

*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

Child's Name: BG

Date of Birth: XX-XX-XXXX

Date of Hearing: December 23, 2009

OPEN HEARING

ODR No. 00510-09-10 LS

Parties to the Hearing:

Representative:

Dr.  
Mr.

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Date Record Closed:

December 23, 2008

Date of Decision:

January 6, 2010

Hearing Officer:

Cathy A. Skidmore, Esquire

### **INTRODUCTION AND PROCEDURAL HISTORY**

“Redacted” (“Student”) is a seven-year-old student residing in the Abington School District (“District”) who has been identified as exceptional and in need of specially designed instruction as a gifted student pursuant to Chapter 16 of the applicable Pennsylvania regulations, 22 Pa. Code §§ 16.1-16.65. The parents filed their request for a due process hearing through counsel on November 25, 2009, in which they challenged the appropriateness of the District’s gifted special education program for Student and sought compensatory education as a remedy. A hearing was scheduled for December 23, 2009. This case was reassigned to this hearing officer on December 16, 2009.

Prior to the date of the scheduled hearing, counsel for the District requested a continuance or, in the alternative, a second hearing date after the first of the year (January 1, 2010) due to the District’s holiday schedule and the potential unavailability of some witnesses on December 23, 2009. Counsel for the parents did not object to this request. Nevertheless, these accommodations were denied because the relevant regulations require that the hearing “shall be held within 30-calendar days” of the request for a due process hearing. 22 Pa. Code § 16.63(n)(1). This hearing officer did offer to begin the hearing on December 22, 2009 in an effort to accommodate the parties’ schedules and provide sufficient time for the presentation of evidence, but this date was not available to all parties and counsel. The hearing, which the parents requested to be open, convened as scheduled on December 23, 2009 and was completed

that same date.<sup>1</sup> This hearing officer is satisfied that the parties had sufficient time and opportunity to present evidence relevant to their respective positions, including testimony by eight witnesses, and I find the record provides ample information on which to base my decision.

For the reasons set forth below, I conclude that the gifted program provided to Student has denied him FAPE with respect to the subject of mathematics, and that he is entitled to 30 minutes of compensatory education for each school day on which he attended or will attend school from November 25, 2008 until an appropriate GIEP is developed. I also find that the gifted program is appropriate with respect to reading and communication arts. Finally, I will order the District to reconvene the GIEP team to address the deficiencies described below.

### **ISSUES**

1. Whether the District denied a free, appropriate public education (FAPE) to Student since November 25, 2008?
2. If the District did deny FAPE to Student, whether Student is entitled to compensatory education and, if so, in what amount?

### **FINDINGS OF FACT**

1. Student was born on “redacted” and resides with his parents within the District. (N.T. 52)
2. In the fall of Student’s kindergarten year (2007-08), he was evaluated at the request of his parents to determine whether he was eligible for and in need of gifted support services. Student was administered the Stanford Binet Intelligence Scales – Fifth Edition and obtained a Verbal IQ of 139, a nonverbal IQ of 143, and a Full Scale IQ of 142

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<sup>1</sup> The hearing officer did permit the District to provide additional exhibits in the form of curricula vitae of several witnesses after the hearing concluded, with no objection by the parents, so that the qualifications of those witnesses were made part of the record. Those exhibits are identified and admitted as School District (SD) 59, SD 60, and SD 61.

which placed him in the Very Superior Range. (N.T. 33, 147-48; Parent Exhibit (P) 1, P 24 p. 1; School District Exhibit (SD) 1, SD 2)

