

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 Status Hearing

ODR No. 32204-25-26

Child's Name:

J.K.

Date of Birth:

[redacted]

Parents:

[redacted]

Local Education Agency:

Tredyffrin/Eastown School District
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Wayne, PA. 19087

Counsel for LEA:

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Hearing Officer:

Vicki A. McGinley, Ph.D.

Date of Decision:

February 12, 2026

¹The record closed upon receipt of written closing briefs from the parties.

INTRODUCTION AND PROCEDURAL HISTORY

The Student (“Student”), J.K., is a [redacted]-year-old, [redacted] grade child residing in the District (“District”). On November 21, 2025, Parents filed a Due Process Complaint (DPC) on behalf Student under Chapter 16 indicating that the District failed to implement appropriate gifted evaluations which initially resulted in Student’s ineligibility for gifted education.² In the DPC Parents indicated that as remedy they would seek Gifted Support Services for their child, as well as revision of the Gifted Written Report (GWR) to incorporate “recommendations for services, addressing past services received, Student academic history, as well as any inclusions that they deemed should have been included”.

One hearing session was held on January 13, 2026.

Procedural Issues

Admission of Parent and District Exhibits (all exhibits were admitted by stipulation except P-21 duplicative exhibits were removed prior to the due process hearing)

Parents Exhibits Admitted: P1-P20

District Exhibits Admitted: S-5; S8-S13; S-15-S-19; S-21-S-28

ISSUE(S):

The issue for hearing was established on the record as follows:

Did the Gifted Written Report(s) dated 11/7/25 and 12/18/25 comply with Chapter 16 regulations correctly determining the Student’s eligibility and gifted education.²

² During the prehearing conference and on the record (N.T., p. 10-18), Parents indicated that this proceeding addresses both the November 7, 2025, GWR finding the Student gifted but ineligible for gifted education, which prompted the filing of the DPC. After receiving additional out-of-state records, the District amended the GWR which was then issued on December 18, 2025, and determined that the Student was eligible for gifted education. The District asserted that, because eligibility had been granted, no due process issue remained. Parents, however, contend that the evaluation process underlying both GWRs was deficient and untimely. Accordingly, the issue before the Hearing Officer is whether the District conducted an appropriate gifted evaluations in compliance with Chapter 16.

Stipulations

The following facts are stipulated by parties and are accepted as true:

1. The parties agree that the Student was identified as a gifted and talented Student in [redacted] during the [redacted] grade, prior to the family's relocation to the District (N.T. p. 22).

FINDINGS OF FACT

1. The Student was a resident of [redacted] during the 2024–2025 school year, prior to enrolling in the District in August 2025 for the 2025–2026 school year (N.T. p. 22; S-12). The record reflects that Parents registered the Student in the District on May 29, 2025 (P-6).
2. Parent testified that they did not have a “written plan” for Student from [redacted](N.T. 154-155).
3. In July 2025, during the summer prior to enrolling in the District, the Student was administered the Screening Assessment for Gifted Elementary Students (SAGES)³ for purposes of placement in English Language Arts (ELA) and Mathematics (N.T. pp. 22, 144; P-8; P-10).
4. On August 13, 2025, Parents emailed the District's Gifted Support Teacher inquiring about the development of a Gifted Individualized Education Plan (GIEP) (P-16; S-2).
5. On August 21, 2025, Parents received correspondence from the [redacted] School Counselor indicating that the Student would be placed in an above-level mathematics course (P-12; N.T. p. 217).
6. The Student's first day of attendance in the District was August 25, 2025 (N.T. 161).
7. On August 30, 2025, the Gifted Support Teacher sent a mass communication to individuals on her case management list welcoming the family. The teacher testified that this correspondence was sent as a courtesy following a prior telephone conversation (P-12). This was followed up in testimony by the Gifted Support Teacher explaining that out-of-state Students do not automatically transfer in to gifted services, that Students may need to be evaluated. The Gifted Support Teacher's service starts when a Gifted Written Report (GWR) is issued (N.T. 132).

³SAGES is a norm-referenced cognitive screening tool used as an initial screener prior to referring a Student for a full gifted multidisciplinary evaluation (GMDE).

