

*This is a redacted version of the original hearing officer decision. Select details have been removed from the decision to preserve anonymity of the student as required by IDEA 2004. Those portions of the decision which pertain to the student's gifted education have been removed in accordance with 22 Pa. Code § 16.63 regarding closed hearings.*

## Pennsylvania Special Education Hearing Officer

### DECISION

Child's Name: CD

Date of Birth: April 29, 1997

Dates of Hearing: October 7, October 13, 2008

### OPEN HEARING

ODR No. 9262/08-09 KE

#### Parties to the Hearing:

Parent:  
Ms. D

School District:  
Robert Reese, Dir. Special Education  
Conrad Weiser School District  
200 Lincoln Road  
Wernersville, PA 19565

#### Representative:

Parent Attorney:  
Mark W. Voigt, Esq.  
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600 West Germantown Pike, Suite 400  
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School District Attorney:  
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Wyomissing, PA 19610

Date Record Closed: October 18, 2008

Date of Decision: October 30, 2008

Hearing Officer: Daniel J. Myers

## **INTRODUCTION AND PROCEDURAL STATUS**

CD (hereinafter “Student”) <sup>1</sup> is a middle school regular education student seeking gifted education services. The parties disagree over Student’s qualification as a gifted student. For the reasons described below, I find that Student does qualify for gifted education and that he is entitled to compensatory education services.

## **ISSUES**

- Does Student qualify for gifted education?
- Has the School District denied Student an appropriate gifted education for the 2007-2008 and 2008-2009 school years?

## **FINDINGS OF FACT**

1. Student, whose date of birth is April 29, 1997, is currently in middle school receiving 6<sup>th</sup> grade regular education services. (N.T. 58, 133) <sup>2</sup> Since Student was three or four years old, Student’s verbal communication has seemed more advanced than that of Student’s chronological peers. (N.T. 18)
2. The School District screens all of its students for gifted education eligibility using a multi-level, four-step process that assigns points at each level, with a certain number of points required at each level before a child can move up to the next level. (N.T. 131-132) The process starts with a child’s scores in group achievement testing (Level I), moves on to examine teacher input (Level II), then reviews a student’s individual achievement and teacher responses to a particular

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<sup>1</sup> All future references to CD will be generic and gender-neutral. These impersonal references to Student are not intended to be disrespectful but rather to respect his/her privacy.

<sup>2</sup> References to “N.T.” refer to the hearing transcripts. References to “P,” “SD,” and “HO” refer to Parent, School District and Hearing Officer exhibits, respectively.

gifted evaluation scale (Level III), and finally the process administers cognitive testing to the student. (N.T. 131-132)

2002-2003, Kindergarten

3. In kindergarten, Student's reading and math performance were above grade level. (N.T. 19) A March 2003 Stanford Early School Achievement Test indicated that Student was in the 95<sup>th</sup> percentile in total reading (with subtest percentile ranks of 98<sup>th</sup> and 96<sup>th</sup> in sentence and word reading, respectively,) and in the 78<sup>th</sup> percentile in math. (P1; P6, p.16)

2003-2004, 1<sup>st</sup> grade

4. Student's first grade teacher suggested that Student be tested for the gifted program. (P1; N.T. 19) In April 2004, an Otis-Lennon School Ability Test-7<sup>th</sup> ed. (OLSAT) indicated a Nonverbal scaled score of 603 which converts to a standard score of 120 and a percentile rank of 88. (P1; P6,p.17) Student's Verbal scaled score of 573, which the School District did not convert to a standard score, converts to a percentile rank of 70. (P1; P6,p.17) Student's Overall scaled score of 586 converts to a standard score of 116 and a percentile rank of 81. (P1; P6,p.17) In the School District's multi-level screening system, Student's OLSAT scores were not high enough to move Student from Level 1 to Level II.

