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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

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5484/05-06 AS

File Number

L.P.

Child's Name

Xx/xx/xx

Date of Birth

9/20/05, 9/27/05

Dates of Hearing

Open

Type of Hearing

**For the Student:**

Parent(s)

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Dates of Hearing:  
Receipt of Last Transcript:  
Date of Decision:  
Hearing Officer:

**For the East Stroudsburg Area School District:**

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September 20 and 27, 2005  
October 3, 2005  
October 10, 2005  
Daniel J. Myers

## BACKGROUND

Student (Student) is an [elementary school-aged] gifted student of the East Stroudsburg Area School District (School District.) His parents contend that his 2004-2005 gifted individualized education program (GIEP) was not implemented appropriately and that the School District's 2005-2006 proposed GIEP is not appropriate for Student. For the reasons described below, I find for the School District.

## ISSUE

1. Whether or not Student's 2004-2005 GIEP was implemented appropriately?
2. Whether or not the School District's 2005-2006 proposed GIEP is appropriate?

## FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is an [elementary school-aged] resident of the School District. (SD 1)<sup>1</sup>
2. Student is inquisitive, cooperative, very methodical, always on task, and eager to please. He is not a risk taker, usually raises his hand in class only when certain of an answer, and he sometimes works at a slower pace to ensure completeness. He can be anxious about tests. He enjoys science. (N.T. 141, 143, 192, 234, 267, 306, 419, 464, 512, 663; SD 15)
3. Student's parent describes Student as a conceptual, visual-spatial learner who intuitively understands academic concepts before he has developed the skills that are typically assessed to determine mastery of those concepts. (N.T. 559-560)
4. At the beginning of the 2002-2003 school year, Student attended a private school kindergarten. By November of that school year, Student was moved up to the first grade class. Student remained in the private school for the following year, i.e., 2003-2004, attending second grade at [an earlier than typical age]. (SD 3; SD 15; N.T. 34, 43, 562)
5. In January 2004, while still in second grade at the private school, Student's parents had Student evaluated at their expense:
  - a. Wechsler Intelligence Scale for Children (WISC III) IQ scores were: Verbal 145, Performance 144, Full Scale 148, all of which fall within the Very Superior range.
  - b. Woodcock Johnson III Achievement subtest scores, compared to a national sample of same-aged students, were:

<b>Subtest</b>	<b>Standard Score</b>	<b>Percentile</b>
WRITTEN EXPRESSION	142	99.7
BROAD WRITTEN LANGUAGE	139	99.5

<sup>1</sup> References to "P," "SD," and "HO" are to the Parent, School District, and Hearing Officer exhibits, respectively. References to "N.T." are to the transcripts of the September 20 and 27, 2005 hearing sessions.

<b>Subtest</b>	<b>Standard Score</b>	<b>Percentile</b>
Writing Samples	138	99.5
TOTAL ACHIEVEMENT	134	99
BROAD MATH	132	98
Applied Problems	132	98
ACADEMIC SKILLS	131	98
Spelling	130	98
ACADEMIC APPLICATIONS	129	97
Letter-Word Identification	126	96
BROAD READING	125	95
MATH CALCULATION	123	94
Writing Fluency	122	93
Calculation	121	92
ACADEMIC FLUENCY	120	91
Reading Fluency	119	90
Math Fluency	115	83
Passage Comprehension	112	79

(SD 3; P 26; N.T. 564)

