

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
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DECISION

Child's Name: C. C.
Date of Birth: <redacted>
Dates of Hearing: August 30, 2011
September 2, 2011
OPEN HEARING
ODR No. 2167 / 11-12 KE

Parties to the Hearing:

<Father>
<Mother>

North Allegheny School District

Date Record Closed:
Date of Decision:

Hearing Officer:

Representative:

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September 14, 2011
September 16, 2011

Shawn D. Lochinger, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student is a [REDACTED] year old student ("Student") residing in the North Allegheny 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 refusing to allow the Student to participate in two AP classes.

ISSUE

Has the District proposed an appropriate gifted education plan to the Student despite refusing to enroll Student in two AP courses for the 2011/2012 school year?

FINDINGS OF FACT

- 1) Student attends the District and was evaluated for giftedness in the third grade (Joint Exhibit ["J"] – 1).
- 2) After Student was evaluated for giftedness by the District, a Gifted Written Report ("GWR") was issued on January 5, 2005 (J-1).
- 3) Student is considered gifted in problem solving, higher level thinking, and analytical thinking skills (Notes of Testimony ["NT"] 218 and J-1).
- 4) Student was enrolled in and completed five honors courses during the 2010/2011 school year (J-2 and NT 60).
- 5) Student is enrolled in five accelerated (honors) classes for the 2011/2012 school year (NT 234-235 and J-2).
- 6) Student is receiving acceleration during the 2011/2012 school year through taking honors level classes in the areas of mathematics, English, German, social studies, and science at the District (J-2 and NT 60-61, 234-235).
- 7) The Student has requested to take AP Psychology and AP Economics at the District during the 2011/2012 school year (NT 61 and J-2).

- 8) The District has denied the Student's request in that the Student "does not demonstrate a need for an accelerated course in Economics [and Psychology] based upon the gifted needs addressed throughout [REDACTED] educational career" (J-2).
- 9) The District also cited its policy that does not allow tenth grade students to take AP Psychology or AP Economics as a reason for denying the classes to the Student (NT 361-362 and D-1).
- 10) The District states that the Student will be able to take both AP Psychology and AP Economics next year (2012/2013 school year) when the Student is an eleventh grade student in the District (NT 63).
- 11) In place of the two AP classes, the District has offered Student a "regular" Economics class and an Introduction to Social Sciences, both college preparatory level classes that are open to tenth grade students (D-1 and NT 232, 236).
- 12) The Introduction to Social Sciences and Economics classes are each one semester long (J-1 and NT 232 and 268-9), while the AP Psychology and AP Economics classes are each a full year long (J-1 and NT 355).
- 13) The District did, without clear explanation, admit to allowing two tenth graders to participate in the AP Economics course during the 2010/2011 school year (NT 364). "At least" one tenth grade student was also allowed to take AP Psychology during the 2010/2011 school year (NT 365).
- 14) In addition to the Introduction to Social Sciences and regular Economics courses, the District has promised, through the GIEP, to "differentiate" the curriculum in all of student's classes in order to benefit the Student as necessary (J-1).

15) The District has also offered the Student, as a member of the gifted program, a catalog that contains over five pages of “enrichment” opportunities for the Student to partake in during the 2011/2012 school year (District Exhibit [“D”]-3).

16) Student has rejected the District’s offer of Economics and Introduction to Social Sciences and has indicated that Student will not take either class during the 2011/2012 school year (NT 234-235).

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 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.

¹ 22 Pa. Code § 16.2.

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 most of the witnesses who testified in this hearing to be generally credible and will discuss specific instances of credibility findings as is necessary to the discussion below.

The Parents, in this matter, have brought one specific item to the attention of the Hearing Officer. Specifically, the Complaint stated and the parties agreed at the outset of the hearing that the sole issue in this case was the appropriateness of the Student's GIEP for the 2011/2012 school year. More specifically, the parties agreed that the question of appropriateness was focused solely on whether the District's decision to deny Student two AP classes (AP Psychology and AP Economics) was, in effect, a denial of an appropriate gifted education. Although the Parents attempted to assert a number of other issues throughout the length of the hearing, the only proper issue for decision at this time is the specific issue stated above – whether the District's refusal to allow the Student to enroll in the two AP classes during the 2011/2012 school year has the effect of denying the Student an appropriate gifted education.

