementary buildings, while the District's junior high school houses seventh through ninth grade classes (NT 50-51).

- 9) The District's accelerated math program allows its sixth grade students to take an honors level seventh grade math class (the "accelerated sixth grade math program") (NT 101-102).
- 10) The District's accelerated sixth grade math program is set up so that sixth grade accelerated students board a regular school bus that transports each student to the junior high school for the start of each school day (NT 158).
- 11) The school bus drops each accelerated student off at a drop-off point which is close to the entrance of the school office – in particular the junior high's guidance counseling office (NT 111 and 167).
- 12) Seventh grade students attending the District's junior high school move from their bus directly to the school gymnasium to await the start of classes at the beginning of the day (NT 166-167). Eighth and ninth grade students in the District move directly to the cafeteria to await the beginning of the day (NT 167). The District's accelerated sixth grade students are separated from the seventh, eighth and ninth grade students and await the beginning of the day in the area near the guidance counseling office (NT 167).
- 13) At the first bell, the accelerated sixth grade students climb several flights of steps to the top floor of the junior high which contains only seventh grade classrooms (NT 170). The students, as a group, move directly to their accelerated math class (NT 168).
- 14) Once in the classroom, accelerated sixth grade students are taught by a teacher who has been teaching a math class that integrates both seventh grade students and sixth grade accelerated students since the program began almost twenty-five years ago (NT 102 - 103).

- 15) At the conclusion of the class, the accelerated sixth grade students travel out of the school building and on to an awaiting bus which transports each student back to his/her respective elementary school (NT 102).
- 16) The accelerated program is implemented at the junior high to provide a central location for all sixth grade accelerated students who attend the District's various elementary schools and to encourage interaction among the sixth and seventh grade students (NT 102).
- 17) There are no teachers or administrators who formally and/or regularly escort the sixth grade students to and from the accelerated math class each day. An administrator did escort the accelerated sixth grade students on an informal, but very infrequent and sporadic basis in the past (NT 145 and 169).
- 18) The Student's GIEP in this case would place the Student in the accelerated sixth grade math program (S-8). Student would thus be subjected to the procedure that is set forth above each and every school day for the 2011/2012 school year.
- 19) The Student would then be returned to the Student's regular elementary school and the Student's regular classroom approximately 20 minutes after the Student's regular elementary school day has begun (NT 115 and 136).
- 20) Student's elementary class generally conducts its own "regular" math class at the beginning of the day, meaning that the Student would miss approximately twenty minutes of "regular" math class each day, but would not miss other "non-math" classes (NT 115 and 136-137).
- 21) Upon the Student's return to the Student's regular elementary classroom, the Student would be permitted to either do the Student's homework from the Student's accelerated

math class or participate in one of several enrichment activities until the rest of the class finishes its morning math class. This would encompass approximately 30 minutes each day (NT 136-137).

- 22) Generally, the Student would return to class during the time allotted for the Student's classmates to do individual or small group math work (NT 159).
- 23) In order to participate in the accelerated sixth grade math program, the Student would have to catch a bus early enough to arrive at the junior high school building before the junior high school day starts at 8:10 a.m. (NT 101).
- 24) If not for participating in the accelerated sixth grade math program, the Student's "normal" elementary school day would begin at 9:00 a.m. (NT 102).

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 on 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.¹

Chapter 16 also provides for certain procedural safeguards as well as an obligation on the part of school districts 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

¹ 22 Pa. Code § 16.2.

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 Parents.

It is also the responsibility of the Hearing Officer to make credibility determinations and to assess the weight to be accorded the evidence. *E. N.* at 461. This Hearing Officer found each of the witnesses who testified in this hearing to be generally credible and will set forth specific instances of such findings as may be necessary to the discussion below.²

The Parents, in this matter, have brought but one issue to the attention of the Hearing Officer. Essentially, both parties agree that the Student needs an accelerated math class. The District clearly states that it has had a program in place for many years which allows accelerated math students to take classes one grade level above the gifted student’s current grade level. In this case, that means that the Student would be permitted to take an honors level seventh grade math class while the Student attends the sixth grade. The dispute in this case arises, however, because the District’s program requires the sixth grade Student to board a bus in the morning that takes the Student to the junior high school instead of the Student’s regular elementary school. After attending the math class at the junior high, the Student is transported by bus (along with several other fellow gifted sixth grade students) to the Student’s specific elementary school. The Student would then continue on with a normal elementary school day (save for the first thirty minutes of the Student’s arrival at the elementary building as is more fully discussed below).

