

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

Special Education Hearing Officer

DECISION

ODR No. 1649-1011AS

Child's Name: J.H.

Date of Birth: [redacted]

Dates of Hearing: 5/5/11

OPEN HEARING

Parties to the Hearing:

Parents
Parent[s]

School District
East Lycoming
349 Cemetery Street
Hughesville, PA 17737-1028

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney
None

School District Attorney
Jeffrey F. Champagne, Esq.
McNees Wallace & Nurick
PO Box 1166, 100 Pine Street
Harrisburg, PA 17108

May 10, 2011

May 25, 2011

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student is a high school age resident of the East Lycoming School District, who has always maintained an excellent academic record and exhibits a particular ability in math. At Parents' request, the District conducted an evaluation to determine whether Student needs a gifted education program, but determined that Student met only two of the four eligibility criteria used by the District for identification of gifted students and, therefore, declined to offer a GIEP. Parents' disagreement with the District's conclusion led to a due process complaint and a one session hearing on May 5, 2011.

As fully explained below, based upon the testimony and documentary evidence produced at the hearing, there was no factual or legal error in the District's non-eligibility conclusion. Accordingly, Parents' claims in this matter must be denied.

ISSUES

1. Did the School District properly evaluate Student for gifted education services?
2. Did the District use appropriate factual and legal criteria for determining Student's eligibility, and correctly conclude that Student is not a gifted student who needs specially designed instruction provided in accordance with a Gifted Individualized Educational Program (GIEP)?
3. If the District failed to properly evaluate Student or incorrectly concluded that Student is not eligible for a gifted education, what is the appropriate remedy?

FINDINGS OF FACT

1. Student is a mid-teen-aged child, born [redacted]. Student is a resident of the School District. (Stipulation, N.T. p. 11)
2. As a 9th grade pupil in the District high school, Student was eligible to be evaluated and considered for gifted services as a school age child in accordance with State Standards. 22 Pa. Code §16.1. (S-3, p. 2)

3. On May 7, 2010, near the end of Student's 8th grade year, Parents requested that the District conduct an evaluation to determine whether Student is eligible for gifted education. (N.T. pp. 20, 55, 85; S-2, S-3, p. 2)
4. On September 16 and 17, 2010 the District's school psychologist administered standardized, individual assessments of cognitive ability and academic achievement, consisting of the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) and the Woodcock-Johnson Tests of Achievement-Third Edition (WJ-III). (N.T. p. 88; S-3, p. 3)
5. Student's WISC-IV Full Scale IQ (FSIQ) standard score of 123 (94th percentile) was in the Superior Range, nearly 2 standard deviations above the mean of 100. Based upon the confidence intervals listed in the GWR, if Student were re-tested, Student's FSIQ score would most likely fall between 117 and 127. (S-3, p. 3)
6. Student's index scores, percentile rankings, and descriptive ranges on the four components on which the FSIQ is based are as follows: Verbal Comprehension Index (VCI): 140/99.6 (Very Superior Range); Perceptual Reasoning Index (PRI): 110/75 (High Average Range); Working Memory Index (WMI): 104/61 (Average Range); Processing Speed Index (PSI): 109/73 (Average Range). (S-3, p. 3)
7. Student's academic achievement as measured by the WJ-III standardized test demonstrated significantly above grade level achievement in reading, writing and math, with scores of 112/79th percentile, 106/66th percentile and 131/98th percentile, respectively. (S-3, p. 3)
8. Other measures of Student's academic achievement considered by the District in determining Student's gifted eligibility were the PSSA group test mandated for Pennsylvania public school students at specific grade levels, and Student's report card grades. These measures, represent two different kinds of curriculum-based assessments, and also placed Student at a high level. (N.T. pp. 72, 73, 95; S-3, p. 4)
9. Student earned all "A" grades during the 4th marking period of 8th grade. During the first marking period of this school year, Student received an "A" in all major subjects but for a "B" in English. During the second marking period of this school year, Student's biology grade was also a "B," along with the English grade.¹ (S-3, p. 4, S-9, S-10, p. 9)
10. Student scored in the "Advanced" range in reading, math and science on the PSSA tests taken during 8th grade. The 8th grade PSSA scores and percentile rankings were:

¹ At the time the GWR was originally issued near the beginning of the 2010/2011 school year, the District did not have Student's grades from the current school year available. The dispute over Student's gifted eligibility, however, continued through the hearing and decision. All information bearing on the parties' respective positions concerning eligibility that was available and properly disclosed through the date of the hearing was, therefore, fully considered to determine whether the District's gifted eligibility determination was correct at the time it was originally made, and whether it remains correct.