The District, while agreeing that the Student is gifted, has offered what it believes to be an appropriate gifted education by indicating that the Student is scheduled to take five honors courses (in math, English, social studies, world languages, and science), and that there are numerous enrichment opportunities available to the Student through the Independent Options catalog that is open to all gifted students (including, of course, the Student here) in the District.² Moreover, the District indicates that the Student's GIEP sets forth Specially Designed Instruction ("SDI") which obligates the District to differentiate the curriculum to meet the Student's needs in all of the Student's classes. Even more to the point, the District argues that it is specifically obligated to provide differentiation to the Student in the Introduction to Social Sciences and Economics classes that it proposes the Student take in lieu of the two requested AP courses. Thus, the District sets out an argument indicating that it intends to provide the Student with an appropriate GIEP through acceleration (honors classes), enrichment (the Independent Options catalog), and differentiation (SDI contained in the GIEP).

² Exhibit D-3 contains 47 specific enrichment opportunities open and available to the Student.

The Parents, on the other hand, argue that the District is not providing the Student with an appropriate education because it is denying the Student access to AP Psychology and AP Economics. The Parents argument is, ostensibly, that the “regular” Economics and Introduction to Social Sciences classes offered by the District lack the academic rigor that is needed by the Student. The Parents also argue that differentiation has not occurred in the Student’s classroom in the past and that they are highly skeptical that such differentiation will occur moving forward. Finally, the Parents argue that the enrichment catalog, while impressive looking, does not provide the Student with any specific or meaningful enrichment opportunities that would relate to her preferred fields of study (Psychology and Economics). I will address each of these arguments separately.

The first argument is the Parents’ contention that the enrichment opportunities offered in the catalog are somehow not appropriate for the Student as they do not provide specific enrichment for the Student’s interests in Economics and Psychology. Parents spent a great deal of time at the hearing making the point that none of the 47 options listed in the catalog specifically relate to either Economics or to Psychology. However, proving such a fact misses the point of the Independent Options/Enrichment program. The catalog is not designed to enrich a specific course at the District. Instead, the catalog is simply a listing of numerous activities that gifted students within the District can take advantage of during the school year to enrich their general educational experience at the District. Accordingly, the fact that the Independent Option catalog contains no specific enrichments for the Psychology and/or Economics class does not further the Parents’ case in this matter. The catalog is simply one tool that the District uses to provide a gifted education to the Student (and to all gifted students in the District). Instead of being designed to enhance specific courses, the catalog is actually designed as a means of expanding gifted students’ educational experience beyond the standard curriculum. Accordingly, I find that the fact that the Independent Option catalog does not contain specific references to Economics or Psychology classes does not further the Parents’ case and does not render the District’s proffered GIEP inappropriate.

The next argument raised by the Parents deals with differentiation within the classes offered by the District. The District maintains that all of Student's classes, but specifically the Economics and Introduction to Social Sciences classes, can and will be differentiated if there is a specific need shown by the Student for such differentiation. This is specifically promised by the SDI contained in the Student's GIEP (J-1). The Parents have essentially argued that the District has failed to differentiate in the past and that they are skeptical, at best, the differentiation will occur in the future. In its most basic form, the Parents proffer that because the Student's classes in the past were not differentiated, the District's promise to differentiate moving forward is a hollow promise at best.

Frankly, the difficulty with the Parents' position in this matter is that it is speculative in nature. Moreover, the evidence that was presented in this case is the somewhat conflicting testimony of several different teachers. For example, the Student's ninth grade gifted teacher indicates that differentiation can, in fact, take place in the classroom (NT 62-63). The Student's middle school gifted teacher, however, indicates that while differentiation did take place in the middle school, it may not work as well in a high school setting (NT 82-87). The Student's ninth grade history teacher testified that there was no differentiation in the Student's class last year (NT 114). Student's eighth grade History teacher, however, indicated that differentiation did take place on a regular basis in her classroom (NT 118-121). Finally, the teacher who would teach the AP Economics course indicated that differentiation is constant and ongoing in her classroom and that it is done on a regular basis by teachers in the District (NT 328-329).

