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PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

6684/05-06 KE and 6685/05-06 KE

File Numbers

J.C.

Child's Name

Xx/xx/xx

Date of Birth

July 12, 2006

Date of Hearing

Open

Type of Hearing

For the Student:

Parent(s)

For the Penn Manor School District:

Beth Campagna
Penn Manor School District
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Date of Hearing:

July 12, 2006

Date of Receipt of Transcript:

July 20, 2006

Date of Decision:

August 1, 2006

Hearing Officer:

Daniel J. Myers

BACKGROUND

Student (Student) is a [pre-teenaged], 4th grade resident of the Penn Manor School District (School District). Last year, while in 3rd grade, Student was accelerated into a 4th grade math class, where he excelled. The parties anticipate that, for the upcoming school year, Student will accelerate through the 5th grade math curriculum and be ready for the 6th grade math curriculum by November, at the latest. The parties' dispute is over the proficiency level that Student must demonstrate on a 5th grade math curriculum test before he will be moved into the 6th grade math class. The School District wants Student to demonstrate 80% proficiency on a 5th grade math curriculum assessment before he will be placed into the 6th grade math class. Student's parents want Student to demonstrate 70% proficiency.

For the reasons described below, I find for the Student, but not quite in the manner requested. I conclude that the School District's position is based upon speculation and not in response to Student's individualized needs. I further conclude that both parties have unnecessarily framed the issue around an arbitrary administrative structure involving grade placement. I conclude that, to meet Student's individualized gifted education needs, his Gifted Individualized Education Program (GIEP) must provide that Student be taught to 80% proficiency in the 5th grade math curriculum while simultaneously attending 6th grade math classes at the beginning of the 2006-2007 school year.

ISSUE

What should be the appropriate proficiency level to be applied in Student's 5th grade math assessments for purposes of acceleration into the 6th grade math curriculum?

FINDINGS OF FACT

1. Student, whose date of birth is xx/xx/xx, is a [pre-teenaged], 4th grade resident of the School District at Elementary School. (N.T. 28-29)¹ Student is a gifted student, who achieves above grade level in reading, spelling and math. (N.T. 60-62)
2. Sometime around the beginning of November 2005, during Student's 3rd grade school year, Student was moved up from the 3rd grade math class to the 4th grade math class. (N.T. 40, 140) At the time of Student's move up into the 4th grade math, he scored only 52% on an end-of-book assessment published by the publisher of the School District's 3rd grade math curriculum. (N.T. 65) In response to parental pressure and parental threat to go to due process, however, the School District agreed to move Student up to the 4th grade math class and the gifted teacher provided individualized instruction to Student in skill deficits that were indicated by his 52% end-of-year assessment score. (N.T. 135)

¹ References to "N.T." are to the transcript of the July 12, 2006 hearing session. References to "H.O.," "P.," and "SD" are to the exhibits of the Hearing Officer, Parent, and School District, respectively.

3. By all accounts, Student's acceleration into the 4th grade math class was successful. (N.T. 109, 135, 141)
 - a. Among 22 other students, all of whom were 4th graders (where Student was the only 3rd grader), Student was consistently among the top 25% of the class. (N.T. 157) At the end of the school year, Student's 4th grade math class average was 96%. (SD 2, p.2)
 - b. Because Student knew his math facts so well, he performed well in any area involving math computations. (N.T. 158)
 - c. In areas involving new concepts and those that were not highly dependent upon math calculations, other students caught on more quickly than Student, but Student always caught up and remained among the top students in the group. (N.T. 158)
 - d. Student's gifted teacher never observed Student express any frustration regarding his math instruction. (N.T. 81, 128) His math teacher observed Student demonstrate frustration with problem solving when he did not answer a question accurately the first time. Under those circumstances, Student would keep working at the problem until he figured out the answer. (N.T. 144, 150)
 - e. Student made some nice friendships among his 4th grade math classmates. (N.T. 152) Student prefers instruction with his peers to one-on-one math instruction. (N.T. 78)
4. Student is motivated by praise and good grades. (N.T. 89) It is not disputed that Student has the ability to understand the 6th grade curriculum. Student struggles with word problems, which indicates difficulty in the application of his excellent math computation skills. (N.T. 44, 58, 85, 87) School District personnel, however, are unsure of Student's actual skill levels in either the 5th or 6th grade math curricula. (N.T. 104)
5. The School District's math curriculum is sequential and constantly building upon what was previously learned. (N.T. 86)
 - a. The emphasis in the first four years of the curriculum is on computation, patterns and problem-solving methods. In 4th grade, the curriculum introduces the Student into more abstract reasoning and unknown variables. (N.T. 112)
 - b. The 5th grade curriculum involves formulas and more unknown variables. (N.T. 51)
 - c. The 6th grade curriculum gets into very abstract concepts including algebra, basic trigonometry, statistics, probability and ratios. (N.T. 51, 69, 105, 111)
6. On May 9, 2006, the School District administered to Student the 5th grade math book publisher's assessment to assess Student's achievement in 5th grade math curriculum skills. He answered 25%, or 17 of 67 questions correct. (N.T. 36; SD 2, p.2)
7. On May 31, 2006, the School District administered another, different, end-of-book test after Student had a chance to study the 5th grade math book at home. Student scored 49%, or 33 of 67 questions correct. (N.T. 36, 41-42; SD 2, p.2)

