

This is a redacted version of the original decision. Select details have been removed from the decision to preserve the anonymity of the student. The redactions do not affect the substance of the document.

**Pennsylvania Gifted Education Due Process Hearing Officer
Final Decision and Order**

OPEN HEARING

ODR No. 29454-23-24

Child's Name:

A.K.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parents:

Pro Se

Local Education Agency:

Bethlehem Area School District
1516 Sycamore Street
Bethlehem, PA 18017

Counsel for LEA:

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

May 7, 2024

INFORMATION AND PROCEDURAL HISTORY

The student (Student)¹ is enrolled in the [redacted] grade and receives gifted education programming in the District (District) under Pennsylvania Chapter 16.² The Parents are *pro se* and requested a due process hearing asserting the District denied the Student an appropriate gifted education by denying their request for the Student's acceleration into a second math class. As a remedy, the Parents seek reimbursement of the costs and fees associated with the Student's attendance at a summer program for gifted and talented youth. The District contends the current gifted programming in place is appropriate and no relief is due.

Two in-person and two remote hearing sessions occurred. After a review of the evidence, and for the reasons set forth below, this Hearing Officer determines that the District's gifted programming is appropriate for the Student. The claims of the Parents are denied.

ISSUES

- 1) Did the District fail to offer appropriate gifted programming to the Student when it denied a request for double acceleration in math?

- 2) If the District failed to offer appropriate gifted programming to the Student, what remedy is appropriate?

¹Although the Parents requested an open hearing, in the interest of confidentiality and privacy, the Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. 22 Pa. Code §§16.63(d), 16.65.

² 22 Pa. Code §§ 16.1 – 16.65.

FINDINGS OF FACTS

1. The Student is intellectually gifted in math. (S-2)
2. During the 2022-2023 school year, the Student was enrolled in the [redacted] grade in the District and received gifted programming through a GIEP developed in November 2022. (S-2)
3. The November 2022 GIEP offered a math/advanced math goal with one short-term objective and accompanying SDI. (S-2)

2023-2024

4. During the 2023-2024 school year, the Student is enrolled in the [redacted] grade in the District. (S-10)
5. Based on the Orleans-Hanna standardized test scores and grades in the [redacted] grade, the Student was accelerated into Algebra I, a [redacted]-grade course. (N.T. 260-261; N.T. Vol. II-B, 14)
6. Through a GIEP, the Student receives both enrichment and acceleration. Math enrichment occurs through a [redacted]-grade gifted seminar class that meets every other day. Math acceleration occurs through enrollment in the [redacted]-grade Algebra I class. (P-1, S-7, S-11; N.T. 46)
7. On October 17, 2023, a Parent requested a meeting to discuss the Student's math/Algebra I pathway and the prospects of taking upper-

level math in [redacted] school. The Algebra teacher shared the email with the members of the GIEP team. (P-3; N.T. 29-30, 179)

8. On October 24, 2023, the Parent re-contacted the District to follow up on the October 17 request for a meeting. On November 3, 2023, the Parent re-contacted the District to follow up on the October 17 request for a meeting. (P-3)
9. On November 15, 2023, the GIEP team met to develop academic programming for the Student.³ At the meeting, the team discussed the Parents' interest in enrolling the student in [redacted]-grade Geometry while simultaneously taking Algebra I. The Parents referred to this as "double acceleration." Options discussed included the Student taking Geometry or Statistics in person at the high school or enrollment in an online Geometry course while simultaneously enrolled in Algebra I. (P-4, p.1, S-10; N.T. Vol. II-B, 23-24, 39, 136, 148-149)
10. The GIEP team discussed the Student's performance on the district-administered MAZE, IXL and PSSA measures. The team did not discuss the relationship between the Student's performance on those measures and acceleration to Geometry. (S-10, p.4; N.T. 6, 22-23, Vol, IIB)
11. IXL is an online District math program that is used to improve skills. Students may access IXL from home to practice math skills. The District administers IXL diagnostic assessments in a controlled, supervised school environment at the beginning, middle, and end of the year. (N.T. 32, 48-49, 55-56)

³ The GIEP team consisted of the Parents, the Student's Algebra I teacher, an LEA, and a teacher of the gifted. (S-10, p.2)