6. In May 2004, a School District reading specialist's evaluation found that Student read 2<sup>nd</sup> grade word lists independently, and was at the instructional level on 3<sup>rd</sup> grade word lists. His reading fluency, accuracy and comprehension of the 2<sup>nd</sup> grade reading passages were at the instructional level. (SD 3) Student's private school teacher reported that Student was very creative, imaginative and often took leadership roles in math and science due to his excellent memory and ability to apply previously taught concepts. (SD 3)
7. In June 2004, the School District issued a Gifted Written Report based upon all information described above, and concluding that Student qualified for services as Mentally Gifted, and that he would benefit from receiving enrichment activities. (SD 3)
8. Accordingly, on June 22, 2004, a team of School District personnel and Student's parents developed a GIEP in preparation for the upcoming school year, 2004-2005, which would be 3<sup>rd</sup> grade, and Student's first year in public school. (SD 5)
  - a. Student's needs for gifted education were described as:
    - i. modification of regular education programming beyond basic enrichment activities,
    - ii. an accelerated pace of instruction with an appropriate peer group that includes other students who achieve and learn as quickly as Student does, and
    - iii. daily instruction at Student's pace and level of instruction that allows for opportunity for advanced creative thinking in small and large settings.
  - b. Student's math goal was to demonstrate mastery of the entire 3<sup>rd</sup> and ½ of the 4<sup>th</sup> grade mathematics curriculum, as a result of 30 minutes or more daily instruction at an appropriate pace, with students of similar cognitive ability, and with curriculum compaction based upon pre-exposure and pre-testing. (SD 5) This goal included four short term learning outcomes related to:

- i. addition, subtraction, multiplication and division facts;
  - ii. adding and subtracting with and without regrouping;
  - iii. whole number multiplication; and
  - iv. proficiency in all other 2<sup>nd</sup> and 3<sup>rd</sup> grade math curriculum skills and ½ of 4<sup>th</sup> grade curriculum skills.
  - v. The GIEP further defined proficiency, fluency and mastery in each short term learning outcome and it prescribed the assessment probes that would be used to measure Student's progress for each short term learning objective.(SD 5)
- c. Student's communication arts goal was similar to his math goal, calling for mastery of the entire 3<sup>rd</sup> and ½ of the 4<sup>th</sup> grade communication arts curriculum, as a result of 45 minutes or more daily instruction at an appropriate pace, with students of similar cognitive ability, and with curriculum compaction based upon pre-exposure and pre-testing.
- i. This goal had 3 short term learning objectives relating to mastery of decoding skills, mastery of written expression and proficiency with all other 2<sup>nd</sup> and 3<sup>rd</sup> grade and ½ of 4<sup>th</sup> grade communication arts curriculum skills. (SD 5)
- d. An "enrichment activities" goal required opportunities to participate in enrichment activities that extended beyond the general curriculum.
- i. Short term learning outcomes related to math enrichment, critical writing skills, and analytical thinking skills. (SD 5)
- e. The specially designed instruction section stated that baselines would be established to determine Student's level of math instruction and that he would be provided the opportunity for advanced instruction upon demonstration of mastery of skills. Among other things, it included individual administration of Woodcock Johnson tests of achievement once per school year in March or later to assess Student's yearly progress.
- (SD 5)

### **2004-2005**

9. Student began public school in 3<sup>rd</sup> grade. It took him a few weeks to warm up to his peers, because he was both new to the school and chronologically younger than other children in the class. Although Student's 3<sup>rd</sup> grade teacher has had only 8 years of teaching experience, I found her testimony to be particularly credible. This is because she had an outstanding recall of Student's performance, she described the curriculum and her teaching methods with precision, and her demeanor at the hearing was confident, competent, and professional. (N.T. 33 154, 191, 226, 279)
10. Student was placed in the highest ability group among 3<sup>rd</sup> graders for communication arts and reading instruction. 21 other children, not all of whom had GIEPs, were in Student's communication arts class. In comparison to the other communication arts classes, Student's group received expanded instruction on written expression, critical thinking and review of higher level literature. (N.T. 33, 147, 175, 185, 224)