Reading/1644 (74th percentile); Math/1877 (96th percentile); Science/1569 (89th percentile). (S-3, p. 4, S-8, p. 3)

11. The school psychologist also compiled information provided by Parents and teachers from 8th and 9th grades. Parents noted that Student is outstanding in all academic areas, but needs to be more challenged in class work to overcome boredom, and for achievement to rise to the level of Student's capabilities. Parents want Student to be accelerated and placed in classes that will allow Student to move on to new material when Student has acquired and mastered the curriculum content. (N.T. pp. 26—30; S-3, p. 2)
12. Generally, Student's teachers indicated that Student exhibits a high rate of acquisition and retention of new academic concepts. (S-3, p. 3)
13. The Gifted Written Report (GWR) included specific comments from Student's 8th and 9th grade math teachers, who reported Student's exceptional work, willingness to go above and beyond course expectations and ability to extend ideas to higher order concepts and applications. The 8th grade math teacher considered the curriculum challenging enough to meet Student's educational needs. (N.T. pp. 86, 87, 117, 119, 123, 126, 153, 154; S-3, p.3)
14. Student's 8th grade English teacher commented for the GWR on Student's preparation, focus, good literary analysis, leadership in group work and desire to learn as much as possible, demonstrated by asking questions for greater understanding. (N.T. p. S-3, p. 2)
15. In addition to an IQ score of 130 or above, the District uses three criteria for determining eligibility for gifted support services: Individual achievement test scores two years above grade level in reading, writing and math; group achievement scores at the 98th percentile for reading and/or math, with the other area not below the 95th percentile on the most recently available test scores; all, or all but one, report card grades of "A" in major subjects. The District identifies as gifted students who meet three of the four criteria. (N.T. pp. 72, 73, 102, 103; S-3, pp. 5,7, S-6, pp. 1, 2)
16. Based upon the evaluation data compiled at the beginning of the current school year, Student met the standards for a gifted student with respect to two of the criteria, individual achievement test scores and report card grades, but did not meet the IQ or group achievement test standards. (S-3, p. 5)
17. Since the PSSA percentile ranks for 8th grade were not available at the time the GWR was completed, the school psychologist used the 7th grade PSSA results. Student's scores were at the Advanced level in both reading and math, with the math score at the 99th percentile. Student's 7th grade PSSA reading score was at the 78th percentile. (N.T. p. 89; S-3, p. 4)
18. By the GWR cover letter, and a Notice of Recommended Assignment (NORA) issued on October 6, 2010 following a meeting to discuss the results of the GWR, the District

notified Parents that Student did not meet the standards for identification as a gifted student and that it would not develop a GIEP. (S-3, p. 1, S-4, p. 1, S-6, p. 1)

19. When Parents disagreed with the NORA, the parties met several times to try to resolve the dispute, but were unsuccessful. The District updated the GWR after the 8th grade PSSA percentile ranks were available, but Student still did not meet the criteria for group achievement testing, since Student's reading score placed Student at the 75th percentile. (N.T. pp. 34, 37, 56, 61, 70, 88—90; S-8, p. 3)
20. At Parents' request, the District provided them with the subtest scores used in calculating the WISC-IV Index scores for additional analysis. The scores indicated that Student's scores were in the average range (7—13) on all subtests other than the three that comprised the VCI. (N.T. pp. 35, 38; S-7, p. 2)
21. Student is currently taking all honors classes available for 9th grade. Student's teachers for honors biology and English do not believe that Student exhibits characteristics of gifted students. Although very competent and successful in honors biology, Student's class work is not at a level that indicates a need for specially designed instruction. Student's teachers and the school psychologist consider Student to be working and achieving at an honors level commensurate with Student's ability, and believe that Student's educational needs are being met without specially designed instruction. (N.T. pp. 91, 134, 166—171, 177; S-12, S-13, S-14, S-15)
22. Student's 9th grade math teacher accelerates the math curriculum for students in her class based on skill and concept acquisition, not gifted status. Student receives all of the accommodations/extensions of the curriculum available to gifted students in the class. Based upon her observations, the data collected concerning Student's strengths, weaknesses and progress, and the extensions of the curriculum available to Student, the teacher believes that the Algebra 2 Honors math curriculum meets Student's educational needs. (N.T. pp. 137—144, 147, 152, 153; S-15)

DISCUSSION AND CONCLUSIONS OF LAW

Parents in this case were understandably disappointed, surprised and skeptical when presented with the District's conclusion that, although obviously bright and academically successful, Student does not meet the District's criteria for gifted eligibility. Nevertheless, thorough review of the District's procedures in light of the Pennsylvania legal standards applicable to evaluating students for gifted eligibility establish that the District met all procedural requirements for conducting an appropriate evaluation and for producing an accurate and appropriate GWR. There is, therefore, no basis for either countermanding the District's

substantive determination that Student is not eligible for gifted education services, or for requiring the District to reexamine its evaluation results or consider additional or different assessments.