12. According to September 2023 IXL diagnostic data, reported in the November GIEP, the Student scored 760 in Algebra and 700 in Geometry.⁴ An IXL score of 760 is considered unsuitable for placement in Geometry. (S-9; N.T. 49-50)

13. The IXL scores reported in the GIEP, dated November 17, 2023, indicated the Student's overall math score was 850, with a 950 in Algebra and 780 in Geometry. (S-10, p. 4)

14. The November 2023 GIEP present levels indicated that the Student was accelerated to Algebra I and received enrichment through a pull-out program. The Student was observed to be reasonable, respectful, and active in classroom activities and group discussions. (S-20, p. 3)

15. The November GIEP offered one annual math goal and two short-term objectives.⁵ Specially designed instruction included pull-out enrichment (three times per week), encouragement of risk-taking (two

⁴The explanation of IXL in the GIEP indicated the assessment gathers as much information as possible about students' knowledge to recommend the skills that will challenge them at the appropriate level and help them grow. A 750 indicates the student is halfway through the year [redacted] level. The reported IXL scores appear to have been obtained after the November GIEP meeting and were not discussed at that time. (S-10, p.4)

⁵ The GIEP dated November 15, 2023, contained errors. First, the document inaccurately indicated the Student was in the [redacted] grade Second, although the Student was enrolled in a [redacted] grade Algebra class, the math goal referred to [redacted]-grade math standards. Finally, neither party introduced the original GIEP that resulted from the November 2023 meeting. S-20 offered as the November 2023 GIEP contains data and comment from the subsequent February 2024 GIEP. After review, it is difficult to discern what information was originally provided to the Parents through this document in November 2023 and what was added in February 2024.

times per marking period), leadership opportunities (one time per weekly cycle), self-evaluation (two times per marking period), and excusal from missed assignments during gifted enrichment Seminar. (S-10, p. 6-7)

16. The November GIEP indicated an implementation date of November 16, 2023, and the gifted education services' frequency, location and duration. The November GIEP contained objective criteria, assessment procedures and a timeline related to the annual goal. (S-10, p. 6-7)
17. Student input in the GIEP indicated a favored subject of math, a desire to learn more about engineering, and recreational activities that included soccer, [redacted], and video games. The GIEP reported that the Student earned all A's. (S-10, p.6)
18. Although the team discussed acceleration options, no recommendation was made after the meeting regarding the Student's simultaneous enrollment in Algebra I and Geometry. The District did not provide a NORA to the Parents after this GIEP meeting. (S-10; N.T. 6-Vol IIB, 148-149)
19. The evening after the GIEP meeting, the Parent contacted the Principal and indicated the best option was for the Student to take Geometry through cyber school while completing requirements for Algebra I. The Parents requested contact from the District to proceed. (P-4)
20. On December 5, 2023, the Parents contacted the District seeking a response to their November 15, 2023, email about acceleration to Geometry. That same day, the Principal replied that District level

approval was needed, the Cyber Academy would begin at the start of the semester, and paperwork required completion to determine a start date. (P-4; N.T. 7-8 Vol II-B)

21. In mid-January, the Principal met with the Student and apologized for the delayed decision regarding acceleration to Geometry (N.T. 27, Vol II-B)
22. On January 16, 2024, the Parents emailed the Principal to follow up on the Student's concurrent enrollment in Geometry. They expressed interest in a start date for the following week, with the new quarter. (P-4)
23. On January 18, 2024, the Student guidance counselor emailed an administrator for the District's cyber school and inquired whether an Algebra I student could enroll in a Geometry class during the second semester. The administrator replied that the District's STEM supervisor needed to be consulted. (S-26, p.2; N.T. 189)
24. The District utilizes the Pennsylvania Value Added Assessment System (PVAAS) to measure growth between assessments and determine whether a group of students maintained, exceeded, or fell short of the growth standard based on their prior testing history. PVAAS provides predicted data related to PSSA and Keystone math performance. Its use is encouraged by the Pennsylvania Department of Education. (P-13, S-20; N.T. 60-67, 71 Vol. IIB, 93, 234-235)
25. After reviewing the Student's IXL, PSSA and PVAAS performance data, the District's STEM coordinator concluded that the Student's math programming, including acceleration to Algebra I, was

appropriate. The coordinator did not recommend double acceleration.
(P-9, S-1, S-16, p. 2, S-26; N.T. 30, Vol IIB. 83-84)