The Parents in this case, while agreeing that the Student needs an accelerated math class, take objection to the District’s method of delivering that accelerated math program. Specifically,

² It must also be noted that the District’s closing argument was received by the Hearing Officer beyond the deadline set by an agreement of the parties in this matter. After an objection to the District’s closing was lodged by the Parents, the objection was sustained and the written closing argument was removed from consideration in this case. As such, the District’s written closing was not read or considered in this decision.

the Parents object to the Student boarding a bus and attending the junior high school for several reasons. First, the Parents contend that the junior high bus is a potentially dangerous place for an elementary aged student. Next, the Parents are concerned about the safety and welfare of the Student while the Student is physically present at the junior high. Next, the Parents are concerned because when the Student arrives back at the elementary school, the Student does not have a clear and concise plan to follow until the end of [the Student's] elementary school classmates' math class (approximately 30 minutes of each day). Finally, the Parents object because the Student, is, in essence, going to school for approximately fifty minutes longer than [the Student's] fellow elementary classmates (given that the junior high starts fifty minutes earlier than elementary schools in the District). I will deal with these objections one at a time.

Initially, the Parents object that the Student will be forced to board a junior high bus that obviously contains students who are older than the Student. They are thus concerned about the Student's safety and welfare. However, while the Parents are clearly and genuinely concerned about this situation, there is absolutely no evidence to support the idea that the Student is in any particular danger or distress because of the Student's bus ride to the junior high school. In fact, several District witnesses testified credibly that they were unaware of any specific bus incidents in the past involving accelerated sixth grade students on the junior high buses (NT 135, 147, and 173-174). While the Hearing Officer certainly empathizes with the Parents' situation (as sending an elementary student to the junior high school on the junior high bus can certainly seem like a daunting task), it does not change the fact that there is no evidence to suggest that riding the bus is, in any way, dangerous for the Student. Thus, in the absence of any specific or clear danger that the Student would be subjected to on the bus ride in this case, there is no reason to find that the District's program is inappropriate due to this specific objection.

The next concern and objection is similar, in that the Parents object to the program in light of the potential danger faced by the elementary school aged Student at the junior high school. Once again, however, there appears to be no real cause for concern in this situation. The District has taken very purposeful and reasonable steps in order to insure that the accelerated sixth grade students (including the Student in this case) are as safe and protected as possible. When the bus drops off the students, they are immediately segregated from the remainder of the

junior high's school population. Specifically, while seventh, eighth, and ninth grade students are held in the cafeteria and gymnasium prior to the start of school, the accelerated sixth grade students are kept in the guidance counseling office and thus away from any potential problems or safety issues that may occur before the first bell. When the first bell rings, the students must simply walk up several flights of steps to a floor of the building that houses only seventh grade students (students, it must be pointed out, who are only one year older than the Student and thus taking their own "first steps" in the junior high building).

It must be noted that there was testimony during the hearing that the previous assistant principal (who is now the principal of the Student's elementary school) personally escorted the accelerated sixth grade students to class during the first week of school when he was present in the junior high building. Parents in this case are concerned because that person is no longer located at the junior high building and because the District does not have a formal escort policy in place for the 2011/2012 school year. Again, however, it must be pointed out the previous assistant principal escorted the students on a very sporadic and infrequent basis. Moreover, there is no evidence on the record that the lack of an escort has led to any specific issues or problems for the accelerated students at the junior high building in the past. As such, I do not find the lack of an escort to be significant enough to find the program itself to be objectionable or inappropriate.

The Parents' next objection is that when the Student is returned to the elementary school, the District does not have a particular plan in place for approximately 30 minutes of classroom time. There is little doubt, in this Hearing Officer's mind, that there does not appear to be a good plan or structure in place for the time when the Student returns to the elementary school classroom. The District testified that this is a time when the Student could do homework or engage in some other enrichment activity (NT 102). While I do not believe that this 30 minute period of time, which lacks specific structure or guidance, is fatal to the District's program, I will order the parties to reconstitute the GIEP Team to develop a specific plan or program for the Student to follow for those 30 minutes that is agreeable to the Parents, to the District, and to the Student. The plan should allow the Student to be integrated back into the classroom each day in a more purposeful manner, rather than "hoping" it naturally happens in some fashion. However,

again, I do not believe that the lack of structure for this short period of time is fatal to the District's proposed GIEP for the 2011/2012 school year.