3. On the Woodcock Johnson III Tests of Achievement administered at the same time, Student achieved very superior scores (99.9<sup>th</sup> percentile) in both reading comprehension and mathematics. (P 1; SD 2)
4. In the Gifted Written Report (GWR) which issued in November 2007, Student was determined to meet the criteria as a mentally gifted student and a Gifted Individualized Education Plan (GIEP) was recommended. (P 1; SD 2)
5. The GIEP team met in December 2007 and developed a GIEP which contained a goal for developing creativity and problem solving skills through a weekly enrichment group called the APEX program (Abington's Program for Excellence); as specially designed instruction (SDI), Student also had opportunities to participate in other enrichment activities including Compass Learning (for mathematics and reading) and First in Math (for mathematics) in the regular education classroom. The parents approved the Notice of Recommended Assignment (NORA). (N.T. 36-38, 149-53, 154, 366; P 2; SD 4, SD 5, SD 6, SD 7, SD 11)
6. The GIEP team met again in April 2008 to discuss Student's program with respect to his transition to first grade as well as the possibility that Student would skip first grade and go on to second grade in the fall of the 2008-09 school year. Prior to this GIEP meeting, the District conducted screening assessments of Student in the areas of reading, spelling, writing, and mathematics. Student "met or exceeded all of the criteria" on the screening in the areas of reading and spelling. In mathematics, the District identified several areas of weakness that Student demonstrated at the first grade level including fact families, greater than and less than concepts, graphing data, multidigit subtraction, and linear measure. On a separate Grade K into 1 Placement Test for mathematics, Student scored 63.6% and demonstrated some degree of weakness in all areas assessed. The GIEP team agreed to meet again in June 2008 to discuss Student's placement for 2008-09. (N.T. 42, 156-57, 160-61, 282-84; P 3; SD 10, SD 12, SD 14, SD 15)
7. At the end of April 2008, the parents wrote to the District and indicated their belief that Student should begin the 2008-09 school year in second grade. (N.T. 45-46, 119; P 24 p. 1A)
8. As agreed, the GIEP team met again on June 6, 2008. The team determined that Student would be accelerated to second grade beginning in September 2008, and that the district would administer curriculum-based pretests in both reading and mathematics. A new goal in self-advocacy was also added to Student's GIEP. (N.T. 47-50, 119, 162-63, 170-71, 286-87, 388-89; P 4 pp. 2, 5; SD 18, SD 24 pp. 2, 5, SD 57)
9. Student began the 2008-09 school year in second grade. The pretesting in reading and mathematics did not occur at the beginning of the school year. However, in December of 2008, the District conducted curriculum-based assessments of Student in the area of

mathematics. On the Grade 2 End-of-Year Assessment, Student achieved an 82% and exhibited some weaknesses in the categories of numbers and computation, geometry and measurement, reasoning and problem solving, and probability and statistics. On a Grade 2 (into 3) Placement test, Student demonstrated several areas of need in the categories of numbers and computation, and geometry and measurement, while scoring 100% in the categories of reasoning and problem solving, probability and statistics, and algebraic concepts. (N.T. 52-56, 166-70; P 4 p. 3, P 25 pp. 25-26; SD 22, SD 23 pp. 1, 10)

10. A District reading specialist also administered a Qualitative Reading Inventory in late November and early December 2008 at levels three, four, and five. The reported results suggested that Student was independent at a third grade reading level, below instructional at a fourth grade level, and approaching frustration at a fifth grade level. Student's oral comprehension scores were higher than his silent comprehension scores at the fourth and fifth grade levels while his accuracy in context scores were 99-100% at all three levels. (N.T. 313-16; P 4 pp. 2-3; SD 32 pp. 2-3)
11. The GIEP team convened again in December 2008 and discussed, among other things, Student's mathematics and reading assessments. The District informed the parents that Student did not meet the criteria for consideration of his further acceleration into third grade mathematics. The team agreed on a new goal and corresponding objective related to mathematics problem solving and enrichment activities in the regular second grade curriculum. Few other significant changes were made to any of Student's goals or objectives; in the SDI section of the GIEP, opportunities for additional enrichment activities in mathematics in the Everyday Mathematics Program (EDM), the Navigator Enrichment Series, and Math Plus were added. (N.T. 58-60, 166, 174-76; P 4, pp. 3-4; SD 24 pp. 3-4, SD 25)
12. EDM is a regular education curriculum program which allows for differentiation in instruction and offers the opportunity for more self-directed learning as well as enrichment opportunities. (N.T. 257, 347)
13. The parents wrote to the District after the December 2008 GIEP meeting and requested that Student's GIEP be revised to include more specificity with respect to mathematics goals, objectives, and specially designed instruction, as well as more information about Student's Present Levels of Educational Performance (PLEP) in mathematics. (N.T. 62-63; P 24 pp. 3-4; SD 26)
14. The GIEP team again met at the end of January 2009 to discuss further whether Student could be accelerated into third grade mathematics. A new objective was added for the successful completion of open-ended mathematics problems based upon the District's rubric. (N.T. 64-65, 178, 179-80; P 5, P 24 p. 6; SD 30, SD 31, SD 32 p. 5, SD 33, SD 34)
15. On January 27, 2009, the parents again wrote to the District and expressed concerns about inadequate assessment of Student's PLEP in mathematics. The parents also provided the results of Student's performance on the Texas Assessment of Knowledge