- a. Student exhibited difficulty with written expression. He was an average speller. Although he was regularly pretested for spelling, his pre-test scores often were not high enough to warrant the higher-level “challenge” spelling words. (N.T. 144, 181, 235, 266, 270)
  - b. Similarly, Student did not receive curriculum compaction in reading because his scores were average. (N.T. 173, 224)
11. Student was placed in the highest ability group among 3<sup>rd</sup> graders for math instruction.
  - a. In comparison to the other math classes, Student’s math class received quicker pacing, more problem solving, and “extensions” of the curriculum, meaning that his class explored math concepts further and worked on activities requiring multiple skills. Student’s math class also regularly went beyond the current chapter that it was working on, and had “mini-lessons” to expose the class to other concepts that were not the focus of that day’s lesson. At the end of the year, Student’s math class was introduced to the 4<sup>th</sup> grade long division curriculum. Student’s math group also received quarterly enrichment activities from the School District’s math coach, primarily to prepare for PSSA. (N.T. 157, 167-168, 185, 216, 377)
  - b. Student understood the 3<sup>rd</sup> grade math concepts, but he lacked automatic fluency in his math facts, and he never received an 85% or higher in pretests so as to warrant skipping a math lesson. He placed in the middle among peers in his high-level math class. He sometimes was frustrated with word problems and longer division that involved multiple steps. (N.T. 151, 155, 158, 165-168, 171, 252, 255)
12. Student received push-in math enrichment instruction from the gifted teacher that consisted of additional problem solving instruction once every six days. He also received two hours of pull-out, small group enrichment once every six days, which integrated communication arts, science, public speaking, and long-term projects with multiple steps. (SD 13; N.T. 145, 178, 237, 240, 262, 297)
13. On October 18, 2004, Student’s parents wrote to the School District expressing concern that not all of the assessments required by Student’s GIEP were being administered. Student’s parents also asked for information comparing Student’s performance to that of children with similar cognitive ability, as well as to that of other 3<sup>rd</sup> grade gifted students at Student’s elementary school. (SD 7)
14. On October 26, 2004, Student’s gifted and regular education teachers responded, acknowledging the concerns of Student’s parents and promising to compile and report more information in the next few days. They provided that additional information on November 2, 2004. They acknowledged that their math assessments had been one-minute tests, not the three minute tests required by the GIEP, and they promised to use three minute tests in the future. They also reported various quiz and pretest scores in math and written expression to date. Finally, they provided sanitized, comparative data regarding the 3<sup>rd</sup> grade standardized math and reading/language scores of all of the children in

Student's class, as well as all of the 3<sup>rd</sup> graders in Student's elementary school. (P 4; SD 8)

15. The School District administers a standardized test to its elementary school students in the fall and spring of each year to measure academic progress against a nationally normed 3<sup>rd</sup> grade group. This test is the Northwest Evaluation Association Measure of Academic Progress (hereinafter, the "MAP" test.) (N.T. 160; SD 16) The School District regularly assesses all of its students' achievement through the use of at least two standardized tests, the PSSA and the MAP, both of which compare student test scores against normed groups larger than the School District's student population. (N.T. 349, 379-380, 383, 526, 548) Student's 2004-2005 MAP test results were:

	School District average	Norm group average	Typical norm group growth	Student's score	Student growth	Student percentile range	Expected score for gifted students
<b>Math Fall 04</b>	194	190		201		83%	207
<b>Math Spring 05</b>	204	200	9.6	221	20	96%	220

<b>Reading Fall 04</b>	191	189		201		78%	211
<b>Reading Spring 05</b>	199	197	7.6	208	7	75%	220

<b>Language Fall 04</b>	192	192		196		58%	211
<b>Language Spring 05</b>	201	199	9.1	206	10	66%	218

16. School District report cards describe 3<sup>rd</sup> graders' academic progress on a 4 point scale, either as Unsatisfactory (U), Marginal (M), Proficient (P), or Exemplary (E). Student received consistent P's in Math, Communication Arts and specials. He received consistent Es in Science/Social Studies. (SD 15)

17. On May 16, 2005, the School District administered a Woodcock Johnson III Test of Achievement, as required in Student's GIEP. (SD 26) Student's subtest scores, compared to a national sample of same-aged students, were:

Subtest	Standard Score	Percentile	Age Equiv.	Grade Equiv.
Applied Problems	141	99.7	12-3	6.7
Calculation	136	99	11-3	5.7
BROAD MATH	135	99	10-7	5.4
Story Recall	128	97	>21	
Writing Samples	126	96	14-3	4.3