This testimony leaves one with a variety of opinions and thoughts on differentiation at the District that is not particularly enlightening. The evidence would lead one to find that differentiation does occur, but not necessarily in every classroom. The reason for such inconsistency is not clear on the record, although certain classes and certain situations may be more (or less) conducive to differentiation. Also, of course, the individual needs of each student must be taken into account in any given situation. Regardless, it must be noted that the eighth grade history teacher and the high school economics instructor were both highly credible witnesses. This is important because both of these teachers indicated that differentiation was taking place in the District's classrooms on a regular basis and that such differentiation can and

does benefit individual gifted students who need such differentiation. The evidence thus leads to a finding that good teachers provide differentiation in the classroom and that the District does have at least several good teachers (specifically, the middle school history teacher and high school economics teacher who testified in this matter). While this is not particularly helpful in this matter, it is what the evidence shows.

That being said, the matter of differentiation is a speculative issue – meaning that it is impossible to determine at this point in time whether differentiation will or will not occur in the Student’s various classrooms (or, for that matter, whether it is even needed in Student’s various courses). The only evidence before this Hearing Officer is the conflicting testimony cited above and the fact that differentiation is promised by the Student’s GIEP. And, because the burden of proof in this case, as stated above, is on the Parents, I must find that the Parents have not carried their burden with the differentiation argument. I believe that the most credible testimony indicates that differentiation has occurred in the past and will also occur in the upcoming school year if, indeed, it is needed. There is also a legally binding promise to differentiate in the Student’s GIEP. Moreover, the Parents would certainly be free to file another due process hearing at the conclusion of the 2011/2012 school year if they believe that the specific differentiation that was promised by the District did not occur. Accordingly, there is not enough specific evidence before me to indicate that the District will not fulfill its duty to differentiate as needed.

The final argument presented by the Parents is that the AP classes are necessary because these classes alone provide the academic rigor that the Student requires under [REDACTED] GIEP. Essentially, despite many detours and side trips during the hearing, the Parents ask for a finding that the Student’s GIEP is, in the absence of the two AP courses, inappropriate and not designed to provide a meaningful educational benefit to the Student for this reason. The difficulty facing the Parents in this situation is that they must be able to present evidence which clearly shows that absent the two AP courses, the Student’s gifted education is, indeed, inappropriate. The Parents have attempted to prove this point in several ways.

Initially, the Parents argue that the Student has an extremely strong desire and interest in the AP Economics and AP Psychology courses. This may very well be true. Specifically, the Student testified about reading ahead to prepare for these classes and testified very credibly about [REDACTED] interest in these particular subjects. However, while the Student's desire is likely true, such a fact is not evidence that the classes are somehow necessary in order for the Student to receive an appropriate gifted education. Proving a "want" for certain classes, while certainly important for the Student's motivation, determination, and overall mental state of being, is not to be confused with evidence of a need for said classes. In this case, the Parents have certainly made it clear that the Student wants to take the two AP classes. However, the Student's desires, while certainly important in the Student's overall education, do not carry enough evidentiary weight to prove the Parents' case in this instance.

Next, the Parents argue that the AP courses are the best "fit" within the parameters of the Student's giftedness as set forth in the GWR and GIEP. Specifically, the Student is gifted in the areas of problem solving, analytical thinking skills, and high level thinking skills. The Parents argue that "any" class could meet those needs if done properly. That would mean, necessarily, that the AP classes would meet those needs. Frankly, the Parents are correct. However, under the same argument, the classes offered by the District, especially when the classes are differentiated as set forth in the Student's GIEP, would also meet this "test." However, proving that the AP classes are a good "fit," or even a "better" fit than the classes offered by the District does not show that the District's submission is inappropriate. As such, this argument carries little weight and does not further the Parents' case.