and Skills (TAKS) which the parents obtained from the internet and gave Student to complete sometime in January 2009. (N.T. 69-72, 127, 181-82; P 17, P 24 pp. 8-11; SD 34)

16. In early February 2009, the District informed the parents that it would follow up on the December 2008 mathematics Grade 2 into Grade 3 Placement testing by conducting a mathematics assessment of Student called Phase II over a period of several days. That portion of the assessment would include each and every unit test that is part of the Grade 3 mathematics program. The parents understood that the Phase II testing required a student to achieve 90% or better on each and every unit before acceleration would be considered. The parents did not agree to these assessments, and the District suggested another meeting of the GIEP team to address the parents' concerns. (N.T. 72-75, 129-30, 189-90, 233; P 24 pp. 15-19; SD 17 pp. 1-8)
17. According to the District's Coordinator of Mathematics and Elementary Science, the Phase I – Phase II procedure is used in considering subject acceleration as follows. In Phase I, which was a survey similar to an end of book test, a student is required to score 90% in order to proceed to Phase II. In Phase II, the student is required to take every unit test at the next grade level and score an average of 90%, but not necessarily score 90% or above on each and every unit. Weaknesses or foundational gaps would be revealed by scores on the individual units which would be considered before a determination on acceleration would be made. (N.T. 242-43, 249-50)
18. The GIEP team met again on February 19, 2009 and added a new objective in mathematics, namely Student's participation in the EDM program through enrichment and above-grade level work (which was part of the SDI in the prior GIEP). The team also made slight changes to the SDI to add enrichment activities for reading. The team again discussed the third grade unit testing in mathematics that the District was proposing. The District subsequently issued a Permission to Re-evaluate form requesting the parents' consent to conduct the mathematics Phase II assessments as well as a standardized achievement test in mathematics, the Test of Mathematical Abilities for Gifted Students. The parents did not provide permission to conduct the requested mathematics assessments (N.T. 76-80, 81-82, 129-31, 183-84, 187-88, 189-90; P 6, P 7, P 24 p. 22; SD 35, SD 37, SD 40)
19. Beginning in February 2009, Student also participated at school in the Compass Learning program, an individual computer-based instruction program in reading and mathematics, which he had also used in kindergarten. Compass Learning is part of the curriculum for all students in kindergarten through sixth grade. (N.T. 37-38, 82-83, 281-82; P 18, P 25 pp. 45-54)
20. In late February 2009 Student was given a School and College Ability Test (SCAT) which is administered through Johns Hopkins University's Center for Talented Youth. SCAT scores are used by the Center for Talented Youth to compare performance of students who take the test and to determination whether a student qualifies for its

programs and courses. The parents shared Student's scores on the SCAT with the District. (N.T. 80-81, 134-35; P 16)