2004-2005, 2<sup>nd</sup> grade

5. Student read above grade level in 2<sup>nd</sup> grade. (N.T. 22) Student's November 2004, Kaufman Test of Educational Achievement (KTEA), using a grade-based norming population, indicated a high average range Composite standard score of 115 (84<sup>th</sup> percentile), a superior range Reading standard score of 125 (95%),

superior range Spelling standard score of 129 (97%), and an average range Math standard score of 97 (42%). (P1; P6,p.17) An April 2005 Stanford Achievement Test placed Student in the national percentiles of 63<sup>rd</sup> and 54<sup>th</sup> in Reading and Math, respectively. (P2; P6,p.17) In Vocabulary and Reading Comprehension, Student's percentile ranks were 79<sup>th</sup> and 67<sup>th</sup>, respectively. (P6, p.17) The School District's guidance counselor informed Student's parent that Student was very bright, but not gifted. (N.T. 21, 24; P15)

2006-2007, 4<sup>th</sup> grade

6. In 4<sup>th</sup> grade, the School District administered a Slosson IQ test and another KTEA. Student's Slosson IQ standard score was 124, which is in the 93<sup>rd</sup> percentile, and which earns 2 points on the School District's Level I screening process. (P2,p.1; P6,p.17) The KTEA resulted in a superior range composite standard score of 121 (92<sup>nd</sup> percentile), which earned another 3 points and moved Student up to Level II on the School District's four-stage screening process. (P2,p.1; P6,p.18)
7. At Level II, Student earned the requisite point from Student's teacher's input to move on to Level III. (P2,p.1)
8. At Level III, the School District administered a Wechsler Individual Achievement Test, 2d edition (WIAT-II), which resulted in a very superior range standard score of 132 (98<sup>th</sup>) in Numerical Operations, and a high average range standard score of 110 (75<sup>th</sup>) in Word Reading. (P2,p.1; P6,p.18) This was good enough to move to the teacher evaluation scales used in the School District's screening process. Information from Student's teachers, guidance counselor and specialists, using the

Gifted Evaluation Scale, 2d edition (GES-2) resulted in a total standard score of 119 (87<sup>th</sup> percentile). (P2,p.1; P6,p.19) The combined WIAT-II and GES-2 results were sufficient to move Student up to Level IV in the School District's screening process.

2007-2008, 5<sup>th</sup> grade

9. Before administering a Wechsler Intelligence Scale for Children, 4<sup>th</sup> edition (WISC-IV) IQ test, the School District obtained the permission, in July 2007, of Student's parent to evaluate Student. (P4, p.2; N.T. 39, 155-156)
10. On December 4, 2007, the School District administered the WISC-IV to Student. (P6,p.18) Student's General Ability Index (GAI) was 123. (N.T. 189, 221)  
Student's full scale IQ standard score was 125, which is in the 95<sup>th</sup> percentile and in the superior range. Student's perceptual reasoning and working memory indices were in the superior range with standard scores of 121 and 123, respectively. Student's verbal comprehension and processing speed indices were in the high average range with standard scores of 119 and 115, respectively. (P6,p.18) These scores received 6 points in the School District's screening process, which was 2 points below the 14 points needed to be identified as gifted under the School District's screening process. (P2,pp.1-2)
11. On December 11, 2007, the School District issued a gifted written report (GWR) concluding that Student did not meet the School District's gifted education criteria and did not require additional services beyond regular education. (P6,p.20) While admitting its GWR was 7 school days late, the School District's

special education director does not believe that this delay significantly impacted Student. (N.T. 164, 172)

12. From December 17, 2007 to June 5, 2008, Student's parent and the School District corresponded, met and even mediated their disagreement regarding whether or not Student qualified for gifted education services. (SD1; P7; P15, pp.3-8; N.T. 44, 46, 50, 137-138, 149, 151) In May 2008, Student's parent hired a certified school psychologist in private practice (Dr. K) to review Student's educational records. Dr. K recommended either providing Student a gifted enrichment program based upon Student's existing school record, or providing Student with an independent educational evaluation (IEE) for full evaluation and a fair determination of Student's gifted eligibility. (P9; N.T. 55, 69) No agreement between the parties was reached.