<b>Subtest</b>	<b>Standard Score</b>	<b>Percentile</b>	<b>Age Equiv.</b>	<b>Grade Equiv.</b>
MATH CALCULATION	126	96	9-11	4.5
ACADEMIC APPLIC.	125	95	11-8	5.5
TOTAL ACHIEVEMENT	123	94	9-8	4.5
WRITTEN EXPRESSION	122	93	9-10	4.0
ACADEMIC SKILLS	122	93	9-10	4.5
BROAD READING	119	90	9-8	4.3
Letter-Word Identification	117	88	9-11	4.5
BROAD WRITTEN LANG.	116	86	9-4	3.8
Reading Fluency	116	85	9-8	4.3
Writing Fluency	114	83	9-4	3.9
ACADEMIC FLUENCY	114	82	9-2	3.9
Passage Comprehension	114	82	9-6	4.2
Spelling	110	75	8-7	3.6
Understanding Directions	104	62	8-7	
Math Fluency	100	51	8-0	2.6
Story Recall Delayed	88	22	8-10	

18. One of the responses of Student's parent to the results of the School District's May 2005 Woodcock Johnson III test analysis, was to enter Student's raw test scores into a computer program that produced results based upon a grade-based norm group, rather than an age-based norm group. Student's parent argues that, when Student's raw test scores are compared against his grade-based norm group, his Standard Scores and percentile ranks will be lower, thereby demonstrating the School District's failure to provide meaningful educational benefit to Student. (P 8; N.T. 612)
19. The School District contends that its use of an age-based norm group for analyzing Student's Woodcock Johnson III raw scores is more credible than using a grade-based norm group. This contention is founded upon the facts that: a) standard practice in the profession is to use age based norms; and b) in all of the School District psychologist's training, greater weight has been accorded to age-based norm comparisons rather than grade-based norm comparisons. (N.T. 523-524, 535, 545, 550, 553)
20. I conclude that the more appropriate norm group to use in this circumstance is the age-based norm group. This is because the purpose behind the GIEP's requirement that a Woodcock Johnson III be administered in May 2005 was to enable comparison against Student's January 2004 WJ-III test results. Because the January 2004 WJ-III results were based upon an age-based norm group (P 26), it was most appropriate to use an age-based norm group in analyzing the May 2005 WJ-III test results.
21. When the grade equivalencies reported in Student's January 2004 Woodcock Johnson III test are compared against the May 2005 Woodcock Johnson grade equivalent scores, the result is as follows:

<b>Subtest</b>	<b>Increase in grade equivalent</b>	<b>Decrease in grade equivalent</b>
Calculation	3.3	
Applied Problems	3.2	
BROAD MATH	2.5	
Passage Comprehension	2.2	
MATH CALCULATION	2.1	
ACADEMIC SKILLS	1.7	
BROAD READING	1.7	
TOTAL ACHIEVEMENT	1.7	
Letter-Word Identification	1.6	
Reading Fluency	1.6	
ACADEMIC FLUENCY	1.2	
Writing Fluency	0.9	
Spelling	0.7	
BROAD WRITTEN LANG.	0.6	
WRITTEN EXPRESSION	0.3	
Math Fluency	0.2	
ACADEMIC APPLIC.		
Story Recall		
Story Recall Delayed		
Understanding Directions		
Writing Samples		2.3

22. At the hearing, I determined that Student's Parent was not qualified to testify as an expert on the Woodcock Johnson III test. His credentials are insufficient to establish Student's parent as an expert in either the administration or interpretation of the Woodcock Johnson III.

- i. As a graduate student in 1996-1997, Student's parent had administered the Woodcock Johnson - Revised (not the W-J III) six times to children under the supervision of his professor.
- ii. Student's parent has work experience with an intermediate unit as a clinical psychologist under a licensed psychologist's supervision.
- iii. Student's parent is eligible for licensure as a psychologist, but he is neither licensed nor certified as either a psychologist or a school psychologist.
- iv. Student's parent has taken graduate level courses in adult assessment, child assessment, and test design and measurement. He has also taught statistics courses at both the undergraduate and graduate levels.
- v. Student's parent has reviewed the Woodcock Johnson administration manual.

Therefore, the weight that I will accord to the opinions of Student's parent regarding the Woodcock Johnson III test is the weight that I would generally accord to any highly educated parent who is an active and knowledgeable participant of the GIEP team, but who is not an expert regarding the Woodcock Johnson III achievement test.

