

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

Shawn D. Lochinger, Esq., PO Box 1146, Harrisburg, Pennsylvania 17108-1146

(Phone) 717-231-6696; (Fax) 717-238-8622; (E-Mail) slochinger@rhoads-sinon.com

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.

DECISION

Child's Name: G. M.

Date of Birth: [redacted]

Date of Hearing: August 24, 2011

OPEN HEARING

ODR No. 2162 / 11-12 KE

Parties to the Hearing:

Parent[s]

Representative:

Pro Se

Bermudian Springs School District

Stephen S. Russell, Esq.
Susquehanna Commerce Center East
Suite 600
221 West Philadelphia Street
York, PA 17404

Date Record Closed:

September 9, 2011

Date of Decision:

September 23, 2011

Hearing Officer:

Shawn D. Lochinger, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student is a teen-aged student ("Student") residing in the Bermudian Springs School District ("District"), who has been identified as gifted under the provisions of 22 Pa. Code §§ 16.1 – 16.65. Parent claims that the District is denying the Student an appropriate gifted education for the 2011/2012 school year in that the District will not waive the Student's participation in the District's PLATO program and is also denying the Student the opportunity to take an on-line class at District expense as part of the Student's GIEP.

ISSUE

Has the District proposed an appropriate gifted education plan to the Student for the 2011/2012 school year despite the fact that the District will not exempt the Student from its PLATO program and will not provide an on-line course for the Student at the District's expense?

FINDINGS OF FACT

- 1) There is no dispute that the Student attends the District and has been identified as a gifted student (School District Exhibit ["S"]-2).
- 2) Student has a 2011/2012 GIEP dated May 25, 2011 that has an implementation date of August 30, 2011 (S-2).
- 3) Student's GIEP has two annual goals – to attend monthly gifted symposiums and to investigate potential career paths in the military at the Army War College (S-2).
- 4) Student's GIEP also states that the District will "offer advanced placement or honors courses [to Student] with differentiation when appropriate..." (S-2).
- 5) In accordance with the GIEP, the Student is scheduled to receive accelerated learning during the 2011/2012 school year through taking five honors level classes, including English, world cultures, chemistry, and pre-calculus/trigonometry, and geometry (Notes of Testimony ["NT"] 62 and S-10).
- 6) Student's schedule for the 2011/2012 school year also calls for the Student to take "Driver's Theory" during period 11, two times out of every six day cycle (NT 99-100 and S-10). Each Driver's Theory class lasts 43 minutes (NT 71).
- 7) Driver's Theory is required for graduation in the District (NT 40).

- 8) Driver's Theory, as offered by the District, is a self-paced class that requires 30 hours of classroom time to complete (NT 70 and 72). Students at the District are scheduled to be in the classroom 60 days (for 43 minutes each day) during the school year (NT 71). Theoretically, students would complete the Driver's Theory class with 13 hours of classroom time still scheduled in the school year.¹ However, students are permitted to work on Driver's Theory outside of the "regular" classroom time (NT 71). This means that students may complete the Driver's Theory class with more than 13 hours of classroom time left in the year (NT 71). In fact, the District's experience is that the average student completes Driver's Theory in about one-half (1/2) of a school year (NT 71).
- 9) If a student fails the Driver's Theory final exam, that student must perform remedial work and re-take the exam at a later time (NT 72).
- 10) In theory, a student who does not pass Driver's Theory on his/her first or second attempt may not finish the class (NT 71). However, this has never occurred at the District (in other words, every student has completed Driver's Theory in a timely fashion) (NT 71-72).
- 11) When each student completes Driver's Theory, each student is required by the District to use the Driver's Theory classroom time that may remain in the school year to take a class known as PLATO (NT 72).
- 12) PLATO, while taken after Driver's Theory is complete, is not related to Driver's Theory in any way (NT 64).
- 13) PLATO is not required for graduation (NT 38). However, the District requires all tenth grade students to take PLATO following completion of Driver's Theory (NT 103 and 118).

¹ 60 classes at 43 minutes each totals 2,580 minutes, or 43 hours. Since Driver's Theory requires 30 hours of classroom time (NT 70), this would leave about 13 hours of classroom time following the completion of Driver's Theory.