A. Evaluation Measures/Criteria

The relevant legal standards against which the District's actions in this case must be measured are found in Chapter 16 of Pennsylvania education regulations, specifically, 22 Pa. Code §16.1 (Definition of Gifted Student, Mentally Gifted and Specially Designed Instruction), §16.21 (General) and §16.22 (Gifted multidisciplinary evaluation).

Under §16.1, a "Gifted Student" is

- (i) A student who is exceptional under section 1371 of the School Code (24 P. S. §13-1371) because the student meets the definition of "mentally gifted" in this section, and needs specially designed instruction beyond that required in Chapter 4 (relating to academic standards and assessment).
- (ii) The term applies only to students who are of "school age" as defined under §1.12 (relating to school age).

The term "Mentally Gifted" is defined as, "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." "Specially designed instruction" means "Adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials or a specialized curriculum for students who are gifted."

The provisions of §16.21 relevant to this case are found in subsections (c), (d) and (e):

(c) Each school district shall determine the student's needs through a screening and evaluation process which meets the requirements of this chapter.

(d) 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. Determination of gifted ability will not 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 be admitted to gifted programs when other educational criteria in the profile of the person strongly indicate gifted ability. Determination of mentally gifted must include an assessment by a certified school psychologist.

(e) Multiple criteria indicating gifted ability include:

(1) A year or more above grade achievement level for the normal age group in one or more subjects as measured by nationally normed and validated achievement tests able to accurately reflect gifted performance. Subject results shall yield academic instruction levels in all academic subject areas.

(2) An observed or measured rate of acquisition/retention of new academic content or skills that reflect gifted ability.

(3) Demonstrated achievement, performance or expertise in one or more academic areas as evidenced by excellence of products, portfolio or research, as well as criterion-referenced team judgment.

(4) Early and measured use of high level thinking skills, academic creativity, leadership skills, intense academic interest areas, communications skills, foreign language aptitude or technology expertise.

(5) Documented, observed, validated or assessed evidence that intervening factors such as English as a second language, disabilities defined in 34 CFR 300.8 (relating to child with a disability), gender or race bias, or socio/cultural deprivation are masking gifted abilities.

In conducting an evaluation to determine a student's eligibility for gifted education

school districts are required to meet the following standards:

§16.22. Gifted multidisciplinary evaluation

(a) Prior to conducting an initial gifted multidisciplinary evaluation, the school district shall comply with the notice and consent requirements under §§16.61 and 16.62 (relating to notice; and consent).

(b) Referral for gifted multidisciplinary evaluation shall be made when the student is suspected by teachers or parents of being gifted and not receiving an appropriate education under Chapter 4 (relating to academic standards and assessment) and one or more of the following apply:

(1) A request for evaluation has been made by the student's parents under subsection (c).

(2) The student is thought to be gifted because the school district's screening of the student indicates high potential consistent with the definition of mentally gifted or a performance level which exceeds that of other students in the regular classroom.

(3) A hearing officer or judicial decision orders a gifted multidisciplinary evaluation.

(c) Parents who suspect that their child is gifted may request a gifted multidisciplinary evaluation of their child at any time, with a limit of one request per school term. The request must be in writing. The school district shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school district, that individual shall provide a copy of the permission to evaluate form to the parents within 10 calendar days of the oral request.

(d) Multidisciplinary evaluations shall be conducted by GMDTs. The GMDT shall be formed on the basis of the student's needs and shall be comprised of the student's parents, a certified school psychologist, persons familiar with the student's educational experience and performance, one or more of the student's current teachers, persons trained in the appropriate evaluation techniques and, when possible, persons familiar with the student's cultural background. A single member of the GMDT may meet two or more of the qualifications specified in this subsection.

(e) 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.

(f) The multidisciplinary evaluation process must include information from the parents or others who interact with the student on a regular basis, and may include information from the student if appropriate.

(g) The following protection-in-evaluation measures shall be considered when performing an evaluation of students suspected of being gifted:

(1) No one test or type of test may be used as the sole criterion for determining that a student is or is not gifted.

(2) Intelligence tests yielding an IQ score may not be used as the only measure of aptitude for students of limited English proficiency, or for students of racial-, linguistic- or ethnic-minority background.