26. On January 18, 2024, the school guidance counselor emailed the Parents, and advised the Student's PSSA and IXL data did not support enrollment in online Geometry before completion of Algebra I. The Parents requested a meeting with the District to discuss this decision.
(P-5; S-26; N.T. 186-189)

27. On February 5, 2024, the GIEP team met and discussed the acceleration of the Student to Geometry while concurrently taking Algebra I. During the meeting, the team reviewed the Student's performance on the PVAAS, PSSA, and IXL. (P-8, P-13, S-10, p. 4-5; N.T. Vol. II-B, 30-31, 84-86)

28. According to PVAAS projections, the Student was 98% likely to score proficient, rather than advanced, on the [redacted]-grade math PSSA. On the [redacted] grade PSSA, the Student scored proficient in math. (N.T. Vol. II-B, 66-67, N.T. 225)

29. The Student's [redacted]-grade PVAAS report contained a Keystone Algebra I (advanced) predicted percentile score of 96%. Based on the achievement probabilities of classmates, the Student's projected state percentile score was in the middle. (P-2, P-6, P-13, S-10, p. 4-5; N.T. 68, Vol IIB)

30. According to IXL data ending on January 19, 2024, the Student's Algebra score was 980, indicative of performance on a [redacted]-

grade level. The Geometry score was 790, indicative of performance of a [redacted]-grade level. (P-9, p. 1-2; N.T. 51-53, 219)

31. The GIEP team discussed an IXL Geometry score of 951-1000, in the 97th percentile or higher, and an advanced math PSSA score as a criterion for consideration of double math acceleration. After a discussion of the multiple data points, the team determined the Student's gifted needs were met through the current enrichment and acceleration to Algebra I. (P-2, P-6: N.T. 52-54, 68 Vol. IIB, 144-145)

32. On February 5, 2024, the District issued a NORA that recommended the Student receive gifted support with enrichment/acceleration through participation in Seminar and acceleration to Algebra I. The NORA indicated that after a review of Student data (IXL, PVAAS, and grades), the LEA did not recommend additional acceleration into Geometry. The NORA contained a signature by the District Superintendent on November 15, 2023. (P-2, P-6; N.T. 30, (Vol IIB, p. 95-97), 137, 140, 150)

33. On February 6, 2024, the Parents emailed the District, requested a copy of the Student's PVAAS report discussed at the GIEP meeting, and attached the Student's IXL Geometry score from that day. The IXL score was 1020. (P-6; N.T. 51, 59, 74,115)

34. On February 9, 2024, the District's Special Education/Gifted Coordinator emailed the Parents and acknowledged the confusion that resulted from the District's communication delay. (P-6)

35. According to the District's scope and sequence, Algebra I is a foundation for higher-level math and should be completed before Geometry. (N.T. 33-34, Vol IIB, 59-60, 211-213)
36. On February 17, 2024, the Parents declined the NORA. (P-2)
37. On March 27, 2024, the Parents filed a Complaint and requested a due process hearing.

DISCUSSION AND CONCLUSIONS OF LAW

In Pennsylvania, the provision of gifted educational services is governed by Chapter 16 of Title 22 of the Pennsylvania Code. Although Chapter 16 does not address which party bears the burden of proof when a matter proceeds to a hearing, case law instructs that the burden lies with the party initiating the request for due process, which is the Parents. *E.N. v. M. School District*, 928 A.2d 453, 466 n.21 (Pa. Commw. 2007); *see also D.Z. v. Bethlehem Area School District*, 2 A.3d 712 (Pa. Commw. 2010). It is the responsibility of a hearing officer to make credibility determinations in assessing the weight to be accorded the testimonial evidence. *E.N.* at 461. Three hearing sessions, two in person, and one remote occurred. The Student's Algebra and the gifted teacher, a Parent, a guidance counselor, the Principal, the supervisor of STEM, and the Special Education/Gifted Coordinator testified at this hearing. The testimony was reviewed and weighed in light of the witnesses' participation in the hearing. Considering the testimony in light of the documentary evidence. I find that the witnesses were generally credible and reliable. The witnesses' testimony was consistent with the documentary evidence. More specific credibility determinations are made below.