8. At the outset of the 2025–2026 school year, the District offered the Student placement in the advanced level Humanities Seminar prior to completion of the Gifted Written Report (GWR). Testimony reflects that this placement decision was based upon Parents’ representations that the Student had previously been identified as gifted, as communicated verbally and through the District’s registration materials (N.T. p. 140).
9. On September 3, 2025, District personnel exchanged internal correspondence referencing “starting fresh” and the removal of two drafted gifted Prior Written Notices (PWNs) pertaining to the Student, neither of which had been provided to Parents at that time (P-18; P-19).
10. On September 9, 2025, following Parents’ request for a gifted evaluation, the District issued a Permission to Evaluate (PTE) (P-10). Parents testified that they were unaware of the need to request an evaluation either orally or in writing (N.T. p. 170).
11. A Gifted Multidisciplinary Evaluation (GMDE) was conducted during September and October 2025 (N.T. pp. 57, 82). Parents testified that they received the Notice of Parental Rights for Gifted Students (N.T. p. 158; S-16).
12. As of November 2025, the District had received limited educational records from [redacted], including the Student’s prior academic grades (P-4; N.T. pp. 42, 50). Testimony further reflects that [redacted] does not utilize a Gifted Individualized Education Plan (GIEP) comparable to that required under Chapter 16 (N.T. pp. 23, 37).
13. Following issuance of the Gifted Written Report (GWR) dated November 7, 2025, the District received a one-page summary of a [redacted] evaluation pertaining to the Student (N.T. p. 24). Testimony reflects that the [redacted] criteria referenced a cutoff for gifted identification at the 90th percentile on nationally normed screening instruments, whereas the District’s criteria utilize cutoff scores within the 98th to 99th percentile range (N.T. p. 24).
14. The Gifted Written Report (GWR) dated November 7, 2025, determined that the Student met the criteria for giftedness but was not in need of specially designed instruction (N.T. p. 25). The evaluation results reflect a Full-Scale IQ (FSIQ) score of 132, corresponding to the 98th percentile, with performance on WISC-V⁴ subtests falling within the Very High range. Academic achievement scores ranged from the 86th to 96th percentiles on subtests of the WIAT-4⁵ and KTEA-3 (P-1).

⁴ The WISC-V is standardized intelligence test use to measure cognitive abilities. It provides a FSIQ and multiple index scores, one of which being the General Ability Index which reflects higher-level reasoning skills without the influence of working memory and processing speed.

⁵The WIAT-4 is a standardized test of academic achievement for measuring what students have learned, their strengths and areas of need across reading, writing, mathematics and oral language

15. On November 7, 2025, the District issued a Notice of Recommended Assignment (NORA) (S-15).
16. On November 21, 2025, Parents filed a Due Process Complaint (DPC) alleging that the District failed to comply with Chapter 16 requirements, including claims that the District excluded relevant student records and intentionally restricted the Student's access to gifted services (S-17).
17. Both the Gifted Written Report (GWR) dated November 7, 2025 (P-1) and the revised GWR dated December 18, 2025 (P-2) reflect consideration of multiple data sources, including parental input (P-20; N.T. p. 87), teacher input (N.T. p. 88), cognitive assessment utilizing the WISC-V, and academic achievement assessments derived from subtests of the WIAT-4 and KTEA-3. The evaluations also incorporated a review of course grades (P-1; N.T. p. 38), i-Ready⁶ diagnostic assessments in Mathematics and Reading, and multiple-criteria analysis informed by parent and teacher rating scales, including the Chuska Scale⁷ (N.T. pp. 28, 33).
18. The District's Curriculum Supervisor for English Language Arts (ELA), World Languages, Health and Physical Education, Family and Consumer Science, Library Services, Kindergarten, and Elementary Gifted Education testified regarding the District's criteria for gifted identification. The witness stated that the District typically considers i-Ready Reading Diagnostic results at approximately the 99th percentile, reflecting performance at or above an eighth-grade reading level for a [redacted]-grade student. The Student's i-Ready Reading score was reported at the 97th percentile (N.T. p. 212). The witness further testified that the Student's Critical Reading Inventory (CRI) results were consistent with a fifth-grade instructional reading level (N.T. p. 213).
19. The School Psychologist testified that the November 7, 2025, date was retained on the amended Gifted Written Report (GWR) issued December 18, 2025 (P-2). The witness explained that the document was issued as an amendment to the original GWR and further testified that altering the date could have created the appearance of a compliance concern (N.T. p. 87).

⁶ The i-Ready Diagnostic is an assessment that measures student's current instructional skills in Reading and Mathematics, to identify specific skill gaps and proficiencies.

⁷ Chuska Scale is a teacher-completed observational rating scale used to document behavioral characteristics commonly associated with giftedness, such as advanced reasoning, creativity, task commitment, intensity of learning.

