

*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: A. M.

Date of Birth: [redacted]

Date of Hearing: November 14, 2014

OPEN HEARING

ODR No. 15458 / 14-15 KE

Parties to the Hearing:

Representative:

Parent[s]

Pro Se

Ridley School District  
901 Morton Avenue  
Folsom, PA 19033

D. Daniel Woody  
Woody Law Offices, P. C.  
110 West Front Street  
Media, PA 19063

Date Record Closed:

November 17, 2014

Date of Decision:

November 20, 2014

Hearing Officer:

Shawn D. Lochinger, Esq.

## INTRODUCTION AND PROCEDURAL HISTORY

Student currently resides in the Ridley School District (the “District”). The Student is [school-aged] who entered the District for the first time in August of 2014. Student was educated by Student’s Mother at home in [two other states] prior to moving to Pennsylvania and enrolling in the District. Student’s mother is a special education teacher who is credentialed in [two states] but not in the state of Pennsylvania. Parents claim that the Student was taught a full kindergarten curriculum at home by the Student’s Mother. Accordingly, the Parents want the Student educated in a first grade classroom. The District, while conceding that the Student is, in fact, gifted, believes that the best interests of the Student are to educate the Student in a kindergarten classroom with enrichment services.

## ISSUE

Should the Student be placed in a first grade classroom or in a kindergarten classroom with enrichment in order to receive an appropriate gifted education in the District?

## FINDINGS OF FACT

- 1) Student is currently enrolled as a student in the District (Notes of Testimony (“NT”) page 57).
- 2) The District has identified the Student as a “gifted student” under the terms of 22 Pa. Code §§16.1 – 16.65 (“Chapter 16”) (NT 17, 18, and 22) (School District Exhibit (“S”) – 16).
- 3) Prior to the 2014/2015 school year, the Student was [not yet school-aged] and did not attend a public school (S-9).
- 4) The Student, prior to moving to Pennsylvania in June of 2014, lived in [two other states] with the Student’s Parents (NT 39 and 41).

- 5) [Previously], the Student was taught at home by the Student's Mother (NT 23, 25, 26, and 51).
- 6) The Student's Mother has a teaching degree and testified that she is credentialed in [two states] (NT 23 and 33).
- 7) The Student's Mother is not credentialed in the state of Pennsylvania (NT 52).
- 8) Student's Mother homeschooled Student using [another state's] curriculum standards (NT 24, 26, and 51); (Parent's Exhibit ("P") – 12).
- 9) Student's mother claims that the Student, over the course of ten (10) months, mastered the kindergarten curriculum set forth by the [other state] and that she thereafter began instructing the Student on first grade level materials (NT 24 and 26); (P – 12, P – 13, P – 14).
- 10) Student's family moved to Pennsylvania and contacted the School District concerning enrollment in June of 2014 (NT 38, 40, and 135).
- 11) The Student's Parents made it clear to the District from the initial contact that they wished the Student to be placed in a first grade classroom due to the Student allegedly completing kindergarten curriculum at home (NT 135); (P – 1).
- 12) The District pointed to its policy, which states that the District "has no provision for the early admission to school, i.e., admitting children to school who are younger than the stipulated age for enrollment in kindergarten or first grade," to originally deny the Student a first grade placement (S – 25).
- 13) After additional Parent contacts, the District agreed to perform an evaluation on the Student to determine educational levels (NT 46); (S – 6).

- 14) The result of the evaluation was set forth in a Gifted Written Report (“GWR”) dated August 25, 2014 (S – 9).
- 15) The GWR indicated that the Student was not gifted and that the Student was therefore not eligible to be placed into the gifted program or to be accelerated into the first grade (S – 9).
- 16) The District followed the GWR up with a NORA dated September 4, 2014 stating the same (S – 11).
- 17) The Parents disagreed with the NORA and requested a due process hearing on October 6, 2014 (S – 11).
- 18) Following the request for due process and additional contacts, the District agreed to perform further assessments on the Student (NT 137, 138, and 139); (S – 15).
- 19) Following additional evaluations on October 16 and October 20, 2014, the District conceded that the Student was, in fact, gifted (S – 15); (S – 16).
- 20) The report issued after the additional evaluations indicated that the Student should have differentiated instruction in the Student’s regular classroom. In other words, while the District recognized the Student as gifted, the District deemed it appropriate to educate the Student within the kindergarten classroom with a plan of differentiating instruction as opposed to placing the Student into a first grade classroom at the District (S – 15); (S – 16).
- 21) The Parents objected to the decision and a series of GIEP discussions were held between the District and the Parents (S – 18); (S – 22). Eventually, a NORA was issued by the District indicating that the Student was gifted and had the opportunity to “participate in a gifted and enrichment program and differentiated instruction in the regular classroom” (S – 21).