(N.T. 620-624)



**2005-2006**

23. On August 2, 2005, Student's parent requested a due process hearing, alleging lack of meaningful educational benefit during the 2004-2005 school year and because the School District was proposing unreasonably low goals for 2005-2006. (SD 27; N.T. 84, 713)
24. On August 4, 2005, I was assigned to serve as hearing officer in this matter.
25. On August 15, 2005, the School District proposed, and Student's parent rejected, the specific GIEP that is at issue in this matter. (SD 26; N.T. 47-50, 83) Similar to the previous year's GIEP, the proposed 4<sup>th</sup> grade GIEP contains three goals for math, communication arts and "opportunity for enrichment."
- a. The math goal provides for 45 minutes of daily math instruction in the 4th grade mathematics curriculum, and states that Student will move to 5<sup>th</sup> grade math instructional materials when he masters the 4<sup>th</sup> grade curriculum. This goal includes two short term learning outcomes related to: a) fluency in the areas of addition, subtraction, multiplication and division; and b) mastery of math concepts and application skills. These short term learning outcomes define fluency and mastery by describing the number of correct answers expected on tests and probes.
  - b. Student's communication arts goal provides for 60 minutes of daily instruction in the 4<sup>th</sup> grade communication arts curriculum. This goal includes three short term learning outcomes related to: a) fluency in written expression skills; (b) fluency in oral reading; and c) improvement in reading comprehension. These short term learning outcomes define fluency and improvement by describing the accuracy percentages expected of Student on work samples, teacher observation, teacher made rubrics, probes, and curriculum publisher-developed tests.
  - c. The "enrichment activities" goal requires opportunities to participate in enrichment activities that extend beyond the general curriculum through special projects and reports. Short term learning outcomes related to writing skills, and analytical thinking skills.
  - d. Specially designed instruction requires that baselines will be established to determine Student's level of math instruction and that he will be provided the opportunity for advanced instruction upon demonstration of mastery of skills. Among other things, it includes individual administration of both the Woodcock Johnson and the MAP tests to assess Student's yearly progress.  
(SD 26; N.T. 47)
26. This school year, the School District has introduced a Challenge Homeroom system. Children are placed in the Challenge Homeroom based upon minimum MAP reading scores, and/or identification as a gifted student. Student is in the 4<sup>th</sup> grade Challenge Homeroom, with 24 other students, including 3 other gifted students. In comparison to other 4<sup>th</sup> graders, Student's Challenge Homeroom works at an accelerated pace, and includes curriculum compaction and push-in services by the gifted teacher for math and communication arts. (SD 21; N.T. 69, 79, 102, 393-394, 421, 425, 465, 476)

27. Student's current 4<sup>th</sup> grade teacher is implementing the pendent 3<sup>rd</sup> grade GIEP. She testified that written work is a weak area for Student. (N.T. 439)
28. Student's Independent level in spelling at 2.9, and Frustration level of 4.5, suggests some difficulty and causes some concern for Student's parent. (N.T. 632) Student's Parent has considered and rejected, however, the notion that Student's Woodcock Johnson subtest scores suggest any specific learning disability in written expression, because it has not been ruled out that Student's lack of achievement is not based upon "lack of appropriate instruction." (N.T. 718)
29. School District Exhibits SD 1-33 were admitted without objection. (N.T. 721) Parent Exhibits 4,7,8,15,21, and 27 were admitted into the record without objection. . (N.T. 723) P 26 was admitted over the School District's objection. (N.T. 571)
30. This decision is issued:
- a. 69 days after the due process hearing request was filed;
  - b. 67 days after my assignment as Hearing Officer to the case;
  - c. 13 days after the last hearing session; and
  - d. 7 days after receipt of the last transcript.