20. Parents expressed concerns that certain standardized assessments administered during the Student's [redacted]-grade year in [redacted], including the Iowa Achievement Test⁸, the Cognitive Abilities Test (CogAT)⁹, and a GATE assessment, were not included in the November 7, 2025, Gifted Written Report (GWR) (N.T. p. 55). The record reflects that results from these assessments were obtained following completion of the November 7, 2025, GWR and were subsequently incorporated into the amended GWR dated December 18, 2025 (N.T. p. 100).
21. Additional educational records from [redacted] were received by the District on December 8, 2025 (S-22).
22. On December 8, 2025, the District transmitted correspondence to Parents providing an amended GWR indicating that the Student met the criteria for development of a Gifted Individualized Education Plan (GIEP) based upon the updated records received from [redacted] and invited Parents to a GIEP meeting (S-22).
23. The School Psychologist testified that, in connection with the amended Gifted Written Report (GWR) dated December 18, 2025 (P-2), additional assessment measures were administered (N.T. p. 98). The witness explained that follow-up testing was conducted to further examine the Student's Reading Comprehension, Mathematical Problem Solving, and Written Expression skills. The amended GWR also incorporated educational data received from [redacted], including prior CogAT, Iowa Achievement Test, and GATE evaluation results, as well as updated academic grades (P-2).
24. Parents continued to express concerns that the amended Gifted Written Report (GWR) dated December 18, 2025, did not incorporate certain records they believed should have been considered, including STAR assessment results. Parents testified that these concerns were related to the perceived accuracy and completeness of the evaluative record (N.T. pp. 188–190).
25. On December 18, 2025, Parents transmitted correspondence to the District indicating their intent to appeal the amended GWR. On December 19, 2025, the District responded by requesting clarification and offering to convene a Gifted Individualized Education Plan (GIEP) team meeting on January 6, 2026 (S-22).

⁸The Iowa Achievement Test is a norm-referenced standardized achievement test used in K–12 education to measure how students perform in core academic areas compared with a large, representative peer group.

⁹The CogAT is a standardized assessment designed to measure a student's reasoning and problem-solving abilities in three major domains: Verbal, Quantitative, and Nonverbal. It evaluates the cognitive processes that support learning, such as pattern recognition, analogical reasoning, and problem-solving flexibility

26. On December 23, 2025, the District provided Parents with a draft GIEP (S-24).
27. On December 28, 2025, Parents filed and an additional DPC challenging the amended GWR dated December 18, 2025 (S-25).

DISCUSSION AND CONCLUSIONS OF LAW

Burden of Proof:

The burden of proof consists of two distinct components: the burden of production, which determines which party must present its evidence first, and the burden of persuasion, which determines which party must ultimately convince the fact finder—in this case, the hearing officer—that its position is correct. Although Chapter 16 of the Pennsylvania Code does not expressly address the allocation of the burden of proof in gifted education due process proceedings, Pennsylvania precedent has clearly established that the burden rests with the party initiating the request for due process. *See E.N. v. M. Sch. Dist.*, 928 A.2d 453 (Pa. Commw. Ct. 2007); *see also D.Z. v. Bethlehem Area Sch. Dist.*, 2 A.3d 712 (Pa. Commw. Ct. 2010); *D.V. v. Conrad Weiser Sch. Dist.*, ODR No. 20107-17-18 at *7 (Apr. 10, 2018) (*holding that the moving party bears the burden of proof*); *J.S. v. Mt. Lebanon Sch. Dist.*, ODR No. 17229-15-16 at *5 (May 13, 2016) (*citing E.N. and D.Z.*). Accordingly, in this matter, both the burden of persuasion and the burden of production rest with the Parents, as they are the party that initiated these proceedings.

Credibility Determinations:

As fact finder, the Hearing Officer is charged with resolving conflicts in testimony and determining the weight and credibility to be accorded to each witness's statements. Credibility determinations are based upon a witness's demeanor, internal consistency, plausibility considering the entire record, and the presence or absence of corroborating evidence. *See, e.g., In re A.J.R.-H.*, 188 A.3d 1157, 1167 (Pa. 2018) (fact finder entitled to believe all, part, or none of a witness's testimony); *Commonwealth v. Johnson*, 180 A.3d 474, 479 (Pa. Super. Ct. 2018) (credibility determinations within province of fact finder).

Where conflicts existed, this Hearing Officer considered the totality of the evidence presented. The witnesses appeared to testify to the best of their ability. The Hearing Officer finds the District's witnesses credible with respect to their knowledge of gifted education procedures

and evaluation practices. As the issues presented in this proceeding primarily concern the appropriateness of the evaluation and related processes, greater evidentiary weight is accorded to testimony offered by District personnel in those areas.