- 22) While the Parents did not dispute the gifted finding, the Parents still firmly believed that the Student should be educated in a first grade classroom instead of a kindergarten classroom with differentiated instruction (NT 128 and 129).
- 23) While these discussions were taking place, the Student was, in fact, enrolled in and attending kindergarten at the District (NT 55 – 56).
- 24) The Student's kindergarten teacher testified, and testing confirms, that the Student is clearly intelligent (especially in math and oral expression) (NT 57, 75, and 107) (S – 15).
- 25) The Student's teacher testified, however, that the Student also has some relative difficulties in the area of reading, and more specifically in word attack and decoding (NT 58 and 78).
- 26) The Student's teacher believes, in her professional opinion, that the Student is academically capable of performing first grade work (the Student's teacher indicated that the Student could "succeed, but maybe not at a higher level") (NT 102 and 103).
- 27) The Student's teacher also believes, however, that the Student is not emotionally and socially prepared for a first grade classroom (NT 102).
- 28) The District's Psychologist, who performed the assessments, testified similarly, that the Student is academically a high achiever but is emotionally and socially a "typical" kindergarten student who would be out of place in a first grade classroom (NT 109, 111, 114, 122, and 123).
- 29) A proposed/draft GIEP has been offered by the District (dated November 13, 2014 – literally one day before the hearing) that the Parents have not approved (S – 23).
- 30) The proposed/draft GIEP is to be implemented in the kindergarten classroom and allows for pullout services and enrichment in math and language arts for the Student (S – 23).

- 31) Currently, the Student is being educated in a kindergarten classroom with only twelve students (including the Student) (NT 60). The teacher also has an aide in the classroom for all but very short periods each and every day (NT 60). Moreover, a reading specialist who also is the District's gifted teacher is in the classroom two hours per week (NT 60).
- 32) The Parents expressed no specific concerns with the proposed/draft GIEP other than the fact that it was to be implemented in the kindergarten classroom.

### 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.<sup>1</sup>

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.*

---

<sup>1</sup> 22 Pa. Code § 16.2.

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. 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.

The Parents in this matter have brought one issue, and one issue only, to the attention of the Hearing Officer. Specifically, the Parents' 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 should be provided gifted services in the kindergarten classroom (through pullout and enrichment services) or whether the Student should be educated in a first grade classroom. The issue, as I see it, can be boiled down to a very simple question: Should the Student be in kindergarten or first grade for the current school year?

It is important to note, as stated above, that the burden of proof in this case lies with the Parents. The Parents brought this particular due process action and the law clearly indicates that the moving party, the Parents in this case, have the burden of proving their case. *E.N., supra*. In this instance, I am looking for the Parents to prove that the Student's gifted education is more properly implemented in first grade than it is in the kindergarten setting.

Initially, it must be stated that this is a rather unique situation. The District, prior to the start of the 2014/2015 school year, had literally no experience with the Student due to the fact that the Student [was not school age]. This is exacerbated by the fact that the Student lived in [other states] before moving to Pennsylvania in June of 2014. Accordingly, the District has knowledge of the Student only through what the Student's Parents have told the District, through several assessments that were performed on the Student during the summer (before the start of the 2014/2015 school year), and about two and a half months of the Student attending a District kindergarten classroom.

Complicating the situation even further is the fact that the Parents claim to have educated the Student in a home school environment. The Parents claim that the Student's Mother, who is a teacher credentialed only in [two states] (and not Pennsylvania), taught the Student at home using [another] state curriculum. The Parents claim, quite forcefully, that the Student completed and "mastered" the kindergarten curriculum.<sup>2</sup> Based upon this home schooling, the Parents firmly and strongly believe that the Student is capable of performing first grade work in the District. In fact, the Parents are deeply concerned that placing the Student in kindergarten will result in regression of the Student and will cause the Student to react negatively towards school and turn the Student away from education in general. The Parents thus strongly believe that the only way to properly preserve the Student's continued quest for learning and knowledge is to have the Student placed in a first grade curriculum. The Parents also contend that the Student learns and reacts better in a group setting. Thus, they claim, pulling out the Student for gifted services in a kindergarten setting is actually counterproductive to the Student's overall education, as the Student would not be in a group setting.

The District, on the other hand, does not accept that the Student has properly completed a kindergarten curriculum. More importantly, the District believes that the Student, while most likely intelligent enough to do first grade level work, is not socially or emotionally mature enough for a first grade classroom. The District believes that placing the Student in first grade will be counterproductive to the Student's overall growth and long term education.