## DISCUSSION

Our school system is charged with the ominous task of providing a free appropriate education to every exceptional child of school age in this Commonwealth. Brownsville Area School District v. Student X, 719 A.2d 198 (Pa. Cmwlth. 1995) It has been held that in cases involving gifted students, to which the IDEA and its remedies are not applicable, and in the absence of judicial guidance, the IDEA compensatory education analogy should be construed narrowly. In Re V.S., Special Education Opinion No. 1099 (2001) For example, the Rowley/Polk standard for appropriateness for a gifted student's program differs from that for an eligible student with a disability. Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3<sup>rd</sup> Cir. 1988); In Re M.S., Special Education Opinion No. 1232 (2002)

On the other hand, Commonwealth Court has extended to gifted education cases the statute of limitations applicable to cases involving students with disabilities. Carlynton School District v. D.S., 815 A.2d 666 (Pa. Cmwlth. Ct. 2003); Montour School District v. S.T., 805 A.2d 29 (Pa. Cmwlth. Ct. 2002) Thus, it is appropriate to look to IDEA cases for guidance in gifted education disputes concerning compensatory education awards. Compensatory education is a legally available remedy, when a gifted student, has been denied an appropriate education. Brownsville, supra. Compensatory education is an appropriate equitable remedy to cure the violation of statutory rights while the child was entitled to those rights. In re A.D., Special Education Appeals Panel Decision No. 1024 (2000); In Re A.P., Special Education Appeals Panel Decision No. 988 (1999)

When determining whether or not a GIEP results in the Student achieving educational benefit in the form of enrichment and, consequently, a free and appropriate public education (FAPE), it is appropriate to view the program provided to the Student as a whole. In Re A.D. and Lower Merion School District, Special Education Opinion No. 1550 (2004) The substantive standard for FAPE is the same for Chapter 16 (education of gifted children) as it is for IDEA/Chapter 14 (education of children with disabilities) – “reasonably calculated to yield meaningful benefit.” 22 Pa. Code Section 16.1

Because this standard, which is not particularly high for students with disabilities, is floor-based rather than ceiling-based, it represents an even more relaxed criterion for gifted students. In Re E.D. v. Lower Merion School District, Special Education Opinion No. 1564 (2005) While a student may not have been provided with the degree or intensity of programming envisioned or desired by his parents, the law does not require that a School District live up to that optimal standard. In Re A.D., supra (“...a school district is not required to become a Harvard or Princeton to all who have IQs over 130”) citing Centennial School Dist. v. Dept. of Education, 517 Pa. 540, 552 (Pa. 1988)

The Appeals Panel has observed that curriculum-based assessment, if done correctly, is valid, objective, and contains built in baseline measures and, more importantly, is more sensitive to actual changes in progress than normative measures. In Re J.K. v. Mt. Pleasant Area School District, Special Education Opinion No. 1481 (2004) Curriculum based testing is also used to determine specific instructional levels and needs. Further, it is based on the content being taught to the student, versus a standardized test which may not even cover the content in the curriculum or address the areas of need. Id., citing, Assessment by Salvia and Ysseldyke (2004); In re S. J., Special Education Opinion No. 1435 (2004) and In re R. B., Special Education Opinion No. 1458 (2004)

### 2004-2005

Student’s parent contends that Student did not receive FAPE during the 2004-2005 school year because his GIEP was not implemented appropriately. More specifically, he argues that progress monitoring was not used to inform instruction and that, while School District personnel became good at recording data, they did not use the data to analyze their teaching methods. (N.T. 594, 661) He also argues that the required pretests were simply performed automatically and routinely, without appropriate exposure to conceptual information, which would have been a benefit to Student because Student is a conceptual learner. (N.T. 588, 605) Student’s parent does not believe Student was placed with other children with similar cognitive abilities, as required by the GIEP. (N.T. 589) Finally, Student’s parent contends that Student did not receive meaningful educational benefit last year as evidenced by the fact that his January 2004 Woodcock Johnson Spelling subtest score was in the superior range, but it was only in the average range by May 2005. (N.T. 636-637)

I agree that the GIEP’s progress monitoring probes last year were not as effective as Student’s parents intended. I believe that this had more to do with their design rather than with their implementation. The probes simply required numerical counts of words read, and math facts calculated, without any real connection to the curriculum. (SD 5) They also focused on

fluency, rather than concepts, even though Student is purported to be a conceptual thinker and to be relatively weak in rote fluency activities. (N.T. 559-560) Thus, it is not surprising that the probes, which I believe were intended by Student's parents to establish objective benchmarks for skipping curriculum units, had the opposite effect by emphasizing Student's lack of reading and math facts fluency. (Student's parent admits that he knows much more about appropriate progress monitoring now than he did last year. (N.T. 583)) In any event, I find that Student's teachers actually did implement the GIEP's probe requirements. I further find that they were responsive and sincere in monitoring Student's progress.