- 14) PLATO is a self-paced, computer based curriculum that allows students to be assessed and remediated in areas that correspond to the PSSA exams (NT 50-52).
- 15) When each student begins using PLATO, he/she takes a self-assessment test offered by the computer program (NT 47, 72, and 100). The program then uses the self-assessment test to prescribe specific exercises and tasks designed to increase (or at least maintain) each student's proficiency levels in the PSSA tests (NT 99-100).
- 16) The District requires all students to use PLATO because the District believes PLATO allows students to achieve higher proficiency levels on the PSSA exams (NT 50-52).
- 17) The District states that PLATO is important even for those students achieving at an advanced level of proficiency on the PSSA exams because it allows those students to stay at an advanced level of proficiency when taking PSSA tests in the future (NT 51-52).
- 18) In the present matter, the Student's most recent PSSA proficiency levels (from eighth grade) show that the Student was advanced in math, advanced in science, advanced in reading, and advanced in writing (S-2).
- 19) Student's ACBA² assessments (from ninth grade) showed Student to be advanced in math and proficient in reading at the beginning of the 2010/2011 school year (S-2). Approximately two months later, Student's ACBA assessments show that Student to be advanced in math and in reading (S-2). However, the breakdown of Student's score by subject area shows the Student to be proficient (as opposed to advanced) in a number of specific subtests from the second ACBA assessment given during the 2010/2011 school year (S-9).
- 20) In ninth grade, Student took an on-line Latin class (NT 79 and Parent's Exhibit ["P"] – 7).

² [Redacted] County Benchmark Assessment (NT 56).

- 21) The on-line Latin class was a pilot program designed to last only one year (NT 84-85, and 114) (P-7).
- 22) The District offers its own on-line cyber charter school to students (NT 85 and 118-119). Essentially, students may take *all* of their classes on-line and not physically attend at the District's buildings (NT 120).
- 23) The District's written policy also allows students to take individual on-line courses without enrolling in the on-line charter school if the courses are electives that are not offered by the high school, if the class is not taken as a substitute for a required course, and only if the student covers the expense of the course (NT 91-95, S-5, and S-6).
- 24) Student has requested to take either a Latin or military history course on-line as a substitute for the PLATO course (NT 16 and S-1). The District has denied said request (NT 110).
- 25) The Student's mother approved the Student's GIEP and NORA, despite the fact that the GIEP and NORA require Student to take the PLATO class and do *not* allow the Student to take an on-line military history course at District expense (NT 97 and S-9).
- 26) The Student's father did not approve the GIEP or NORA and requested the current due process hearing (S-1 and S-4).

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.³

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 Parent.

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 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 Parent, in this matter, has brought two specific items to the attention of the Hearing Officer. The Complaint stated, and the parties agreed at the outset of the hearing, that the issues in this case concern 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 on two issues. First, Parent has requested the Student be exempted from the District's PLATO class. Second, Parent has requested that in lieu of the PLATO class, Student be permitted to take an on-line course in either Latin or military history. Because the District denied both of these requests,

³ 22 Pa. Code § 16.2.

the Parent now argues that the Student's GIEP for the 2011/2012 school year is inappropriate due to the absence of the on-line course requested and also due to the inclusion of the PLATO class which Parent believes Student should be exempt from taking during the current school year.

The District's position is that it has offered an appropriate, individualized gifted education to the Student for the 2011/2012 school year. Initially, the District points to the fact that the Student is taking five honors classes and thus has been accelerated in the vast majority of the Student's course work. Moreover, Student has a GIEP which allows the Student to participate in monthly symposiums to enrich Student's school experience. Finally, the District argues that the PLATO course is required of all students and even though the Student scored relatively well on the Student's standardized assessments in the past, PLATO is designed to keep the Student at a high level of performance and to potentially move the Student to an even higher level in those areas where the Student has achieved at less than an advanced level of proficiency.

