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Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: SR

Date of Birth: XX-XX-XXXX

Date of Hearing: September 2, 2009

OPEN HEARING

ODR Case 00136-09-10-AS

Parties to the Hearing:

Mark W. Voigt, Esq.
600 W. Germantown Pike
Suite 400
Plymouth Meeting, PA 19462

Representative:

Sharon Bennett
Director of Special Education
Kennett Consolidate SD
300 E. South Street
Kennett Square, PA 19348

Andrew Faust, Esq.
331 E. Butler Avenue
P.O. Box 5069
New Britain, PA 18901

Date Record Closed:

September 2, 2009

Date of Decision:

September 15, 2009

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

“Student” is a 12-year old student residing in the Kennett Consolidated School District (“District”) who has been identified as gifted under the provisions of 22 PA CODE §§16.1-65 (“Chapter 16”). Parent claims that the District has denied the student an appropriate gifted education due to alleged procedural and substantive failures in the student’s gifted education plan.

For the reasons set forth below, I find in favor of the parent.

ISSUE

Has the District provided an appropriate gifted education plan to “student”?

If not, what remedy/remedies are owed to the student?

FINDINGS OF FACT

1. In April 2006, “student” was identified as eligible for gifted education in a gifted written report. (Parent’s Exhibit [“P”]-1; School District Exhibit [“S”]-1).

2. On the Kaufman Test of Educational Achievement, “student” scored in the 98th percentile in mathematics and the 97th percentile in reading. (P-1; S-1).
3. On the Wechsler Intelligence Scale for Children-Fourth Edition, “student’s” full-scale IQ of 126 placed him at the 96th percentile. (P-1; S-1).
4. In the spring and summer of 2008, the student participated in the Johns Hopkins University Center for Talented Youth and Carnegie Mellon Elementary Student Talent Search. (P-21, P-22).
5. “Student’s” PSSA scores, taken in 5th grade and reported in the spring of 2008, showed “student” scored at an advanced level in reading and mathematics. (P-12).
6. Gifted individualized education plans (“GIEPs”) were created, including a GIEP on May 14, 2008 for the 2008-2009 school year, “student’s” 6th grade year. The meeting was attended by only three individuals—“student”, “student’s” mother, and the gifted support teacher. (S-2).
7. The GIEP included three goals—the development of higher order thinking skills, the development of research projects, and the development of leadership skills. (S-2 at pages 3-6).
8. In 6th grade, the student participated in academically talented (“AT”) classes in language arts and social studies, and regular education science. (P-7; S-3; Notes of Testimony [“NT”] at 169-170).

9. AT classes include almost all gifted students with GIEPs along with non-gifted regular education students who meet certain criteria.
(NT at 90-91).
10. Mathematics instruction is totally removed from gifted education systems. “Accelerated mathematics” is taught to students who qualify for the class, but there is no gifted or AT designation for the class. Mathematics instruction is not within the jurisdiction of the District’s middle school gifted support teacher.
(NT at 90-91, 141).
11. The District’s middle school gifted support teacher also serves as the District’s AT coordinator. This individual also served as “student’s” 6th grade AT social studies teacher. (NT at 89, 92-93).
12. The gifted support teacher recognized that “student” is an academically talented student but opined that “student” had needs for support in organization skills, in written assignments, and in perspective-taking/cordial debate with peers. (NT at 104-107).
13. “student’s” instruction is differentiated in terms of learning techniques and instruction in regular education/AT classes. But there was no individualized enrichment or acceleration. (NT at 108-110).
14. Adaptations in the AT classes are not individualized gifted adaptations or specially designed gifted instruction. For example,