Student was placed with other children with similar cognitive abilities, as required by the GIEP. (N.T. 33, 147, 175, 185, 224) I do not interpret this as a requirement that all of Student's classmates must have specific minimum IQ scores, but rather that Student's classmates should be capable of working at Student's pace and that the class, as a whole, should contain a critical mass of the various talents necessary to ensure a stimulating learning environment on a regular basis. Student received both push-in and pull-out enrichment services during 3<sup>rd</sup> grade; he was placed in the highest level 3<sup>rd</sup> grade communications arts and math classes, with similarly-situated peers, and he was instructed at his ability level by a 3<sup>rd</sup> grade teacher whose testimony I found to be very credible. (N.T. 151, 157, 165-168, 171, 185, 216, 252-255, 377)

Finally, I conclude that Student did receive meaningful educational benefit last year. Using Student's own Woodcock Johnson grade-equivalency analysis developed by his parents, I observe over two grade levels improvement in Broad Math, Math Calculation, Applied Problems, Calculation and Passage Comprehension, and over one grade level of improvement in Academic Skills, Broad Reading, Total Achievement, Letter-Word Identification, and Reading Fluency. (Finding of Fact No. 21) Finally, testimony, grade reports and the objective MAP assessment support the School District's contention that it did, indeed, meet the gifted-education programming needs of Student. (SD 15; SD 16; N.T. 160, 379-380, 383)

### **2005-2006**

Student's parents also contend that the 2005-2006 GIEP is not designed to achieve meaningful educational progress. They contend that the Communication arts and Math goals should be higher. (N.T. 50, 57, 64-66, 104-105, 324) Noting that Student is a conceptual learner, not a fact-based learner, they contend that Student should not be required to master the 4th grade curriculum before moving on to the 5th grade curriculum. (N.T. 695) Finally, they further argue that the School District's proposed GIEP simply offers to Student a regular, run of the mill 4<sup>th</sup> grade curriculum. Again, I disagree.

Student's parent believes that Student will not work any harder than necessary to reach his goals, and therefore he will not be challenged if his goals are as low as those contained in the proposed GIEP. Regarding communication arts, Student's present education level in oral reading fluency, on 4<sup>th</sup> grade material, is 114 wpm @ 96% accuracy. Student's Parent wants a goal of 150 words per minute (wpm) @ 97% accuracy on 4th grade material, and 170 wpm @ 97% accuracy on 5th grade material. The School District proposes a goal of 135 wpm @ 97% accuracy on 4<sup>th</sup> grade material. I find for the School District because they have established a credible track record for estimating the appropriate level of challenge for Student in reading.

Specifically, at the beginning of last year, Student was at the Instructional 2<sup>nd</sup> grade level, reading 80 wpm with 93% accuracy. (SD 3) His IEP goal was “improvement to fluency level in reading (middle of 4<sup>th</sup> grade, 95%ile)...” (SD 5) His current reading level is, indeed, 4<sup>th</sup> grade material, 114 wpm, 96% accuracy. Thus, it appears that last year’s reading goal was a reasonable estimation of Student’s expected progress and I conclude that the School District’s proposed reading goal for this 2005-2006 school year is also a reasonable estimation.

Student’s parents argue that his Spring 2005 MAP Math score of 221, when compared to the School District’s curriculum, establishes that Student should be working on objectives and skills that are in 5<sup>th</sup> grade math curriculum, not 4<sup>th</sup> grade math curriculum. (N.T. 644) Student’s Parent contends that, because Student is independent at 4.1 grade level in broad math and frustrational in broad math at 7.1 grade level, he should be taught at a grade level higher than 4<sup>th</sup> grade. (N.T. 631) The proposed GIEP’s mathematics goal, however, provides that Student will move to the 5<sup>th</sup> grade mathematics instructional materials when he masters the 4<sup>th</sup> grade curriculum. (SD 26) Further, nothing prevents either party from reconvening the GIEP team later in the school year if Student’s actual progress warrants advancement into the 5<sup>th</sup> grade curriculum.