Finally, the District argues that there is no evidence to indicate that the on-line course requested by the Student is necessary for the Student's gifted education. The District contends that although it has a written policy that would allow the Student to take an on-line class if certain criteria are met, the Student has not met those criteria in this case. Specifically, the written policy makes it clear, the District argues, that an on-line course cannot be taken in lieu of a required course (in other words, the on-line military history or Latin course requested by the Student cannot be taken instead of the required PLATO course). Regardless of this failing, however, the District further argues that the policy is clear that the on-line course can only be taken at the Student's expense (and not at the expense of the District).

The Parent has requested a ruling that the Student's GIEP is inappropriate in its current form. The Parent desires an order that would exempt Student from the PLATO class and for the District to instead provide, at District expense, an on-line course in military history or in Latin. Each of these issues will be discussed separately below.

Initially, the PLATO program at the District is designed to increase students' proficiency levels (or to at least maintain a student's already high level of proficiency) on the PSSA exams. The PLATO classes offered at the District begin with a "self-assessment" taken on the computer. The PLATO program then uses the results from the assessment to construct a course of study that is individualized for each student. The course of study is designed to remediate (or at least maintain) each and every student's performance on the PSSA assessments. The District testified credibly that even students who have previously achieved at an advanced level of proficiency on their PSSA exams benefit from PLATO due to the fact that the program gives the student an individualized program designed to keep that student performing at a high level on the next set of assessments.

The PLATO class is scheduled to begin for each tenth grade student when that particular student completes a Driver's Theory class. It must be noted that the PLATO program, which starts as soon as Driver's Theory ends, is not actually related to or connected with Driver's Theory. Instead, the District schedules the classes together to take advantage of the opening in each student's schedule that is created when that student completes Driver's Theory. The District schedules each student for Driver's Theory for an entire year for two sessions during each six day cycle. The District does this even though it knows that students complete the Driver's Theory curriculum *before* the end of the school year. However, the class is scheduled for an entire year because the District uses the classroom time for students to work on the PLATO program *after* each student has completed the Driver's Theory portion of the class. The classes are scheduled together so that when a student completes Driver's Theory, he/she can immediately move on to PLATO using the same scheduled class time as the student used for Driver's Theory.

Driver's Theory is, of course, a class that many of us used to know as Driver's Education. However, because of new technology and software, students are able to take Driver's Theory at a pace that suits the needs of each individual student at the District. A teacher in the classroom assists students as necessary to complete the required class work on the computer for Driver's Theory. When all of the material for the course has been completed, students are

assessed and (assuming they achieve passing grades) are allowed to officially “complete” Driver’s Theory. The students then immediately begin the PLATO program.

The District provided credible testimony and evidence showing that the successful completion of Driver’s Theory is required for graduation. Similarly, the District presented evidence to show that although PLATO is not required for graduation, the course is still required for all of its students. The Parent countered this claim by arguing that there is no clear evidence to indicate that the District’s School Board ever officially approved the class as a “requirement” for all students. The Parent uses this to further his point that the Student should be exempt from the PLATO class on the grounds that the course is not “officially” required (due to the failure of the School Board to specifically vote as such).

The weight of the evidence, however, leans heavily toward the District’s position. Although it is true that there is no evidence before me that points to a specific School Board policy or vote that requires students to take PLATO, it is just as apparent from the evidence that *was* presented that the District does, in fact, require each student to take the PLATO class. Various District personnel, including the Principal of the building where the Student attends, testified credibly that the course is required for all tenth grade students upon completion of the Driver’s Theory class. In response, Parent then attempted to argue that because the Driver’s Theory class is a self-paced program, not all students may reach the PLATO program (thus rendering it “non-mandatory” for those students who do not complete the Driver’s Theory class). Again, District personnel testified credibly that no student has ever failed to complete the Driver’s Theory portion of the class before the end of the school year and thus all students have taken at least a portion of the PLATO class.