- all AT students in “student’s” AT social studies class in 6th grade, whether identified as gifted or not, received the same acceleration in geography and do the same research project. (S-3 at page 5; NT at 111-112, 144-145).
15. “student” had 94 minutes of AT language arts instruction daily in 6th grade. Additionally, “student” had 47 minutes of daily instruction in math, AT social studies, and science. (NT at 126-127).
 16. A GIEP was developed on April 23, 2009 for the 2009-2010 school year, “student’s” 7th grade year. The meeting was attended only by “student”, “student’s” mother, and the gifted support teacher. (P-7; S-3).
 17. The GIEP included four goals for the 2009-2010 school year—the development of higher order thinking skills, the development of time management skills, a goal in language arts, and a goal in science. (S-3 at pages 3-4, 7-8).
 18. “student” has 84 minutes of AT language arts instruction daily in 7th grade and 84 minutes of math instruction. Additionally, “student” has 42 minutes of daily instruction in social studies and AT science. (NT at 126-127).
 19. “student” has “cycle” classes such as health, home economics and keyboarding. (NT at 86).

20. “student” also has 42 minutes of daily enrichment time. This is a period of time that every middle school student has to pursue independent study in science and social studies (alternating each marking period) for project research and other self-directed activities. (NT at 167-169).

DISCUSSION AND CONCLUSION OF LAW

The provision of a gifted education is governed by Pennsylvania law as set for at 22 PA CODE §§16.1-65. The purpose of gifted education is to provide gifted education to each identified student based on the unique needs of the student including acceleration and/or enrichment programs and services according to the student’s intellectual/academic needs and abilities.¹

Parent claims that the District’s gifted education for “student” has been procedurally and substantively inappropriate. Parent claims specific remedies of 540 hours of compensatory education, an order that the GIEP team meet to revise/re-design the student’s GIEP, and an order that the student skip grades in certain subjects.

Procedural Violations. Here, the parent’s claim of procedural violations amount to one verifiable violation. The GIEP meetings in May 2008 and April 2009 were attended by only three individuals—“student”,

¹ 22 PA CODE §16.2.

“student’s” mother, and the gifted support teacher (a different individual at each meeting but serving in the same role: the gifted support teacher). (FF 6, 16). None of these individuals is “a representative of the district, who will serve as the chairperson of the GIEP team, who is knowledgeable about the availability of resources of the district, and who is authorized by the district to commit those resources.” 22 PA Code §16.32(b)(3).

I need not reach the question of whether this procedural violation is grounds for compensation because, as set forth below, the substantive inappropriateness of the GIEP and “student’s” gifted program overwhelm this procedural violation and will provide the grounds for remedy.

Substantive Violations. A GIEP must be based on the information in the gifted written report and must include multiple components. 22 PA Code §16.32(d). Included in these necessary components are “a statement of annual goals and short-term learning outcomes which are responsive to the learning needs identified in the evaluation report”, “a statement of the specially designed instruction and support services to be provided to the student”, and “appropriate objective criteria, assessment procedures and timelines for determining, on at least an annual basis, whether the goals and learning outcomes are being achieved.” 22 PA Code §§16.32(d) (2-3),(5).

Here, “student’s” GIEP is inappropriate in these three regards. First, “student’s” goals and short-term learning outcomes are not grounded in the gifted written report of April 2006. (FF 1, 2, 3). On the Kaufman Test of Educational Achievement, “student’s” reading skills fell in the Superior range and “student’s” math skills fell in the Very Superior range. (P-1; S-1). The most recent PSSA scores bear out that “student” is still achieving at significantly advanced levels in both areas. (FF 5). Yet there is nothing in “student’s” goals or short-term objectives that speak to individualized enrichment or individualized acceleration in reading or math.

Indeed, the most glaring and problematic omission is that “student” has no mathematics goal in “student’s” gifted education program. Mathematics is clearly not just a strength but an identified area of outstanding ability and achievement. (FF 2, 4, 5). Inexplicably, middle school mathematics instruction has been entirely removed from sphere of the District’s middle school gifted education program. The District is free to structure its gifted education program as it sees fit; but when those organizational structures interfere with, and ultimately deny, the ability of a gifted education student to receive individualized gifted education, it must bear the consequences.