2008-2009, 6<sup>th</sup> grade

13. On August 18, 2008, Student's parent secured Dr. K to conduct an IEE. (P13; N.T. 57) Dr. K administered a WISC-IV, a WIAT-II, and the Gifted and Talented Evaluation Scales (GATES). (P13,p.1) Dr. K's WISC-IV resulted in a full scale IQ score of 132, which is in the 98<sup>th</sup> percentile. (P13,p.2) On the WIAT-II, Student's Reading composite standard score of 130 was in the very superior range (98<sup>th</sup>ile), with basic reading skills and reading comprehension subtest scores (124 on both subtests) that were commensurate with Student's abilities as measured by the WISC-IV as well as well above grade level (10<sup>th</sup>-11<sup>th</sup> grade). (P13,pp.2,7; N.T. 89) Similarly, Student's WIAT-II Math composite standard score of 127 was in the superior range (96<sup>th</sup>ile), commensurate with ability and above grade

level. (P13,pp.2,7; N.T. 89) Apparently, the GATES was filled out only by Student's parent, and indicated a high probability of giftedness in academic skills, a probability of giftedness in creativity, leadership and artistic talent, and borderline results in intellectual ability. (P13,p.9) Dr. K concluded that Student should be classified as gifted by the School District because Student functions cognitively in the very superior range, performs academically well above expectation for Student's age and grade, and demonstrates the academic skills, creative potential, leadership capabilities and artistic talents that are associated with giftedness. (P13,p.9)

14. On August 28, 2008, Student's lawyer sent to the School District a copy of Dr. K's IEE report. (P15,p.12; N.T. 150) The School District then requested parental permission to further evaluate Student, which permission was refused. (P15,p.14; N.T. 139-140) The School District seeks to perform a Woodcock Johnson IQ test and some additional achievement tests, as well as gather additional information from Student's parent and teachers. (N.T. 193, 229) On September 12, 2008, Student requested a due process hearing. (P15, p.15)

15. I presided in due process hearings on October 7 and 13, 2008. Exhibits introduced and either admitted or not admitted into the record were as follows:

<b>Exhibit #</b>	<b>Without Objection</b>	<b>Over Objection</b>	<b>Not Submitted</b>	<b>Admission Refused</b>
P1	✓			
P2	✓			
P3	✓			
P4	✓			
P5	✓			
P6	✓			
P7	✓			
P8	✓			



<b>Exhibit #</b>	<b>Without Objection</b>	<b>Over Objection</b>	<b>Not Submitted</b>	<b>Admission Refused</b>
P9	✓			
P10	✓			
P11				✓ (N.T. 278-279)
P12				✓ (N.T. 279)
P13, pp.1-25	✓			
P13, pp.12A-12D				✓ (N.T. 280)
P14	✓			
P15	✓			
P16	✓			
P17	✓			
P18	✓			
P19	✓			
P20	✓			
P21	✓			
P22	✓			
P23			✓ (N.T. 282)	
P24				✓ (N.T. 284)
P25				✓ (N.T. 284)
P26				✓ (N.T. 284)
P27				✓ (N.T. 284)
P28		✓ (N.T. 284)		
P29	✓			
SD1	✓			
HO1	✓			

16. At the due process hearing, I distributed Appeal Procedures applicable to a single-tier due process system. HO 1 The parties should be aware, however, that the Chapter 16 regulations applicable to this case may still require a two-tier due process system, in which case the single-tier appeal procedures contained in HO 1 would not apply. 22 Pa. Code §16.63(l) The parties should seek competent legal counsel regarding their appellate rights.

17. The School District's psychologist Ms. W, and Student's psychologist Dr. K, disagree about whether or not Student qualifies for classification as a gifted student.