21. Also in late February 2009 the parents attempted unsuccessfully to schedule a meeting with Student's regular education teacher. The District sent the parents a revised GIEP in early March 2009 and further explained its request for permission to conduct the Phase II assessments in mathematics in order to properly consider whether Student should be accelerated in that subject. A second permission to evaluate form was sent to the parents in April 2009. The parents did not agree, believing that the District had sufficient information to place Student into third grade mathematics, but they did request another GIEP meeting having decided that it would be better to focus on the 2009-10 school year. (N.T. 84-90, 193-94; P 24 pp. 26-30; SD 42)
22. In Student's second grade school year (2008-09) his mathematics enrichment consisted of 30-45 minute weekly small group sessions during the second semester as well as participation in the APEX program which is a 150 minute/week pullout program addressing various subjects including mathematics. Student also participates in enrichment activities in EDM and Compass Learning. With respect to communication arts, Student has participated in a reading program in which he uses "beyond level" readers, approximately one grade level above, and also was given "beyond level" spelling lists. Student performed well overall on spelling tests throughout the school year which were included in his writing grades. "Communication arts" also encompasses reading, interpreting literature, writing, speaking, listening, and research. (N.T. 57-58, 294-99, 309, 317-18, 321-22; P 23 pp. 3-4; SD 29)
23. The GIEP team convened on May 12, 2009. A draft GIEP bearing the date of that meeting included additional information in the PLEP section including Student's grades in the areas of Grade 2 Communications Arts (advanced in all categories), results of an Individual Reading Assessment conducted in May 2009 at grade levels 3, 4, and 5, and the results of the Macmillan/McGraw-Hill Benchmark Assessment, Grade 4, in reading and grammar. Based on these results, the GIEP indicated that Student was reading at approximately one year above grade level and would benefit from "Beyond level" materials in third grade. The TAKS and SCAT scores were included on this GIEP. (N.T. 196-98, 318-21; P 9, pp. 2-3; SD 44, SD 46, pp. 2-3)
24. With respect to mathematics performance, the District provided the results of a placement test administered at the end of April 2009. Student scored 141 points out of a possible 163 points on the Grade 2 Placement Test Phase I and 49 out of a possible 72 points on the Grade 2 Placement Test Phase II, which was at a Basic level. The District advised the parents that the appropriate mathematics program for Student would be at a grade 3 level with enrichment and extension activities as well as "Beyond level work," and that Student did not qualify for acceleration in mathematics. (N.T. 94, 198-99, 237, 256; P 9, p. 3, P 25, pp. 27-28; SD 43, SD 46)
25. The revised GIEP dated May 12, 2009 included major changes to goals, objectives, and SDI from the prior (February 2009) GIEP. Specifically, the May 12, 2009 GIEP included

one goal for the development of oral, written, and visual communication skills with two short term objectives related to writing a script for a play and creating and performing in a play; a second goal addressing the application of critical thinking strategies for solving complex philosophical and mathematical problems with short term objectives relating to manipulating and constructing pentomino patterns, practicing mathematical skills and solving problems, connecting philosophical thoughts, completing open-ended math problems, and completing EDM activities; a third goal for expanding problem solving abilities in science, with short term objectives addressing prediction and experiments; and a fourth goal and short term objective related to self-advocacy. One new SDI component specified that Student would be prompted to improve the quality of his work including organization and neatness. Progress notes for the APEX Program were appended to the GIEP. The parents did not approve or disapprove of the May 2009 GIEP. (*Compare* P 6 with P 9/SD 46; N.T. 200-03)

26. In Student's third grade year (2009-10), Student participates with his classmates in regular education classes in all of his subjects including communication arts and social studies, is in the beyond level reading group, and participates in a variety of enrichment activities through the APEX program weekly, Compass Learning weekly, EDM, and has opportunities for further enrichment in mathematics in the classroom. Also through the APEX program the students have been working on writing a script for a theatrical play. Every child in the APEX program has the same goals for the APEX program as appear in Student's GIEPs. Student has demonstrated good but not perfect scores on spelling tests which have included beyond-level and extra difficult words. (N.T. 97-101, 136, 321-22, 339-42, 344-46, 349-50, 356, 367-68, 369-74, 379; SD 32, SD 33)
27. The District has provided enrichment and acceleration to Student but has not considered or provided course or curriculum compaction for him. (N.T. 273, 305, 325)
28. Student's GIEP team met again on October 27, 2009 at the request of the parents. The discussion focused on the SDI section of the GIEP due to changes by the state in the format of the document. Additionally, new SDI relating to problem solving skills in reading and mathematics and to the Compass Learning program was included. (N.T. 104, 205-09; P11; SD 51, SD 52, SD 53, SD 54)
29. On November 25, 2009, the parents, through counsel filed a due process complaint challenging the appropriateness of Student's educational program for the one year period prior to the filing of their complaint.
30. A due process hearing was held before the undersigned on December 23, 2009 and concluded on that same date. The parents sought as a remedy 540 hours of compensatory education as well as an order that the District conduct a new evaluation limited to obtaining information for Student's PLEP and develop a new GIEP which is appropriate for Student. The District averred that its gifted programming for Student has been and is appropriate.