The Parent then essentially argues that the Student should be exempt from the PLATO class due to the Student’s advanced levels on the assessment exams and due to the general idea that such remediation would not be useful or helpful to the Student. However, there is no substantive evidence which would lead one to conclude that the Student should be exempt from the PLATO class. More importantly, there is no substantive evidence to indicate that the Student must be exempt from PLATO for the Student to receive an appropriate gifted education during

the 2011/2012 school year. This is made even more clear when the District's evidence indicates that the Student is *not* performing at an advanced proficiency level on all assessments, thus making PLATO even more necessary for the Student.⁴

Accordingly, there is no substantive evidence to indicate that the Student should be exempt from the PLATO class. Nor does the evidence indicate that exempting the Student from the PLATO class is necessary, in any way, for the Student to receive an appropriate gifted education during the 2011/2012 school year. Instead, the GIEP presented by the District is appropriate, as it sets forth an individualized program designed to provide meaningful educational benefit to the Student through acceleration (five honors classes), enrichment (a monthly symposium which is set forth as a specific annual goal in the Student's GIEP), and differentiation (as needed and as set forth in the Student's current GIEP). Therefore, the evidence does not support the Parent's position the PLATO class would somehow cause the Student's gifted education to be incomplete or inappropriate.

The only other issue set forth by the Parent in this case concerns an on-line military history course (or, alternatively, an on-line Latin class). Parent argues that the Student was permitted to take an on-line Latin course during the 2010/2011 school year at District expense. Parent asks that Student be allowed to take a similar course for the 2011/2012 school year – preferably in lieu of the PLATO class discussed above. Parent argues that Student will not be receiving an appropriate gifted education without such an on-line class.

The District counters this argument by indicating that the 2010/2011 on-line course was a pilot program that was designated and communicated to Parent as a one time only (and one year only) opportunity. District personnel credibly testified that Student was permitted to take the class at District expense during the 2010/2011 school year because the Student expressed an interest and because there was one “open seat” through the District's on-line charter school that was available for *only* the 2010/2011 school year.

⁴ The District has also clearly and credibly testified that even if Student was performing at an advanced level on all assessments, PLATO would still be useful and helpful to the Student to maintain such high levels of proficiency.

The District argues further that there is a written District policy in place, which Parent was well aware of, that the Student failed to abide by in this case. That policy indicates that the District will allow a Student to take an on-line course only if the on-line course is not offered by the District. Here, that requirement is met. The policy also states that the on-line course *cannot* be taken in place of a required course at the District. Here, the Student fails this particular test, as the request is for the on-line course to be taken in lieu of the required PLATO class. However, even if one were to ignore the second requirement, the third requirement is that the on-line class can be taken only at if the student's family pays for the class. The District thus correctly states that even if the on-line class requested was not in lieu of the required PLATO class, the District would have no obligation to pay for the on-line course, especially given that the course is *not* required for the Student to receive an appropriate gifted education at the District.

The Parent attempts to counter the District's position by arguing that because the Student took an on-line Latin course last year at District expense, the District should be obligated to allow the Student to take a similar class (at District expense) this year in order to fulfill. However, there is no evidence to show that the individual needs of the Student are such that the on-line course is in any way necessary for the Student to receive an appropriate gifted education at the District. Moreover, as set forth above, the Student is receiving an appropriate gifted education at the District at this time. The Student is perfectly free to take the on-line course, but only if the requirements of the District's policy are met. Thus, I will not order the District to provide the class for the Student at District expense, as there has been no showing by the Parent that such a class is necessary in order for the Student to receive an appropriate gifted education.

Therefore, the Parent has failed to present enough evidence to indicate that the overall program offered by the District through its proposed GIEP does not meet the standard of appropriateness.⁵ The District is providing acceleration (five honors classes), enrichment (through the monthly symposiums set forth in the Student's GIEP), and differentiation as necessary (through the GIEP) to the Student based upon the Student's individual needs.

⁵ This is strengthened by the fact that the Student's mother filed paperwork prior to the hearing indicating that she was in agreement with the District's position in this matter.

Similarly, the weight of the evidence clearly indicates that the GIEP is reasonably calculated to yield meaningful educational benefit to the Student as required by Chapter 16. Accordingly, I find that the GIEP proposed by the District for the 2011/2012 school year is appropriate and I will *not* order the District to exempt the Student from the PLATO class or to provide the on-line military history or Latin course at District expense.

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 23, 2011