18. Ms. W believes Student's existing educational record does not qualify Student for classification as a gifted student, noting that, on the basis of all records except Dr. K's IEE, Student earned only 12 points on the School District's multi-level screening process rather than the minimum 14 points required by the School District for classification as a gifted student. (N.T. 192) Ms. W acknowledges that Student would meet the minimum 14 points if Dr. K's WISC-IV IQ score of 132 was included in the analysis. (N.T. 195) Ms. W is uncomfortable using the 132 IQ score, however, because Student had taken the WISC-IV eight months earlier and therefore the 132 score might have been inflated as a result of the practice effect.<sup>3</sup> (N.T. 190, 218) Ms. W acknowledges that the practice effect is of greatest concern when the interval between tests is relatively short, such as two months or less. (N.T. 218) Nevertheless, Ms. W feels that further IQ testing is warranted using a different IQ test. (N.T. 186-187, 193)
19. Ms. W also notes that her conversations with Student's teachers indicated that the pace of regular education instruction was not too slow for Student, because Student was not exceeding those teachers' expectations. (N.T. 223) Student's 5<sup>th</sup> grade teachers, both of whom have extensive teaching experience, corroborated this, testifying that Student did not demonstrate the inner drive, eagerness, inquisitiveness, leadership and creativity that they typically see in gifted children. (N.T. 23-236, 252-255, 263-266)

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<sup>3</sup> This refers to the possibility that a person's progressively higher test scores could simply be the result of having taken the same test more than once. The rule of thumb is that WISC-IV tests are not given within one year of each other to avoid any practice effect. (N.T. 76)

20. Dr. K believes Student's existing educational record does qualify Student for classification as a gifted student, noting that Student has always excelled academically, always functioned above grade level in all areas, and has been recommended by Student's teachers for gifted testing. (N.T. 73-74) In Dr. K's opinion, her IEE merely confirms what the existing educational record already establishes. Dr. K does not believe the practice effect applied in this case, noting that the WISC-IV subtests that might be affected by the practice effect are those found in the perceptual reasoning and processing speed indices, neither of which differed very much from Ms. W's testing eight months earlier. (N.T. 85, 110)
21. The confidence range of Ms. W's WISC-IV 125 full scale IQ is 119-129, meaning that reviewers can be confident that Student's IQ actually is somewhere between 119 and 129. (N.T. 89, 189) The confidence range of Dr. K's WISC-IV 132 full scale IQ is 126-136, meaning that reviewers can be confident that Student's IQ actually is somewhere between 126 and 136. (N.T. 89, 189) Thus, there is overlap between the confidence intervals of both WISC-IV IQ scores. (N.T. 89, 189)
22. In light of the difference of professional opinion between Dr. K and Ms. W, I must render a determination regarding which opinion I find to be more credible. I find Dr. K's professional opinion to be more credible than that of Ms. W. The main reason that I find Dr. K's opinion to be more credible is the comparative professional experience of the two evaluators. Dr. K has a doctorate degree and 30 years experience as a certified school psychologist. Ms. W has a master's degree in school psychology and has been certified for 2 years as a school

psychologist. (N.T. 178, 197-199) Dr. K has testified in 50-100 due process hearings, while Ms. W has performed, at most, 10 gifted eligibility evaluations. (N.T. 67, 178, 197-199; P21)

23. Dr. K convincingly based her opinion of Student's giftedness upon her analysis of Student's entire record as filtered through Dr. K's extensive experience, while Ms. W's opinion is based, not upon her own relatively little professional experience, but upon an almost slavish adherence to the School District's multi-level gifted screening system. (N.T. 192, 195, 199-200, 208-210) As described in detail later in this decision, the School District's screening system does not warrant as much deference as Ms. W accords it.
24. The School District argues that Dr. K's opinion is not credible because she had already pre-judged Student's giftedness when she reviewed Student's educational records back in May 2008, even before she issued her August 2008 IEE. (N.T. 300, 302) I find, however, that Dr. K's conclusion, back in May 2008, that Student was gifted is simply the result of decades of experience in the field and, therefore, it is no surprise to me that Dr. K's August 2008 IEE corroborates her earlier record review.
25. The School District argues that Dr. K's IEE is based upon an unreliable WISC-IV that was administered 8 months, rather than the rule-of-thumb 12 months, after a previous WISC-IV. There is no evidence of actual practice effect in this case, however. Ms. W acknowledged that any practice effect is of greatest concern when the interval between tests is relatively short, such as two months or less (N.T. 218), and Dr. K convincingly explained that any practice effect would show