## **DISCUSSION AND CONCLUSIONS OF LAW**

The burden of proof as well as the burden of persuasion lies with the party which initiated the request for due process, in this case the parents. *In Re Educational Assignment of A.H.*, Spec. Ed. Op. No. 1787 (2006). It is the responsibility of a hearing officer to make credibility determinations in assessing the weight to be accorded the evidence. *E.N. v. M. School District*, 928 A.2 453, 461 (Pa. Commw. 2007). This hearing officer found each of the witnesses who testified in this hearing to be credible and will discuss specific instances of such findings as necessary to the discussion below.

In Pennsylvania, the provision of gifted educational services is governed by Chapter 16 of Title 22 of the Pennsylvania Code. The regulations set forth therein provide, among other things, for certain procedural safeguards as well as an obligation on the part of school districts to identify and appropriately program for students who are gifted and need specially designed instruction beyond that which is provided in the regular education program. 22 Pa. Code §§ 16.1-16.65. 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 Sch. Dist. v. Commonwealth, Dept. of Educ.*, 517 Pa. 540, 549, 539 A.2d 785, 789 (1988). However, a school district’s obligation “is not without limits... . The instruction to be offered need not ‘maximize’ the student’s ability to benefit from an individualized program.” *Id.* Further, school districts need not offer or provide gifted educational programming that goes beyond its own existing curriculum. *Id.* at 552-53, 539 A.2d at 791.

To meet its responsibilities under Chapter 16, a school district must determine a gifted student's placement based upon individual needs, providing "appropriate specially designed instruction based on the student's need and ability" and ensuring that the student "is able to benefit meaningfully from the rate, level and manner of instruction," while providing opportunities in acceleration or enrichment or both as appropriate. 22 Pa. Code § 16.41. The District's obligation is to provide a free, appropriate public education (FAPE). *See generally B.C. v. Penn Manor Sch. Dist.*, 906 A.2d 642 (Pa. Commw. 2006).

The parents claim that Student's gifted program is and has been deficient in four particular respects: (1) that the relevant GIEPs lack sufficient information on PLEPs; (2) that the goals in each of the GIEPs fail to address Student's needs; (3) that the goals in each of the GIEPs are not measurable; and (4) that the gifted program and specifically the APEX class is a one-size-fits-all program.

I will first discuss the parents' more general claims regarding Student's reading and communication arts program. There was little evidence presented to support the assertion that the District failed to appropriately program in communication arts, which is comprised of a variety of subject areas including spelling and writing. (Finding of Fact (FF) No. 22) It is significant to note that Student's mother opined that the writing program for second grade was "a perfect placement" given Student's relative weakness in that area. (N.T. 40, 57) The record further indicates that while Student generally performed well on spelling tests, that subject is but one component of writing. (Findings of Fact (FF) No. 22) Evidence of Student's third grade year in communication arts mirrors that of second grade. I find that the GIEPs in question contain sufficient information to guide Student's educational programming in communication

arts and that overall, the record supports a finding that Student's program in the spelling and writing components of communications arts has been and is appropriate.

With respect to reading, each of the GIEPs during the relevant time period contained information on Student's PLEP in this subject area, and the evidence was consistent that Student's reading program in second and third grades has corresponded to his current instructional reading level. (FF Nos. 10, 23) Although the annual goals and short term learning outcomes/objectives in reading in these GIEPs would likely not be considered models of clarity and objectivity, I conclude that the specially designed instruction, including enrichment activities, was appropriate based on Student's known needs and ability, and permitted Student to benefit meaningfully from the instruction. The parents' belief, no matter how sincere or well grounded, that Student may have been successful if instructed at an even higher grade level in these subject areas does not convince me that the District's program denied him FAPE in reading and communication arts.