(3) Tests and similar evaluation materials used in the determination of giftedness shall be:

(i) Selected and administered in a manner that is free from racial and cultural bias and bias based on disability.

(ii) 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.

(iii) Professionally validated for the specific purpose for which they are used.

(iv) Administered by certified school psychologists under instructions provided by the producer of the tests and sound professional practice.

(v) Selected and administered to assess specific areas of educational need and ability and not merely a single general IQ.

(h) The GMDT shall prepare a written report that brings together the information and findings from the evaluation or reevaluation concerning the student's educational needs and strengths. The report must make recommendations as to whether the student is gifted and in need of specially designed instruction, indicate the basis for those recommendations, include recommendations for the student's programming and indicate the names and positions of the members of the GMDT.

(i) The GMDT shall determine eligibility as defined in §§16.1 and 16.21 (relating to definitions; and general).

(j) The initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 calendar days after the agency receives written parental consent for evaluation or receives an order of a court or hearing officer to conduct a multidisciplinary evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term may not be counted.

Under §16.21(d), any student with an IQ score of 130 crosses the threshold for qualification as a gifted student. In addition, however, school districts must consider multiple criteria indicating gifted ability and need for specially designed instruction for all students considered for gifted eligibility, including those whose IQ score is less than 130. Students for whom consideration of the additional educational criteria "**strongly indicate gifted ability**" may be admitted to gifted education programs (§16.21(d) Emphasis added). In accordance with the definitions of "gifted student" and "specially designed instruction" a potentially gifted student must also demonstrate a need for a modified or special curriculum or different instruction or

environments, or different methods/materials in order to have his/her educational needs met. (§16.1)

Of the multiple criteria listed in §16.21(e) that a school district should consider in determining gifted eligibility, this District explicitly uses 2 years above grade level on standardized tests as one of the factors. (§16.21(d)(1)) (FF 7, 15) It was not entirely clear from the testimony where the remaining two factors the District uses fit within the categories enumerated in §16.21(e), but both reasonably fit within §16.22(e)(3). (FF 15) Report card grades and PSSA scores can be considered demonstrated, criterion-referenced academic achievement measures based upon state wide (PSSA) and District local standards (report card grades). (FF 8, 15) Moreover, the regulations do not provide that only the enumerated factors may be considered, or that all of them must be considered.²

In accordance with §§16.21 and 16.22, a school psychologist administered the standardized assessments and was involved in gathering all evaluation information. (FF 4) The District included information from Parents and teachers and used well recognized, valid, reliable individually administered standardized tests to measure cognitive ability and achievement. (FF 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14) (§16.22(g)) No one test was used as the sole measure of Student's eligibility, and the gifted multi-disciplinary team (GMDT), including the school psychologist, Parents and several teachers, investigated information relevant to determining whether Student meets the criteria for a gifted student, including academic functioning, learning strengths and educational needs. (FF 15, 19, 20) (§16.22(e)) In addition, in connection with the due process hearing, current teachers considered Student's performance in honors classes over

² There was certainly no suggestion in this case that Student's gifted ability may be masked by language or disability issues, so §16.21(d)(5) did not need to be explicitly considered.

Similarly, it is not surprising that in evaluating a high school student, the District would not consider early measures and indicators of gifted ability listed in §16.21(e)(4).

the period that elapsed between the gifted evaluation and the hearing date. (FF 21, 22) Based upon that history and experience, the teachers' testimony confirmed the District's initial conclusion that Student does not meet the criteria to qualify as a gifted student. (FF 16, 18) Moreover, to the extent that Student exhibits needs for a modified, accelerated, enriched and compacted curriculum in math, Student is receiving the same accommodations and modifications available to gifted students. (FF 22)

Although Parents believe that their input into the evaluation process was limited and not appropriately considered in making the non-eligibility determination, the evidence establishes that the District met with Parents several times, considered their opinions, updated the GWR with new information when available, and re-visited its non-eligibility conclusion when Parents disagreed with it. (FF 10, 11, 19, 20) The Pennsylvania regulations do not require that the opinions of parents, based solely upon their beliefs and feelings concerning a potentially gifted student's cognitive ability and educational needs, must be given weight and consideration equal to the objective test results and the opinions of the District staff who observe and evaluate Student daily in the classroom in light of Student's performance and their experience with other students, both gifted and non-eligible. It is true that Parents were not given a "veto" over the District's eligibility determination, but their input was fully considered, beginning with their request for a gifted evaluation and continuing through the due process hearing. The District, therefore, met the requirements for considering parent input into the non-eligibility decision. §16.22(d), (f).