itself in the perceptual reasoning and processing speed indices, neither of which scores differed very much from Ms. W's testing eight months earlier. (N.T. 85, 110) Further, the overlap in confidence levels between the two WISC-IVs supports the reliability of Dr. K's WISC-IV.

26. The School District also argues that Ms. W's opinion is credible because teacher testimony supports her opinion. I note, however, that one of Student's teachers admitted being surprised by Student's PSSA performance in writing because he did not display such skill in the classroom. (N.T. 256-257) This indicates to me that teacher observation, while useful, is not infallible in identifying gifted students.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The general principle in these administrative proceedings places the burden of proof on the person who initiates the action. In Re: A.H. v. Haverford Township School District, Appeals Panel Opinion No. 1787 (2006) Therefore, the burden of proof, and more specifically the burden of persuasion, in this case rests upon Student's parent, who initiated the due process proceeding.

In Pennsylvania, state law determines the entitlement, procedural safeguards, and programs for gifted students. 22 Pa. Code §16.1 (Chapter 16) Public school districts are charged with the ominous task of providing appropriate gifted education to every eligible child of school age in this Commonwealth. Saucon Valley School District v. Robert and Darlene O., 785 A.2d 1069 (Pa. Cmwlth. 2001); Brownsville Area School District v. Student X, 729 A.2d 198, 199 (Pa. Cmwlth. 1999)

Chapter 16 requires that gifted students be provided “appropriate specially designed instruction based on the student’s need and ability”, be ensured that “the student is able to benefit meaningfully from the rate, level and manner of instruction,” and be provided “opportunities to participate in acceleration or enrichment programs, or both, as appropriate.” 22 Pa. Code §16.41 This requires individualization and not the one-size-fits-all type of education that has led to difficulties in previous Chapter 16 cases. See, e.g., Centennial Sch. Dist. v. Pennsylvania Dep’t of Educ., 539 A.2d 785 (1988); York Suburban Sch. Dist. v. S.P., 872 A.2d 1285 (Pa. Commw. Ct. 2005); In Re: Z.S. v. West Chester Area School District, Appeals Panel Opinion No. 1748 (July 10, 2006)

The regulations define “mentally gifted” as outstanding intellectual and creative ability the development of which requires specially designed programs or support services, or both, not ordinarily provided in the regular education program. 22. Pa. Code § 16.1 Pennsylvania law makes specific provision for the identification, evaluation, and educational programming for its gifted students. 24 P.S. § 13-1371; 22 Pa. Code Chapter 16

Each school district must establish procedures to determine whether a student is mentally gifted, which term (“mentally gifted”) includes a person: 1) who has an IQ of 130 or higher; and 2) when other multiple criteria indicate gifted ability. 22 Pa. Code §16.21(d) These appear to be alternative clauses in the regulation, i.e., it does not appear from the regulations that, when a person has an IQ of 130 or higher, he or she must also exhibit gifted ability via other multiple criteria. Rather, it appears that a person is considered to be mentally gifted when s/he has an IQ of 130+ or when s/he meets other multiple criteria that indicate gifted ability. 22 Pa. Code §16.21(d) I conclude, based

upon the credible testimony of Dr. K, that Student's 132 score is a reliable indicator of Student's giftedness. That 132 score is sufficient to qualify Student for gifted education services. 22 Pa. Code §16.21(d)

In reaching my credibility determinations in this matter, I rejected Ms. W's professional opinion because it was based too little upon an analysis of the record and too much upon an unwarranted and unquestioned adherence to the School District's multi-level gifted screening system. (N.T. 192, 195, 199-200, 208-210) The School District's screening process appears to serve a legitimately useful purpose in screening out children who are not gifted, but there is no reason to think that gifted children are always and immediately screened in through the screening process. Student's experience is an example of this. For three years, Student did not accumulate enough points on the School District's screening system to get past Level I. Once Student reached 4<sup>th</sup> grade, however, it was almost as if Student hit a magic number on the Slosson slot machine and screening points started rolling in, eventually resulting in a WISC-IV in Student's 5<sup>th</sup> grade school year.