I have reviewed not only the testimony of the Parents but also the documents placed into evidence by the Parents that purport to show the work performed by the Student (including a "mastery" of the kindergarten curriculum). However, I see several issues with the evidence presented by the Parents. First, the Parents indicate that the Student was taught by a certified teacher in the home environment. While the Student's mother is certainly trained as a teacher and states that she is credentialed in [two states], she has no significant classroom experience and no Pennsylvania credentials. This does not mean that the Student's Mother is incapable of teaching or that she did not teach the Student properly. However, it does raise questions about the relative "value" that I should place on the evidence presented.

---

<sup>2</sup> Student's mother testified that by "mastery" she means that the Student scored at least 80% on the end of the year kindergarten testing that is allegedly part of the [other] state curriculum (NT 24).

Next, the documents submitted for the Student's work is often difficult to interpret. While it appears as though the Student has done a great deal of work that is relatively advanced for [Student's age], there is no independent verification that the Student completed all the work *without* prompting or additional instruction by the Student's Mother. It is simply not clear from the evidence and testimony how the Student actually completed the work. Nor can I completely accept the informal standardized testing that was performed by the Student's Parents. The Student's Mother is not trained in testing procedures and, again, the underlying documentation has no firm foundation. Accordingly, I cannot reasonably conclude that the Student has truly and clearly completed a kindergarten curriculum based upon the evidence before me.

That does not end the inquiry, however, as the School performed evaluations and has approximately two and one-half months of classroom observation of the Student that is just as important as the evidence presented by the Parents. It is clear from this evidence that the Student is, in fact, very intelligent. While there was an initial question as to the Student's gifted classification, the District has now classified the Student as gifted. The gifted determination is supported very strongly by the Student's kindergarten teacher who testified at the hearing that the Student is one of the top five students she has ever had in a 17 year kindergarten teaching career (NT 94). This speaks highly, of course, of the Student's academic abilities. While the Student's teacher also pointed out several *relative* weaknesses of the Student (such as the Student's reading skills in the area of decoding), it is clear that these alleged "weaknesses" are relative and not of any major concern.

Despite the Student's teacher testifying to the Student's high ability, she also expressed one important concern regarding the Student. Specifically, the teacher made it clear during her testimony that the Student is, at best, a "typical" kindergarten student in terms of the Student's maturity level and in the Student's emotional makeup. Thus, the teacher believes that while the Student may be able to academically handle first grade work, she also firmly believes that the Student is not socially and emotionally ready for first grade. Testimony made it clear that the Student has never been taught in a group learning environment and is still learning how to properly learn in such a setting. Both the Student's teacher and the District's psychologist (who

administered the various assessments in this matter) agree on the fact that the Student is academically capable, but socially and emotionally not ready to handle a first grade classroom.

The Parents counter this argument with several specific points. First, the Parents correctly point out nobody has ever observed the Student in a first grade setting. The Parents indicate that the District did *not* choose to place the Student in a first grade classroom for a day, a week, or any length of time where they could observe the Student and determine if the Student was emotionally and socially able to handle the situation. While I agree that there is certainly truth to this point and the Parents are correct that no specific observation was ever done on the Student in a first grade setting, I do not believe it is the best idea to move the Student to various classrooms to see where the Student best “fits in” from an emotional and social standpoint.

Second, the Parents argue that the Student’s teacher was not credible on the witness stand. They point to at least one instance (concerning a very minor “confrontation” between the Student and several girls in the Student’s classroom) where the teacher testified in a way that was not consistent with the fact pattern presented by the Parents. The Parents argue that if the teacher was willing to be less than truthful about a minor matter, then the teacher’s credibility as a whole is in question. This, in turn, the Parents argue, brings the teacher’s assessment of the Student as being emotionally and socially unable to complete a first grade curriculum into question as well. While I understand the Parents’ argument in this regard, my own observation and notes at the hearing made prior to the Parents’ argument indicates that the Student’s teacher was, in fact, a credible witness. The teacher testified that the Student is one of the top five students she has ever taught in kindergarten. The teacher also testified that the Student was academically able to handle first grade work. This testimony, despite Parents’ position, is essentially *against* the District’s position that the Student should be educated in the kindergarten classroom exclusively. The teacher was more than willing to testify, truthfully I believe, that the Student is academically capable of handling first grade work. However, the teacher testified, again I believe credibly, that the Student is emotionally and socially unable to handle the first grade setting.

The Parents’ third point of contention in this instance is that the Student is, in essence, a social “chameleon.” In other words, the Parents have observed and have seen that the Student tends to become similar to those around the Student. Their argument is that if the teacher and

psychologist are seeing a “typical” kindergarten student, it is because the Student is surrounded by “typical” kindergarten students. They argue that if the Student was placed in the first grade, the Student would act like a “typical” first grader. While this may or may not be true, there is absolutely no evidence on the record (outside of the Parents own statements) that would support this contention.