As stated, 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 School District v. Department of Education*, 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.

Revisions to GIEPs, changes in educational placement, or continuation of educational placement for a student determined to be a gifted student are made by the GIEP team based upon a review of the GIEP and instructional activities, present levels of educational performance, as well as on information in the most recent evaluation. 22 Pa. Code § 16.32 (a). GIEPs must contain, among other things: (1) a statement of the student's PLEPs; (2) a statement of annual goals and short-term learning outcomes which respond to the student's needs as identified in the GWR; (3) a statement of the SDI and support services to be provided; and (4) appropriate objective

criteria, assessment procedures, and timelines for gauging progress. Finally, when the GIEP is completed, a notice of recommended assignment (NORA) must be presented to the parents, along with procedural safeguards, at the conclusion of the GIEP meeting or by certified mail within five calendar days. 22 Pa. Code §16.62 (4) 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 Student's Program

Through a GIEP, this gifted [redacted] grader currently receives mathematics programming that provides enrichment and acceleration. The enrichment occurs through a pull-out Seminar class and acceleration through a [redacted]-grade Algebra I class. Both parties agree this is appropriate.⁶ The current dispute stems from the Parents' request for what they characterize as "double acceleration" that would provide the Student with simultaneous enrollment in Algebra I and a [redacted]-grade Geometry class. The issue that must be resolved is whether the current gifted program that provides acceleration for the Student only to Algebra I appropriately meets identified needs. Although the Complaint identified a sole issue for resolution, this hearing revealed concerns about the District's communication with the Parents, who are valued members of the GIEP team. The Parents were *pro se* during this hearing, and despite their well-prepared, focused and concise case presentation on this hearing record, they did not meet their burden of proof.

⁶ The Parents' Complaint and hearing issues for resolution pertained to the District's denial of double acceleration. The Parents' closing statement addressed alleged inadequacies with the enrichment provided to the Student through the GIEP and numerous procedural violations. This decision will address the procedural concerns but not the alleged programming deficiencies related to enrichment not raised in their due process complaint.

The Student's [redacted]-grade gifted programming that provided acceleration only to Algebra I was appropriate and provided meaningful educational benefit. Although the Parents notified the District of their interest in more challenging math programming for the Student before the annual November GIEP meeting, they have presented no persuasive evidence that District agreement and a recommendation regarding this option occurred. The evidence has established that the GIEP team discussed the Parents request for "double acceleration" to Geometry at the November meeting. However, no consensus was reached regarding this determination, and no GIEP team recommendations were made.

The resulting November 2023 GIEP was technically compliant with Chapter 16 and contained the legally necessary elements. It recounted the Students' strengths, interests, and ambitions, as well as educator observations, and summarized several performance measures. Without a doubt, this Student is gifted. Still, information available at the November GIEP meeting, thoroughly explained and challenged during the due process hearing, fully supported the conclusion that the Student's acceleration to only Algebra I was appropriate at that time. Following the meeting, the District failed to comply with Chapter 16 requirements and did not provide its pre-prepared NORA to the Parents until months later, far outside the required timelines.

After the November GIEP meeting, with no NORA issued, the Parents were under the mistaken impression that their request for double acceleration of the Student was moving forward. Unfortunately, the District's communication delays throughout December and January, coupled with the transmission of incomplete information to the Parents did little to clarify the status of what should be a team consideration and recommendation. The

evidence has established that the District did not consider whether the Student needed acceleration to Geometry until mid-January. At that point, the District advised the Parents of their pre-determined denial of the acceleration request and that the Student's gifted educational needs were met through acceleration only to Algebra. A February GIEP team meeting followed. At the February 2024 GIEP meeting, the team discussed the District's reliance on the Student's most recent PSSA math performance, IXL benchmarks, and PVAAS projections as the basis for denying the Parents' acceleration request.