With respect to this case, therefore, the District complied with the procedural and substantive requirements of the Pennsylvania regulations relating to evaluations and gifted

eligibility determinations in conducting the gifted evaluation and making the determination that Student does not qualify as a gifted student.

B. IQ/PSSA Test Results

There was some suggestion at the hearing that distractions during the IQ testing might have depressed Student's score, and thereby prevented Student from meeting three of the four criteria the District uses to determine gifted eligibility. (FF 15, 16; N.T. pp. 65, 66, 105, 106, 108) That argument, however, does not alter the outcome of this case, just as the interruptions/potential distractions did not make a difference with respect to whether Student's IQ score reached the criterion level of 130. First, the school psychologist testified that the incident of someone coming into the shared office during administration of the WISC-IV to pick up documents from a printer occurred during untimed subtests and when testing material was being presented orally, not during portions of the test that required Student to read material and answer questions. (N.T. pp. 108, 110, 111)

More important, however, the pattern of Student's scores on the WISC-IV subtests do not include one or more unusually low subtest—or index scores—that might have skewed the test results and resulted in an inaccurately low FSIQ. (FF 5, 6, 20) To the contrary, the pattern of subtest and index scores place most of Student's abilities firmly within the average to high average range of cognitive functioning on the subtests comprising three of the index scores. (FF 5, 20) The "outlier" score in Student's profile is the exceptionally high, very superior scores on the VCI and its component subtests. (FF 6, 20) The District's conclusion that Student's overall cognitive ability falls in the superior, but not the very superior range of ability required for an IQ score that supports gifted eligibility is buttressed by the calculation of General Ability Index (GAI), derived from eliminating Student's scores on the WMI and PSI from the calculation of a

composite score, and using only VCI and PRI. (N.T. pp. 39—42, 47, 48, 50, 92) Measuring Student's cognitive ability by means of the GAI yields a score within the same range as Student's FSIQ, and does not raise Student's cognitive ability score to 130. (FF 5, 6; N.T. p. 92: GAI score calculated by the school psychologist was 127) That is not surprising, since the PRI fell within the same range as both the WMI and PSI. (FF 6)

Parents also suggested that using Student's PSSA percentile ranking as one of the factors considered for determining gifted eligibility was inappropriate since Student wasn't told, and consequently, was not aware, that the scores on those tests might someday affect eligibility for gifted services. Parents further suggested that Student may have tried harder on the PSSA assessments in 7th and 8th grades had Student realized the potential implications of Student's percentile rankings on determining gifted eligibility. In addition to being a highly speculative suggestion that cannot be objectively measured, Student had consistently higher percentile rankings in math than in reading/language aspects of group achievement tests, dating all the way back to 2nd grade Terra Nova scores from a different school district. (FF 10, 17; N.T. pp. 54, 55; S-2) In addition, the gap between the 99th and 96th percentile rankings on PSSA math assessments and the 75th and 74th percentile rankings achieved on the PSSA reading assessments in 7th and 8th grades, respectively, is far too large to be reasonably attributable to Student's level of motivation when taking the tests. (FF 10, 17)

The evidence in this case leaves no doubt that Student has an excellent ability to benefit from instruction, in terms of a rapid rate of acquiring information, and retaining learned information, as, indeed, the District recognized. (FF 12) Student's ability to profit from instruction and rapidly build a good store of knowledge with respect to curriculum content has served Student well in the course of Student's formal education to this point, evidenced by

standardized achievement tests and PSSA scores that place Student's achievement at a very high level in comparison to peers of the same age and grade level, both nationally and state wide. (FF 7, 8, 10, 17) Student is highly likely to continue achieving academic success. The record of this case, however, establishes that the District's conclusion that Student did not meet the cognitive ability/academic achievement criteria used by the District for determining gifted eligibility was neither improper nor inaccurate. In addition, notwithstanding Parents' firm and sincere belief that Student would benefit significantly from a GIEP tailored to Student's academic needs, there is no objective evidence to support their belief that Student needs specially designed instruction to meet Student's educational needs. There was also persuasive testimony and documentary evidence from teachers that Student is being sufficiently challenged in high school honors classes without a GIEP. (FF 21, 22)

CONCLUSION

The District in this case met procedural and substantive requirements for conducting an appropriate and accurate gifted evaluation. The District did not base its non-eligibility determination on IQ score alone, but properly took into account other indicators of gifted ability. The combination of factors considered by the District in determining Student's eligibility as a gifted student did not, however, "strongly indicate gifted ability" in accordance with 22 Pa. Code §16.21(d).

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Parents' claims in this matter are **DENIED**. The School District is not required to take any further action with respect to conducting additional assessments or reexamining its conclusion that Student is not a gifted student..

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

May 25, 2011