Noting that Student is a conceptual learner, however, and not a fact-based learner, Student’s parents contend that Student should not be required to master the 4<sup>th</sup> grade curriculum before moving on to the 5<sup>th</sup> grade curriculum. I conclude that, other than his parent’s testimony, there is no evidence in the record establishing that Student’s gifted education needs are for programming that is geared toward a visual-spatial and/or a conceptual learner, and that Student should not be expected to master rote fluency probes before skipping curriculum units.

While I believe that Student’s parent knows his son very well, and his instincts may be correct, Student’s Gifted Written Report, does not characterize Student’s gifted education needs in this way, and I saw in the record no other professional opinions corroborating these conclusions of Student’s parents. Rather, the Gifted Written Report indicates that Student needs a challenging math and science based curriculum in a fast paced classroom, with accelerated pace of instruction, with compacted curriculum based upon pre-assessment, with the opportunity for advanced creative thinking in large and small groups, and with interaction with other students who achieve and learn as quickly as student does. (SD 3) That is what the 2005-2006 GIEP is designed to do. The 2005-2006 GIEP places Student in the Challenge Homeroom, the most advanced, fastest-paced 4<sup>th</sup> grade learning environment in the elementary school, permitting interaction with other students who achieve and learn as quickly as student does. The Challenge Homeroom, with push-in gifted programming, offers a challenging math and science based curriculum and enables advanced, creative thinking in large and small groups. The 2005-2006 GIEP further requires objective achievement testing using both the Woodcock Johnson and MAP tests, and it includes the more sophisticated probes or progress monitoring supplied by Student’s parent. (SD 26)

I perceived at the hearing that Student’s parents might believe that, simply by virtue of his 148 IQ score, Student has the educational need to progress through the School District’s curriculum at a faster pace than one year per year. If that is, in fact, their belief, then I cannot agree. Again, Student’s Gifted Written Report does not characterize Student’s gifted education

needs in this way, and I saw in the record no other professional opinions corroborating such a conclusion.

I also note that the parties mainly agree with respect to the proposed GIEP's use of standardized tests in progress monitoring. The School District does not like (but has agreed in the proposed GIEP) to use the Woodcock Johnson III test for annual progress monitoring. (SD 26; N.T. 137, 338, 510, 516, 554) Further, both Student's parent and the School District agree that the MAP is an acceptable standardized progress monitoring tool. (N.T. 408-409, 548, 662)

Finally, I wondered aloud during the hearing whether Student's objective test results, as well as testimony regarding his relative lack of fluency and his anxiety surrounding written expression might be indicative of a learning disability. (N.T. 717-718) It has been suggested, however, that it is error for a hearing officer or appeals panel to raise such an issue sua sponte. See Mifflin County School District v. Special Education Due Process Appeals Panel, 800 A.2d 1010 (Pa. Cmwlth. 2002); Re T.M. v. Hempfield School District, No. 2007 C.D. 2002 (Pa. Cmwlth. 2003); In Re J.R. and Haverford Township School District, Special Education Opinion No. 1561 (2005) Cf., In DL and Daniel Boone Area School District, Special Education Opinion No. 1586 (2005) Thus, I will not address further any potential need for additional evaluation.

## CONCLUSION

Student's parents contend that Student only received instruction in the general, run of the mill 3<sup>rd</sup> grade curriculum, that the School District simply went through the motions with its progress monitoring probes, and that Student experienced no meaningful educational progress as measured by the May 2005 Woodcock Johnson. I disagree. The School District properly implemented the 2004-2005 GIEP.

Student's parents also contend that the 2005-2006 GIEP is not designed to achieve meaningful educational progress and that the School District's proposed GIEP simply offers to Student a regular, run of the mill 4<sup>th</sup> grade curriculum. Again, I disagree. The proposed GEIP is designed to result in meaningful educational benefit.

**ORDER**

For the reasons described above, I ORDER that:

- Student's 2004-2005 GIEP was implemented appropriately.
- The School District's proposed 2005-2006 GIEP is appropriate.
- No further action is required of the School District.

*Daniel J. Myers*

Hearing Officer

October 10, 2005

Re: Due Process Hearing  
File Number 5484/05-06 AS  
Student