Based on the information available at the February GIEP meeting and the record evidence, this Student's gifted programming needs were met through acceleration only to Algebra I. Through testimony, the District's STEM supervisor, the Student's Algebra and gifted teachers, the Principal, and the Gifted supervisor credibly corroborated the conclusions reached through the analysis of the multiple data points. According to reported math IXL data, the Student made consistent progress. By January 2024, the Student had an overall math level of [redacted] grade, with Geometry at the [redacted]-grade level. Those were expected gains, not meteoric but indicative of appropriate placement and programming. Likewise, the Student's proficient, but not advanced, PSSA math performance further substantiated the appropriateness of "single" instead of "double" acceleration. The District's educators justified the need for this Student to obtain an IXL Geometry score of 951-1000, in the 97th percentile or higher, and an advanced math PSSA score as a criterion for consideration of double math acceleration. Similarly, collected PVAAS data indicated the Student was likely to score again proficient on the [redacted]-grade PSSA and very likely to score advanced on the Keystone Algebra 1 exam scheduled for the end of the school year. Overall, the testimonial evidence corroborated the diagnostic

and assessment data that although this Student is a solid math performer, making progress, acceleration to only Algebra I met this Student's needs, an additional acceleration was unneeded to provide meaningful education benefit.

Much of the Parents' case presentation attempted to discredit and undermine the statistical validity of the selected instruments and their application to determine whether double acceleration was appropriate for this Student. Despite these attempts, they offered no persuasive evidence to support their theories and introduced no standardized assessments or other measures that contradicted the final team conclusion. In short, the Parents introduced no persuasive evidence that a change in programming was necessary to meet the Student's gifted needs.

The District's reliance on these valid instruments was not problematic. The concern is that the weight of these factors and their impact on decision-making was not adequately revealed to key members of the GIEP team, notably the Parents, before the team meeting. On the surface, it appears this data was hastily cobbled together and offered as a basis to justify a unilateral District decision. The District's appearance of a lack of transparency and the delays in communicating with this family ran afoul of the spirit of Chapter 16, which insists that the GIEP team, including the Parents, determines what is needed based on a Student's unique and individual needs. Although the Parents attended the determinative GIEP meeting without advance knowledge of the criterion that would be applied, their ability to fully participate in the discussion of the detailed statistical analyses relied upon by district administrators was curtailed. These concerns and the failure to issue a timely NORA, will be referred to the Bureau of Special Education for additional action, if warranted.

Next, the District offered evidence uncontroverted by the Parents that substantiated the need for this gifted Student to complete Algebra I before Geometry. According to the District's scope and sequence and credible testimony, Algebra I is a [redacted]-grade level class typically taken before Geometry, a [redacted]-grade level class. Although this gifted learner is successfully accelerated in math, based on a review of current academic progress and relevant data points, a solid foundation in Algebra should be secured before exploring concurrent enrollment in above-grade level math courses. This gifted Student is on track to successfully complete Algebra I by the end of this school year with expected corresponding progress on the measures selected by the District deemed critical to assess higher level math readiness. As such, this Student's motivation and desire for challenge should not be frustrated or discouraged. The Student's GIEP team must be convened to determine, if appropriate, an individual, responsive plan for future math acceleration.

Undoubtedly, these Parents are fierce advocates for their child and want decisions made that will provide opportunities for a wide variety of educational options; however, based on the evidence presented on this hearing record, they did not meet their burden of proof. Overall, the Student's 2023-2024 gifted programming was appropriate, and no denial of FAPE occurred.

ORDER

And now, May 7, 2024, it is hereby ORDERED as follows:

1. Within ten (10) school days of this Order, the District must convene the GIEP team to review the Student's math programming.

- a. The team must consider the appropriateness, availability and interest of the Student in enrollment in a Summer 2024 online Geometry course through the District cyberschool provider referenced during this due process hearing. If available and the Parents elect to enroll the Student, all course fees shall be borne by the District.
- b. The GIEP team must also consider the accelerated math options appropriate for the Student's enrollment during the 2024-2025 school year.

2. The procedural concerns are referred to the Pennsylvania of Education Bureau of Special Education to determine whether additional action is warranted.

3. It is FURTHER ORDERED that any claim not specifically addressed in this Order is DENIED and DISMISSED.

Joy Waters Fleming, Esquire
Joy Waters Fleming, Esq.
Gifted Education Hearing Officer
May 7, 2024