There is no internal difference in Student that explains this pre-4th grade/post-4th grade difference in point accumulation. Student's academic achievement was always high and it is unlikely that Student's cognitive ability changed dramatically between first and fourth grades. It is only an external difference that explains this pre-4th grade/post-4th grade difference in point accumulation: In 4<sup>th</sup> grade, Student had much greater access to other gifted assessments once he reached a magic Slosson IQ number, and once those other assessments were administered, Student progressed from Level I to Level IV. Had the School District's screening process been configured differently, or had Level I been

skipped accidentally in Student's case, Student quite likely could have received a WISC-IV much sooner than 5<sup>th</sup> grade.

In addition, Ms. W acknowledged at the due process hearing that Dr. Kay's WIAT-2 word reading subtest standard score of 124 was more consistent with other measures of Student's above-grade-level reading abilities than the May 2007 Level III WIAT-2 score of 110. (N.T. 226) Thus, the screening process can result, on occasion, in aberrant scores. Finally, no one can explain why, even after Student acquired enough points to go beyond Level I in December 2006, no Level II screening occurred for another five months, until May 2007. (N.T. 176) All of these factors, then, indicate to me that the School District's gifted screening process, while probably reliable in most cases, is not a replacement for a thorough, well-reasoned professional analysis of a child's educational record, and cannot be relied upon as the ultimate determiner of gifted eligibility. Yet, I believe Ms. W gives to the screening process the role of ultimate determiner of gifted eligibility. That is why I concluded that Ms. W's professional opinion was not credible.

Having concluded that Student meets the criteria for gifted education services, I will order the School District to convene a gifted individualized education program (GIEP) team. The GIEP must report in objective terms Student's current instructional levels, curricular content unmastered, and any other information that can be used to establish the Student's level of educational performance within the curriculum, including Student's higher order thinking skills, leadership skills, research skills, writing skills, and study skills. In Re: D.D. v. North Penn School District, Appeals Panel Opinion No. 1791 (Jan. 9, 2007); In Re: A.H. v. Haverford Township School District, Appeals Panel



Opinion No. 1787 (Dec. 20, 2006) The GIEP team shall then develop measurable goals for each area of gifted educational need, first listing Student's present levels of need in objective and measurable terms, and then using those same objective and measurable terms when developing goals for Student in each area of need. In developing Student's GIEP goals, the GIEP team must describe the actual chart(s) that will be used for monitoring and recording Student's progress on each goal.

Claims regarding the appropriateness of gifted education are limited to one year prior to the filing of a due process hearing request, except where mitigating circumstances permit one additional year. B.C. v. Penn Manor School District, 906 A.2d 642 (Pa. Cmwlth. 2006); Carlynton School District v. D.S., 815 A.2d 666 (Pa. Cmwlth. 2003); Montour School District v. S.T., 805 A.2d 29 (Pa. Cmwlth. 2002) In this case, Student argues that this claim for compensatory education should be permitted to extend more than one year before the date of the September 12, 2008 due process hearing complaint because Student's parent relied upon the School District's determinations that Student did not qualify for gifted education services. I reject Student's argument because mere reliance upon well-intentioned, albeit incorrect, opinions of School District personnel do not constitute the type of mitigating circumstances that warrant extension of the one year period. See, B.C. v. Penn Manor School District, supra, fn.13