The parents' focus in the hearing was on Student's mathematics program, which presents a more difficult issue. With respect to the PLEPs in mathematics, the parents have requested more specificity in this section of the GIEP since at least December 2008. Their present claim that the District failed to set forth sufficient information about Student's mathematics levels in the various GIEPs must be evaluated within the context of the District's request since early February 2009 to obtain additional assessments in order to consider further mathematics acceleration. The parents clearly understood that Student would need to score a 90% on each and every unit test on the next grade's mathematics program before acceleration might be an option and, additionally, held some belief that a score below that 90% threshold could threaten Student's identification as a gifted student. Although I do not find the parents'

testimony with respect to their understanding to be incredible, it does appear that this belief was not altogether accurate as the District presented convincing testimony that it would consider further acceleration if Student attained an *average* score of 90% on the unit tests. The District's proposed testing, while very likely time-consuming to conduct, would appear to provide very useful information regarding any gaps or weaknesses in the subject matter if Student would be further accelerated in mathematics, particularly since he had skipped first grade entirely including its mathematics content. Accordingly, I cannot agree that the District should forego this type of assessment. Additionally, the District cannot be faulted for refusing to rely on the results of the parent-obtained tests, whose reliability and validity are far from clear on this record, as a substitute for a proper assessment of Student's strengths and abilities and to guide programming decisions within the District's curriculum.

I find that the PLEP sections of the GIEPs in question contain sufficient information about Student's present levels in mathematics in order to provide appropriate acceleration and enrichment activities in both second and third grade. While the expected pretesting which was to occur shortly after the start of the 2008-09 school year (second grade) did not occur until December 2008, those results revealed certain relative weaknesses in the second grade mathematics curriculum and supported the decision not to further accelerate him into third grade mathematics. (FF 9, 11) The information contained in the May and October 2009 GIEPs revealed Basic level scores on the Grade 2 mathematics placement tests (FF 24) and similarly supported the decision not to accelerate Student into fourth grade math for the 2009-10 school year.

The parents presented credible testimony that Student has been and is attaining scores and grades below the levels that they expect. They also suggest that Student is making careless

errors on tests and homework because the material is too easy for him. Nevertheless, it is my determination that the PLEPs in the District's GIEPs in question are clearly based on objective assessments of his needs and abilities. I therefore cannot conclude that the information contained in the GIEPs at issue is insufficient for Student's mathematics programming.

The parents' next two claims challenge the goals in the 2008-09 and 2009-10 GIEPs with respect to mathematics. The April 2008 GIEP did not contain a separate mathematics goal, but given the fact that the GIEP team decided to accelerate "student" by placing "student" into second grade from kindergarten and had planned to pretest "student" at the beginning of the school year in mathematics and reading (FF Nos. 9, 10, 11), as well as the fact that the parents do not appear to object to the lack of any individual mathematics goal at that time, it would be difficult to find fault with the absence of such a goal. The December 2008 GIEP does contain a specific short term objective for mathematics as well as several enrichment activities specific to that subject. (FF No. 11) The January 2009 GIEP added a new short term objective in mathematics, namely the completion of open-ended math problems. (FF No. 14) Another new mathematics objective was added in February 2009 which merely reflected that Student was participating in EDM. (FF No. 18)

The May 2009 GIEP contains major changes to the existing goals and objectives. With respect to mathematics, Student's goals included solving a variety of mathematics problems, with short term objectives relating to manipulation and construction of patterns, practicing mathematical skills and solving mathematical problems, completing open-ended math problems, and using the EDM program. (FF No. 25) Progress notes for the APEX program were included in the GIEP and, with respect to mathematics, Student's performance was described as

inconsistent depending on the particular skill presented. The last GIEP from October 2009 contained identical mathematics goals and objectives.

After careful review, I find merit to the parents' claims that the mathematics goals and objectives were not measurable and failed to address Student's needs for mathematics enrichment. With the exception of an identified need related to open-ended math problems, the goal and objectives in the December 2008 GIEP do not correspond to the strengths and weaknesses identified in the PLEP section, nor do the stated enrichment areas appear to be individualized to Student. The mathematics goal and objectives in the January and May 2009 GIEPs similarly do not reflect Student's strengths and weaknesses or needs for enrichment. While the objective criteria for the goals and objectives in each of these GIEPs do appear at first glance to include some assessment criteria, upon further review I conclude that the use of terms such as "95% accuracy" in class activities (P 4, p. 4/SD 32 p. 5) and "95% accuracy on assigned tasks" in practicing mathematical skills (P 11, p. 6/SD 37 p. 5) fail to provide the requisite "appropriate objective criteria [and] assessment procedures" for ascertaining whether Student has met those goals and objectives. 22 Pa. Code § 16.32(d)(5).