Chapter 16:

Gifted education in Pennsylvania is governed by 22 Pa. Code §16.1–16.65 (“Chapter 16”). The purpose of Chapter 16 is to ensure that each identified gifted student receives an education based on the student’s unique needs. Such education may include acceleration, enrichment or both, beyond what is available in the general education program. *22 Pa. Code §16.41(b)(3)*. While a school district must provide an appropriate placement and plan with specially designed instruction reasonably calculated to confer meaningful—not merely trivial—educational benefit and progress, it is not required to “maximize” the student’s potential. *Id.*; *see also 22 Pa. Code §§ 16.1(vii), 16.41(b)(2)*.

Under Chapter 16, a “gifted student” is:

- (i) A student who is exceptional under §1371 of the Pennsylvania School Code, 24 P.S. § 13-1371) because the student meets the definition of “mentally gifted” and requires specially designed instruction beyond that provided under Chapter 4 (relating to academic standards and assessment); and
- (ii) A student who is of “school age” as defined in 22 Pa. Code §11.12.

“Mentally gifted” is defined 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. Thus, eligibility for gifted education requires (1) identification as mentally gifted and (2) a determination that the student requires specially designed instruction.

Relevant screening and evaluation for gifted education are set forth at 22 Pa. Code § 16.21(c)–(d). An IQ score cannot serve as the sole basis for determining giftedness. “Multiple criteria” may be considered for students with IQ scores below 130. A student with an IQ below 130 may still be admitted to gifted programs if other educational criteria strongly indicate gifted ability. Determination of mentally gifted must include an assessment by a certified school psychologist. 22 Pa. Code § 16.21(d). *In E.N. v. M. Sch. Dist.*, 928 A.2d 453 (Pa. Commw. Ct.

2007), the Commonwealth Court interpreted §16.21(d) as using permissive (“may be admitted”) rather than mandatory (“shall”) language for students with IQ scores below 130, leaving admission in such cases to district discretion, even when multiple criteria of giftedness are present. By contrast, students with IQ scores of 130 or above who meet multiple criteria must be admitted. Under §16.21, multiple criteria indicatives of gifted ability include:

1. Achievement a year or more above grade level in one or more subjects, as measured by nationally normed, validated tests yielding instructional levels for all academic areas.
2. An observed or measured rate of acquisition and retention of new academic content or skills that reflects gifted ability.
3. Demonstrated achievement, performance, or expertise in one or more academic areas, evidenced by excellence of products, portfolios, or research, and supported by criterion-referenced team judgment.
4. Early and measured use of high-level thinking skills, academic creativity, leadership, intense academic interest areas, advanced communication skills, foreign language aptitude, or technology expertise.
5. Documented, observed, validated, or assessed evidence that intervening factors (e.g., English as a second language, disability, gender or race bias, or socio-cultural deprivation) are masking gifted abilities.

Chapter 16 prescribes a detailed screening and evaluation process to ensure all eligible and potentially eligible gifted students are identified and served. The Gifted Multidisciplinary Evaluation (GMDE) must be sufficiently broad and deep to assess suspected giftedness, including academic functioning, learning strengths, and educational needs, and must include parental input. See 22 Pa. Code §16.1, 16.22(e)–(f). The GMDE must be:

1. Free from racial, cultural, or disability bias;
2. Administered to yield valid measures of aptitude, achievement, or other relevant factors;
3. Professionally validated for the purposes used;
4. Administered by certified school psychologists under standardized conditions; and
5. Designed to assess specific educational needs and abilities, not merely a general IQ score. 22 Pa. Code §16.22(3)(i)–(v).

Following the GMDE, the district must issue a Gifted Written Report (GWR) containing a determination of gifted status, the basis for the determination, programming recommendations, and the names of the multidisciplinary team members. The GWR must be provided to parents within 60 calendar days of receiving consent for evaluation.

Response to Parent's Complaint:

In their Complaint, Parents allege that the District failed to conduct appropriate gifted evaluations and “intentionally put up barriers” resulting in the Student’s initial ineligibility for gifted services (N.T. p. 153).

Chapter 16 requires that a school district complete a gifted evaluation and issue a Gifted Written Report (GWR) within sixty (60) calendar days of receiving written parental consent to evaluate, excluding the period between the conclusion of the spring term and the commencement of the subsequent fall term. 22 Pa. Code § 16.22(j). While parents may request an evaluation at any time, the evaluation timeline is not triggered until written consent is obtained.

Here, Parents made an oral request for a gifted evaluation on September 3, 2025, followed by a written request on September 9, 2025. The District issued a Permission to Evaluate (PTE) on September 9, 2025. Because the District’s procedural obligation was triggered upon receipt of written consent, issuance of the PTE on that date complied with Chapter 16.