Commonwealth Court has recognized that compensatory education may be an appropriate remedy for the District's failure to provide an adequate educational program for the gifted child, and that any compensatory education award must be limited to the education available within the curriculum of the school district. B.C. v. Penn Manor School District, supra. Student requests a compensatory education award of 250 hours

because this School District's middle school gifted program consists of 1 period per day replacement for English requirement, and Student complains of two years of missed gifted education services. (N.T. 135, 162)

Commonwealth Court has rejected, however, a one-to-one system of awarding compensatory education, holding that, where an award of compensatory education is appropriate, the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide an appropriate education. This may require awarding the student more compensatory education time than a one-for-one standard would, while in other situations the student may be entitled to little or no compensatory education, because (s)he has progressed appropriately despite having been denied a FAPE. B.C. v. Penn Manor School District, *supra*.

Frankly, it appears that the Penn Manor case renders virtually irrelevant the Montour case and all arguments regarding how long a Student has been denied an appropriate gifted education. It is no longer important whether Student was denied an appropriate education for the last 10 years or just for the last year, under Penn Manor the Student in both cases is entitled to the amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district's failure to provide an appropriate education.

Of course, the Penn Manor standard requires some type of evidence regarding the educational services that can bring Student to the position that Student would have occupied but for the school district's failure to provide an appropriate education. In this case, Student has offered very little evidence of this type. Dr. K opined that Student

needs: 1) acceleration because Student masters material at a rapid rate; 2) enrichment beyond the standard curriculum; and 3) individualization based upon present levels of educational performance. (N.T. 96) Dr. K did not estimate how many hours, or what type, of compensatory education Student needs to bring him/her to the position that s/he would have occupied but for the school district's failure to provide an appropriate education.

In a case that appears similar to this case, the Appeals Panel awarded, under the Penn Manor standard, one hour for every day that the student attended school from the start of the previous school year until the District offered a revised GIEP. In Re: A.H. v. Haverford Township School District, Appeals Panel Opinion No. 1787 (Dec. 20, 2006) In a similar way, I believe one hour per day for every day of middle school constitutes an amount of compensatory education that is reasonably calculated to bring Student to the position that Student would have occupied if the School District had provided a more systematic gifted education program that was uniquely tailored to Student's specific needs.

This School District's middle school gifted program consists of 1 period per day replacement for English requirement. (N.T. 135, 162) Student started progressing through the screening levels in 4<sup>th</sup> grade, well before middle school. Had Student been identified appropriately, s/he would have been receiving gifted education services as soon as s/he entered middle school. Without regard to any particular filing date (I have already concluded that Montour mitigating circumstances do not apply) and considering the services that Student should have been receiving as well as Dr. K's testimony regarding what Student needs, I conclude that the equivalent of one hour per day for every day since Student entered middle school is a reasonably calculated amount of compensatory

education services. Accordingly, I will order that the School District provide to Student compensatory education in the amount of one hour per day for every day since Student entered middle school.

### **CONCLUSION**

The dispute in this case boils down to the competing opinions of two certified school psychologists. I have found the opinion of the more experienced school psychologist to be more credible. Based upon that credible opinion, I have concluded that Student is eligible for gifted education services and entitled to compensatory education services. Based upon the record, I have awarded compensatory education services to Student.

**ORDER**

- Student qualifies for gifted education services;
- The School District shall convene a GIEP team;
  - Student's GIEP team must report current in objective terms Student's instructional levels, curricular content unmastered, and any other information that can be used to establish the Student's level of educational performance within the curriculum, including Student's higher order thinking skills, leadership skills, research skills, writing skills, and study skills;
  - Student's GIEP team shall develop measurable goals for each area of gifted educational need, first listing Student's present levels of need in objective and measurable terms, and then using those same objective and measurable terms when developing goals for Student in each area of need;
  - In developing Student's GIEP goals, the GIEP team must describe the actual chart(s) that will be used for monitoring and recording Student's progress on each goal;
- The School District shall provide to Student compensatory education in the amount of one hour per day for every day since Student entered middle school.

*Daniel J. Myers*

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Hearing Officer  
HEARING OFFICER

October 30, 2008