The Parents next take exception to the District’s policy for dealing with the placement of children in first grade/kindergarten in these rather unique situations. While it is clear from the record that the District did *not* have a policy concerning this specific situation prior to this incident (or, more precisely, a policy that states the District has “no provisions for the early admission of children to school, i.e., admitting children to school who are younger than the stipulated age for enrollment in kindergarten or first grade”)<sup>3</sup>, the District has, apparently, developed a more specific policy in direct response to the Student’s situation. In other words, the District did not have a specific policy concerning acceleration of a gifted student from kindergarten to first grade immediately upon entering the District. However, the District has now, at least informally, developed a policy which addresses this specific situation.

In this case, even without a prior policy, the District did take steps to determine if the Student should be placed in first grade. The District required assessments by a school psychologist and a recommendation of the psychologist (and various other professionals) to the Superintendent. If the recommendation had been to place the Student in first grade (accelerated), then the Superintendent would have been called upon to determine if she would follow through with a similar recommendation to the Board. The Board then would make the final determination as to whether the Student was placed in first grade. Here, the recommendation never got beyond the Superintendent because, according to the testimony of the Superintendent, all of the professionals reporting to her indicated that the Student, while academically advanced, was socially and emotionally suited for a kindergarten classroom (NT 127 and 138). She thus determined that there was no need to proceed to the Board level. I would urge the District to continue with this policy and to formalize it so that future situations are not met with either the response that a policy does not exist or that the policy prohibits the inclusion of a kindergarten-age child in first grade in *all* situations. In this case, the District may have made statements to

---

<sup>3</sup> Exhibit S – 25.

the Parents indicating that they were prohibited from making a first grade placement due to its policy. However, I do not believe such statements, even if made, made a difference in this matter, as the District did, in fact, develop a policy and actually review the Student's situation. Accordingly, even if there was a no policy, or even if there was a policy prohibiting the Student from moving into first grade, the District pushed it aside in order to properly evaluate and assess the Student for possible inclusion in first grade, thus making the policy issue moot.

After all is said and done, I am left with a situation that I believe is factually clear. Specifically, the Student, all parties would agree, is academically superior, a gifted student, who is most likely able to perform first grade work. Moreover, while there is a dispute, I believe that the best and most credible evidence points to the fact that the Student is not socially and emotionally mature enough at this point in time to handle acceleration into a first grade classroom. I am left, then, with attempting to make a decision as to what is in the best interests of the Student within the confines of the law. On one hand, putting the Student into first grade may allow academic acceleration but may also cause emotional and social difficulties for the Student. On the other hand, keeping the Student in kindergarten may allow the Student to grow emotionally and socially, but may, at least temporarily, delay some of the Student's academic advancement.

That being said, there is one other fact that I believe is extremely important in this case. Specifically, the District has, in fact, offered a GIEP to the Student. According to the proposed GIEP, the Student would be generally educated in a kindergarten setting. However, the Student would be pulled out two times per week (for one hour on each occasion) for one-on-one instruction with the gifted teacher. The Student would also be enriched in language arts and math. Given everything stated above, it is clear to me that this allows the Student the best of both worlds. In other words, the Student can remain in the kindergarten classroom and develop the social and emotional skills that are necessary for the Student to properly be educated in the District moving forward. In the meantime, the Student's academics will not be neglected, as the GIEP allows for pullout instruction of advanced matters and for enrichment of the Student's academics.

As such, I will find in favor of the District and order that the Student remain in kindergarten *with* the proposed GIEP in place. Because the GIEP has, technically, not yet been accepted, I will allow minor changes to be made. Thus, if the GIEP team feels that slight adjustments or “tweaks” to the GIEP are necessary, they can certainly be made by the team (including the Parents), as a whole. My concern for the Student is that the Student’s GIEP must ultimately provide for pullout services and for enrichment in the areas of the Student’s shown and given strengths.

As a side note, I would instruct the Parents, who are undoubtedly not going to be completely pleased with this decision, that they should allow the system to work. If the Student is truly as bright as everybody involved in this hearing seems to believe the Student is (and there is little doubt, according to the record, that the Student is very intelligent), then the GIEP that will be put into place following this hearing will allow the Student to thrive academically while learning, emotionally and socially, to be a student in a group environment. Moreover, since the Student is now classified as gifted and has a GIEP, the program will need to be revisited on at least an annual basis (or more frequently if needed or requested). If the Student shows maturity and social and emotional stability moving forward, the Parents will have the opportunity to request acceleration at a later point in time. It is possible, at that time that there will be evidence on the record to support such a consideration.

#### ORDER

In accordance with the findings of fact and conclusions of law set forth above, it is hereby ORDERED that the District Parents’ Complaint in this matter be dismissed and that the Student will remain in a kindergarten classroom with a GIEP including pullout services and enrichment in the Student’s areas of strength.

---

Shawn D. Lochinger  
HEARING OFFICER

Date of Decision: November 20, 2014