

*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: A.S.

Date of Birth: [redacted]

Date of Hearing: April 8, 2010

### OPEN HEARING

ODR Case 00720-09-10-AS

Parties to the Hearing:

Parents

Representative:

Pro Se

Ms. Christine Mueller  
North Penn School District  
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Date Record Closed:

April 8, 2010

Date of Decision:

April 23, 2010

Hearing Officer:

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

[Student] is a 7-year old student (“student”) residing in the North Penn School District (“District”). The parties dispute [the student’s] identification as a gifted student under the provisions of 22 PA CODE §§16.1-65 (“Chapter 16”). Parents claim that the student is gifted and is entitled to a gifted individualized education plan (“GIEP”). The District claims that, having evaluated the student and found that the student does not qualify for a GIEP, it has appropriately programmed for the student.

### **ISSUE**

Does the student qualify for gifted education?

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

### **FINDINGS OF FACT**

1. In September 2008, at the outset of the student’s kindergarten year, the parents granted permission for the student to be evaluated by a gifted multidisciplinary team. (School District Exhibit [“S”]-1).
2. In October 2008, the District issued a gifted written report. (Parents’ Exhibit [“P”]-3; S-2).

3. As part of a standardized process to evaluate a student for giftedness, the District administered an IQ test, yielding a full-scale IQ for the student of 120, with a score in the high average range (110) on the verbal index, in superior range (123) on the performance index, and in the superior range (122) in processing speed. (P-3; S-2).
4. The student was too young under the protocols for the assessment the District used for math as part of its standardized process so the District did not assess the student in mathematics. (P-3; S-2).
5. The standardized process included the administration of an informal reading inventory. (P-3; S-2).
6. The standardized process included teacher and parent checklists. (P-3; S-2).
7. Under the standardized process, the student was awarded points for the IQ results, performance on the reading inventory, and evaluation of the checklists using a District-generated “elementary gifted evaluation matrix”. (P-3; S-2).
8. Based on the points total, the student was found not to be gifted under Chapter 16. (P-3, P-4; S-2, S-3).
9. In March 2009, at parents’ request, the student was again evaluated for giftedness. (S-4).
10. In April 2009, the District issued a second gifted written report. (P-7; S-5).

11. On an achievement measure of math reasoning, the student scored in the very superior range (138) and scored in the 100<sup>th</sup> decile on the alphabet writing portion of the written expression subtest. These were the only two portions of the achievement test administered to the student. On a mathematics assessment normed for already-identified gifted students (i.e., excluding non-gifted populations), the student scored in the high average range. (P-7; S-5).
12. Since the prior evaluation in the fall of 2008, the District changed the standardized process for its gifted program. Again, however, the student's points total under the District's gifted eligibility matrix did not qualify [the student] for gifted education. (P-7, P-8; S-5).
13. In September 2009, at the outset of 1<sup>st</sup> grade, the parents requested a re-evaluation for gifted education. The District declined to re-evaluate the student due to the potential for practice effect on the assessments used in the District's evaluation process. (P-9, P-11, P-16; S-6, S-7, S-8).
14. In October 2009, the parents filed a due process complaint. The parties engaged in a settlement process and the complaint was withdrawn. The parties were unable to finalize a settlement, so parents re-filed a complaint in February 2010. (P-17; S-9, S-10).

## **DISCUSSION AND CONCLUSION OF LAW**

The provision of a gifted education is governed by Pennsylvania law as set forth 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.<sup>1</sup>

In evaluating a student for gifted education, "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."<sup>2</sup> Assessments used in the evaluation process "shall be...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."<sup>3</sup>

In this case, the District's evaluation process was flawed. In applying its standardized process for the identification of gifted students, the District is not utilizing assessment results to make an individualized determination of giftedness. For example, the record clearly supports the notion that the student is almost certainly gifted, at least, in mathematics and potentially in other areas where processing speed and

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<sup>1</sup> 22 PA Code §16.2.

<sup>2</sup> 22 PA Code §16.22(e).

<sup>3</sup> 22 PA Code §16.22(g)(3)(ii).

visual-spatial reasoning come into play. (FF 11). But the District's determination of the student's potential giftedness is based not on the assessment results that reveal these things but on a cumulative points total. The District is free to employ its gifted matrix; but it is not free to subordinate specific assessment results that indicate giftedness in specific areas in the service of an overarching, standardized system that negates those assessment results.

Accordingly, under the terms of 22 PA Code §16.22(b)(3), the District will be ordered to undertake a comprehensive evaluation for giftedness.

Because it is the finding of this hearing officer that the results of the District's evaluation process are flawed, it is impossible to determine (a) if, indeed, the student is gifted under Chapter 16 (although, again, it is quite likely in certain areas), (b) the extent of the student's potential giftedness and, if found gifted in certain areas, (c) the extent of any deprivation of an appropriate gifted education. Therefore, there can be no award of compensatory education. The consideration of an award of compensatory education, if any, for the alleged denial of an appropriate gifted education, if any, is not ripe until an appropriate gifted evaluation is completed.

## **CONCLUSION**

The District did not appropriately evaluate the student for giftedness. The District will be ordered to perform comprehensive achievement testing as part of its evaluation process.

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## **ORDER**

In accord with the findings of fact and conclusions of law set forth above, and pursuant to 22 PA Code §16.22(b)(3), the District is ordered to undertake comprehensive achievement testing in mathematics, reading, and written expression, including the administration of all subtests in those three areas on the selected assessment test(s). The results of the comprehensive achievement testing shall be considered by the gifted multidisciplinary team, along with all other relevant factors in accord with 22 PA Code §16.22, in determining the student's eligibility for gifted education in one or more areas.

Jake McElligott, Esquire

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Special Education Hearing Officer

April 23, 2010