Furthermore, I also find that the parents' claim that Student's gifted program in mathematics enrichment is, in many respects, simply a "one size fits all" approach to enrichment. At least one District witness candidly and credibly testified that all students in the APEX program have the same goals. (FF No. 27) Similarly, the record establishes that both Compass Learning and EDM are part of the regular education curriculum and, while these programs do provide opportunities for differentiated instruction and enrichment in mathematics, the evidence fails to demonstrate that Student's individual interests and needs for enrichment are meaningful considerations within those particular programs. On the contrary, it is apparent that Student has

merely been placed into a group of students who perform well in mathematics, all of whom are provided the same enrichment activities without regard to their unique abilities. For all of these reasons, I conclude that Student was denied an individualized program designed to meet his need for enrichment in mathematics and, thus, was not provided with FAPE.

It is well settled in Pennsylvania that, “when a gifted child is denied a FAPE, compensatory education may be an appropriate remedy for the District’s failure to provide an adequate educational program for the gifted child.” *B.C. v. Penn Manor School District*, 906 A.2d 642, 648 (Pa. Commw. 2006). Compensatory education is an equitable remedy tailored to the student’s particular needs. *Id.* at 650. Further, in Pennsylvania, an award of compensatory education in cases limited to gifted programs is not necessarily calculated on a strict hour-for-hour calculation of the denial. Rather, “the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide a FAPE.” *Id.* at 651.

There is little if any evidence of what award would remedy the denial of FAPE in mathematics to Student from November 25, 2008 forward. Student’s mathematics program for the 2008-09 school year and the 2009-10 school year (to the date of the filing of the complaint) has consistently included enrichment in the form of 150 minutes per week in the APEX program (for subjects including mathematics) as well as through EDM (daily instruction in the regular classroom), Compass Learning (1 hour per week), and other enrichment activities. I calculate that for the time period in question, Student should have received 30 minutes per day of appropriate enrichment in mathematics which was and is individualized according to his needs. I find it reasonable to believe that Student requires this amount of compensatory education in order to bring “student” to the same position which “student” would have occupied if “student”

had been provided with appropriate mathematics enrichment for this time period. Accordingly, I shall award compensatory education of 30 minutes per day for each school day Student attended school, from November 25, 2008 until a new GIEP is developed, to remedy the deprivation.

Additionally, I will also order the GIEP team to reconvene and revise Student's GIEP to comply with Chapter 16, and specifically to provide the requisite plan of individualized instruction designed to meet Student's needs for enrichment in mathematics as well as to address any other needs for specially designed instruction. The GIEP team may also reconsider whether acceleration in mathematics would be appropriate for Student and/or whether further assessment is indicated to guide this determination.

Finally, there is one other point which merits mention without being made a directive in this decision and order. The District representatives at this hearing, who were a group of clearly competent and well-qualified and experienced professionals, were consistent in their testimony that they did not even consider course and curriculum compaction in developing and implementing Student's gifted program. While not explicitly required by Chapter 16, the District would be well advised to consider exploration of this type of subject acceleration as an appropriate strategy to address Student's individual needs for gifted programming.

### **CONCLUSION**

The District's gifted education program for Student is deficient with respect to meeting "student's" individualized needs in mathematics, but was appropriate in the other respects challenged in this hearing. This hearing officer will award compensatory education and require the GIEP team to reconvene to revise Student's GIEP consistent with Pennsylvania's Chapter 16 requirements.



**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, the School District is hereby ORDERED to take the following actions:

1. Provide compensatory education to Student in the amount of thirty (30) minutes per day for every school day which Student attended school from November 25, 2008 until such time as an appropriate GIEP is developed, in the form of math enrichment and/or acceleration within the District's curricular offerings. Such hours must be in addition to Student's then-current GIEP and may not be used to supplant such services, and may occur after school hours, on weekends, and/or during the summer months, when convenient for Student.
2. Reconvene the GIEP team, within fifteen (15) days of the date of this order, to revise Student's GIEP to provide for appropriate and individualized specially designed instruction, based on Student's unique needs and abilities, which shall include but not necessarily be limited to mathematics enrichment and, if appropriate, acceleration.

*Cathy A. Skidmore*

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Cathy A. Skidmore  
Hearing Officer

Date: January 6, 2010