With a lack of goals in specific achievement areas, it comes as no surprise that there is no specially designed instruction and supports for “student” in terms of appropriate goals based on “student’s” strength. (P-

7; S-2; S-3). Likewise there are no objective criteria, assessment procedures, or timelines for determining whether non-existent goals in reading and math are being achieved.

In short, “student” has abilities and achievement in reading and math that warrant concrete, measurable, individualized goals and objective criteria to ascertain whether those goals are being achieved. Yet “student” is in a regular education setting in both areas without any individualized gifted education. (FF 8, 9, 10, 12, 13 14). The District’s placement of “student” in AT classes and “accelerated” math classes for regular education students does not amount to gifted education; differentiated approaches to teaching and learning in regular education environments does not amount to individualized gifted instruction.

In sum, the District has denied “student” an appropriate gifted education in terms of its flawed GIEPs and for its lack of individualized gifted education in reading and math.

Remedies. Parents claim remedies for compensatory education, and specific provisions of orders for the GIEP team. The remedy of compensatory education is governed primarily by B.C. v. Penn Manor School District, 906 A.2d 642 (Pa. Cmwlth. 2006), where the Pennsylvania Commonwealth Court held that an award of compensatory education in gifted education cases is not to be calculated on a robotic hour-for-hour calculation of denial. Instead, the amount of a

compensatory education award must be reasonably calculated to bring “student” to the position that “student” would have occupied but for the school district's failure to provide an appropriate program.

It is the considered opinion of this hearing officer that “student’s” reading and math instruction could have and should have been accelerated in 6th grade to reach GIEP goals that would have led him to move through math and reading classes/curricula at twice the rate those regular education classes were paced. As such, “student” will be awarded 47 minutes of compensatory education daily for “student’s” reading instruction in 6th grade and 23.5 minutes of compensatory education daily for “student’s” math instruction in 6th grade. (FF 15).

The provision of compensatory education must be provided within the District’s programming, curriculum or other academic/extra-curricular offerings, although its use is under the control of the parent and may be used for services after school and/or during summers.

Centennial School District v. Pennsylvania Department of Education, 539 A.2d 785 (1988).

This hearing officer declines to order explicit grade-skipping in certain subjects. The order will, however, include a provision for the GIEP team to meet and include explicit instructions for the GIEP team’s consideration of “student’s” gifted education program in the 2009-2010 school year.

CONCLUSION

The District has inappropriately programmed for “student” gifted education program in both the 2008-2009 and 2009-2010 school years. An award of compensatory education, as well as explicit instructions for the GIEP team, will follow.

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ORDER

In accord with the findings of fact and conclusions of law set forth above, it is hereby ORDERED that the District provide “student” with 70.5 minutes of compensatory education for every school day “student” attended in the 2008-2009 school year.

Furthermore, within 10 school days of the date of this order, the fully constituted GIEP team, in accordance with the mandate of 22 PA Code §16.32(b), shall meet to revise/re-design “student’s” GIEP for the 2009-2010 school year. The GIEP team shall design a GIEP that contains the necessary components as outlined in 22 PA Code §16.32(d), especially as those components relate to individualized gifted instruction in math and reading.

In its revision and re-design of “student’s” GIEP, the GIEP team shall look to enrich and/or accelerate “student’s” instruction in reading and math, as well as other academic subjects as it deems appropriate.

The GIEP team shall consider “student’s” ability to begin study of a foreign language.

The GIEP team shall consider all means of creative scheduling to provide “student” with an appropriate gifted education program including, but not limited to:

- grade-skipping;
- compacted curriculum /accelerated instruction;
- attending high school classes;
- use of the 2009-2010 “enrichment period” for additional classes or accelerated instruction; and
- accelerating/condensing the “cycle classes” to allow for additional room in “student’s” schedule for additional classes or accelerated academic instruction.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

September 15, 2009