Next, the Parents argue that the Student should take the AP classes because it better prepares the Student for college. In a similar vein, the Parents also argue that denying the Student the two AP classes will gravely affect [REDACTED] self esteem. Frankly, I cannot give either of these arguments any real weight, as they lack credibility. The Student came across to this Hearing Officer as an extremely intelligent, extremely driven, and extremely self assured young person who will be prepared for whatever course in life the Student chooses to take. The Student, even at a young age, is an accomplished high school scholar and athlete (as was attested to by a number of the Student's teachers and coaches). Accordingly, I simply do not find it

credible that the Student's self esteem or preparation for college would, in any way, be injured by [REDACTED] inability to take the two AP classes.³

Finally, the Parents argue that the Student "needs" the two AP classes in order to receive an education that is properly rigorous. The Parents essentially argue that the classes proposed by the District do not offer the academic rigor necessary for the Student to receive an appropriate gifted education at the District. There is little doubt that the AP Psychology and AP Economics courses provide intense academic rigor. There is also little doubt that the AP classes provide more academic rigor than the two classes proposed by the District, even with differentiation. Once again, however, the Parents' evidence does not show that the District's proposed GIEP is inappropriate. While the Parents may have proven that their proposal is slightly "better" than the District's offering, they have not proven that the District's offering is inappropriate. The District has presented evidence stating that the Economics and Introduction to Social Sciences classes, combined with differentiation within each of those classes (on an as needed basis), is appropriate to meet the Student's needs (especially when combined with acceleration in math, social studies, world languages, English, and science and with the numerous enrichment opportunities set forth earlier). While the District concedes that such a plan does not necessarily "maximize" the Student's education, such a plan does, in the end, provide an appropriate education that is individualized to meet the Student's need and is designed to gain the Student meaningful educational benefit.

Two other issues must be briefly dealt with in this case. First, the Parents are very concerned because the District cited its policy to exclude tenth graders from AP classes as a reason for denying those classes to the Student. The fact that the District did this is unfortunate and frankly makes a determination in this case more difficult. While the District is certainly free to have a policy, said policy does not override the individual needs of a specific gifted student. However, this decision is based upon the weight of the evidence, which shows that while the District's stated reason for denying the request may be troubling, the lack of said classes do not render the Student's GIEP inappropriate. Further, the District's "policy denial" is offset by the

³ This is even more true given the fact that Student will be able to take the two classes next year. Thus, the Student will not miss out on the opportunity to take both AP classes during the Student's High School career.

fact that the District also stated that the Student's academic needs are such that the AP classes are not necessary for the Student at this time.⁴ This, of course, is a much more appropriate reason for the denial. Moreover, because the District stated this more appropriate reason in a document given to the Parents and well in advance of the hearing, I give it a sufficient amount of weight to overcome the issues caused by the District's "policy" position.

Finally, there were three "exceptions" made to the policy cited above (excluding tenth graders from AP Psychology and AP Economics). Specifically, three tenth grade students were permitted to take the AP classes during the 2010/2011 school year (two students were permitted to take AP Economics and one student took AP Psychology). None of the exceptions were sufficiently explained. However, as the placement in AP classes is an individualized matter tied to the specific needs and circumstances of each student, I cannot give those exceptions any weight here.

The bottom line in this situation is that I do not believe that the Parents have presented evidence to indicate that the overall program offered by the District fails to meet the standard of appropriateness. The District is providing acceleration (five honors classes), enrichment (through the Independent Options catalog), and differentiation as needed (through the GIEP) to the Student based on [REDACTED] individual needs. Accordingly, I will find that the GIEP proposed by the District (which does not include the two AP classes), is appropriate.

ORDER

In accordance with the findings of fact and conclusions of law set forth above, the District's proposed GIEP is found to be appropriate and it is hereby ORDERED that this matter be dismissed without remedy to the Student.

Shawn D. Lochinger
HEARING OFFICER

Date of Decision: September 16, 2011

⁴ This is clearly set forth in the NORA (J-2), which was a written document that was completed by the District and given to the Parents well before a hearing was even requested.