The record further reflects that, prior to completion of the Gifted Multidisciplinary Evaluation (GME) and while awaiting receipt of out-of-state records, the District screened the Student and placed the Student in advanced-level Reading and Mathematics courses. Although Parents engaged in frequent communications with District personnel during this period, and while such interactions may have contributed to a perception of delay, the evidence does not establish procedural noncompliance or support a finding of intentional obstruction or bad faith.

As recognized by the Commonwealth Court, not all procedural deviations warrant relief. A procedural violation is actionable only where it results in educational harm, a loss of gifted services, or a deprivation of meaningful parental participation. *Montour School District v. S.T.*, 805 A.2d 29 (Pa. Cmwlth. 2002). Parents did not establish that the Student suffered educational

harm, was denied access to appropriate instruction, or that Parents were deprived of meaningful participation. Moreover, educational harm was not an issue presented for determination in this proceeding. Rather, the dispute concerns the appropriateness of the Gifted Written Reports.

Accordingly, even if additional procedural steps could have been taken, any such deviation would constitute harmless error and would not support an award of relief.

With respect to the appropriateness of the gifted evaluations conducted, including the Gifted Written Reports (GWRs) issued in November and December 2025, 22 Pa. Code § 16.31(b) provides that when a student previously identified as gifted in another state enrolls in a Pennsylvania school district, the district may conduct a Gifted Multidisciplinary Evaluation (GME). Where information obtained from another state satisfies Chapter 16 criteria, such information must be reviewed by appropriate personnel and documented within a GWR.

Here, the District credibly testified that more comprehensive educational records from Texas were not received until December 2025 and that no comparable Gifted Individualized Education Plan (GIEP) was available for review at the time of the initial November 7, 2025, GWR. Following Parents' request for a gifted evaluation, the District conducted a Gifted Multidisciplinary Evaluation consistent with Chapter 16 requirements and issued the subsequent amended GWR based upon the full record then available.

The record establishes that, with respect to both the November and December GWRs, the District conducted legally sufficient and substantively appropriate gifted evaluations in compliance with Chapter 16. Consistent with 22 Pa. Code §§ 16.21–16.22, the District employed a multidisciplinary evaluation process and considered multiple relevant data sources, including cognitive assessments, academic achievement measures, classroom performance, observational data, and parental input. The evaluations did not rely upon any single measure or isolated score, but instead reflected a reasoned, holistic review of the Student's abilities and educational performance.

As recognized by the Commonwealth Court, Chapter 16 does not require evaluative perfection, but rather a reasoned determination grounded in professional judgment and supported by the record. *Montour School District v. S.T.*, 805 A.2d 29 (Pa. Cmwlth. 2002). Similarly,

where an evaluation process is thorough, data-driven, and procedurally sound, a hearing officer may properly accord weight to the informed judgment of educational professionals. *Carlynton School District v. A.P.*, 2010 WL 143455 (Pa. Cmwlth.).

Accordingly, the Hearing Officer finds that the District satisfied both the procedural and substantive requirements of Chapter 16 and appropriately evaluated the Student.

Chapter 16 requires that when a student is determined to be gifted and in need of specially designed instruction, a Gifted Individualized Education Plan (GIEP) must be developed within thirty (30) calendar days of issuance of the Gifted Written Report (GWR). 22 Pa. Code § 16.32(c)(6). The record does not establish that this timeline was violated. The District provided Parents with a proposed GIEP on December 23, 2025 following the amended GWR of December 18, 2025.

ORDER

AND NOW, this day of 12th day of February 2026, upon consideration of the testimony, exhibits, and the entire record in this matter, and for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** as follows:

1. Parents' claims alleging that the District failed to appropriately evaluate the Student for gifted education, engaged in intentional delay or obstruction, or otherwise violated Chapter 16 of the Pennsylvania School Code are DENIED.
2. The Hearing Officer finds that the District conducted comprehensive and legally sufficient gifted evaluations and appropriately issued the Gifted Written Reports (GWRs) dated November 7, 2025, and December 18, 2025 in compliance with 22 Pa. Code §§ 16.21–16.22.
3. The Hearing Officer further finds that Parents failed to establish that any alleged procedural deviation resulted in educational harm, a loss of appropriate education, or a denial of meaningful parental participation. Accordingly, any alleged procedural deviation is deemed harmless and does not warrant relief.
4. The Hearing Officer finds that the District complied with 22 Pa. Code § 16.32(c)(6) by timely offering a Gifted Individualized Education Plan (GIEP) on December 23, 2025.
5. All relief requested by Parents is DENIED.

/s/ Vicki A. McGinley, Ph.D.

HEARING OFFICER