The Parents have one final objection to the proposed GIEP plan. Specifically, the Parents argue that the Student is, in essence, being "punished" for being a gifted student. Specifically, the Parents argue that because the Student is required to attend the junior high school (which begins its day at 8:10 am), the Student will be in school for fifty minutes longer than the Student's fellow elementary classmates (who start their day at 9:00 am). I do admit that having the Student attend an extra fifty minutes of school per day is of at least some concern.³ However, the Parents substantially weaken this concern, as they have made it very clear that their solution to this problem is that the District should provide the accelerated math class for the Student in the Student's elementary school. In other words, the Parents state that a teacher should be taken from the junior high and used at the Student's elementary school to teach the class specifically to the Student. The Parents offered one other alternative – for the District to use a teacher who already works at the Student's elementary school (in a different capacity) to teach the class to the Student. This would require that the teacher change her duties for at least one segment of the day to teach the accelerated math class to the Student.

Frankly, the District is not required to take either action. The District and the Parents both agree that the Student is in need of an accelerated math class. The District has offered that class to the Student by using its existing sixth grade accelerated program. While the Parents have certainly stated objections to the provision of the class at that particular location, such objections, in the long run, amount to more of an argument of convenience than anything else. Specifically, such objections do not reach the heart of the matter – whether the provision of the class at the elementary school building is necessary to provide an appropriate gifted education to the Student. Parents have simply not shown, in any way, that it is somehow necessary to provide the class at the Student's elementary building when a class that clearly is appropriate is being offered to the Student at the junior high.

³ The District also admits to a "concern" over this as well (NT 102).

To deal more specifically with the Parents' proposed solutions, I will first examine the request that the District should require the elementary teacher who works at the Student's building (and who is otherwise engaged) to teach the class directly to the Student. However, nothing on the record indicates that this teacher is even capable of teaching the class to the Student. Specifically, there is no evidence to indicate that this teacher is properly trained in providing the accelerated math necessary to meet the Student's needs. Nor is there any indication that this other teacher even has the time or ability to deal with the Student's specific needs. The junior high teacher, on the other hand, has taught the combined seventh grade/accelerated sixth grade class for many years and is adept at integrating the accelerated sixth grade students into the classroom.

Finally, the Parents' only other solution (sending the junior high teacher to the elementary building to teach the Student one on one) is simply not proper. While sending a teacher to work with the Student one on one would allow the Student to remain in the Student's building all day long, the bounds of the law would indicate that the District has no obligation to move a perfectly legitimate and acceptable program for the convenience of the Parents and the Student. Since the program already exists and is appropriate and sufficient to meet the Student's needs, the District is certainly permitted to bring the student to the program – there is no requirement to bring the program to the Student.

Moreover, while the School is required to provide an appropriate education for the Student to meet [the Student's] specific needs, it does not need to "... 'maximize' the Student's ability to benefit from an individualized program." *Centennial School District v Department of Education*, 517 Pa. 540, 539 A.2d 785 (1988). Here, one on one instruction in the Student's elementary classroom must certainly be seen as "maximizing" the Student's ability to benefit from the program. As such, the Student's unique needs are being met by the program proposed by the District.

As a final note, the Parents have indicated that a ruling in favor of the District would cause them to withdraw the Student from the accelerated math program, simply in order to avoid the junior high building. Obviously, it is within the Parents' rights to determine how and when

to educate their child. However, the evidence before this Hearing Officer indicates that the Student is in need of accelerated math and that the District has provided a perfectly legitimate and viable means of delivering those services. It is thus hoped that the Parents would take advantage of this opportunity for the Student.

Based upon all of the above, I find in favor of the District and will not order the District to amend the Student's GIEP to provide the accelerated math class at the Student's elementary school.

ORDER

In accord with the findings of facts and conclusions of law set forth above, it is hereby ORDERED that the District reconvene the GIEP Team as soon as practically possible in order to develop a specific plan of activity for the 30 minute segment of time when Student initially returns to the Student's elementary school building and to include more specific statements of those activities in the Student's GIEP. It is further ORDERED that this case be dismissed without further remedy for the Student.

Shawn D. Lochinger
HEARING OFFICER

Date of Decision: September 7, 2011