8. The end-of-the-book tests do not test all chapters of the 5th grade math book, nor do they test every section of each chapter tested. (N.T. 43, 66, 115; SD 4) In fact, because these tests only skimmed the 5th grade curriculum, the School District's gifted education teacher took the position that Student could not be considered to have mastered the skills in any chapter of the 5th grade math book unless he correctly answered 100% of the questions pertaining to that chapter. (N.T. 66-67) Student's errors on the May 9 and May 31 tests spread across most chapters tested, and they were not clumped in particular chapters so as to identify easily his skill deficits. (N.T. 40, 66)
9. The School District's gifted education teacher believes that Student should demonstrate mastery of 50% or more of the 5th grade curriculum before accelerating to the 6th grade class. (N.T. 43, 86) Otherwise, Student may not have a sufficient foundation for success in the 6th grade math class. (N.T. 44)
10. On or about June 7, 2006, the School District proposed a GIEP for Student's upcoming 4th grade, 2006-2007 school year, placing Student into a 5th grade math class initially, and accelerating Student into the 6th grade math class once he achieves 80% on an end-of-book test similar to those taken on May 9 and May 31, 2006. (N.T. 37, 108-109, 116; SD 2, p. 6)
 - a. The School District's proposal includes providing Student with enrichment of the 5th grade math curriculum while he is placed in the 5th grade math class, and providing one-to-one instruction to get him up to speed in the 6th grade curriculum once he achieves 80% on the 5th grade end-of-book test. (N.T. 31-32, 48, 74, 76, 117, 122-123)
 - b. The School District expects Student to achieve 80% on the 5th grade end-of-book test by November 2006. (N.T. 71, 73)
11. The School District is concerned that this 4th grade Student may experience substantial stress if he is placed into a 6th grade math class before he has achieved at least 80% on the 5th grade end-of-book math test.
 - a. The School District is concerned that a Student who demonstrates less than 80% achievement on the end-of-book test will require a great deal of support to handle the 6th grade math curriculum. (N.T. 51)
 - b. The 6th grade math class does not have a mechanism for teaching the 5th grade math skills in which Student may have deficits. (N.T. 127)
 - c. The School District is concerned about how Student will feel if he is accelerated into the 6th grade math class with less than 80% achievement on the end-of-book test. (N.T. 132)
 - d. School District personnel do not know, however, whether or not Student will find such circumstances stressful. (N.T. 153)
12. Student's elementary school goes up to 6th grade. (N.T. 131) The School District expects to group its 5th grade and 6th grade math classes into ability levels (meaning that 5th grade math students of similar math ability will be grouped together, as will 6th grade math students.) The School District will not, however, combine, into one class, 5th and 6th grade math students of similar ability. (N.T. 31, 122-123, 154)

13. The School District's gifted education teacher has 25 years experience teaching gifted education for the School District. (N.T. 20)
 - a. She is certified in biology, general science, middle school math, reading, elementary education, and she holds a supervisor's certificate. She has taught various graduate and undergraduate courses in gifted education, she has presented at state conferences on gifted education topics, and she received the 2005 State Educator Award from the Gifted Association for Pennsylvania. (N.T. 20-21, 26-27) She has consulted for two other school districts to train their teachers of gifted education, and she has written [a] book researching data related to boredom, its diagnosis, and educational responses. (N.T. 27-28)
 - b. In her experience, it is common practice to require 85-90% proficiency of a grade level math curriculum before accelerating a student to the next grade level. (N.T. 53)
14. On June 12, 2006, Student's parents requested a due process hearing. Student's parents believe that Student should be required to demonstrate only 70% achievement on the 5th grade end-of-book assessment before being accelerated to the 6th grade math class. (SD 1)
15. For some reason that is not clear to anyone, two file numbers have been assigned to this matter, i.e., 6684/05-06 KE and 6685/05-06 KE. Only one hearing session was required to dispose of both file numbers. This decision disposes of both file numbers.
16. A due process hearing was conducted in this matter on July 12, 2006. Substantial time was spent at the hearing discussing an educational practice called "DT-PI," which stands for Diagnostic Testing, Prescriptive Instruction. (SD 3, p.2)
 - a. Apparently, researchers at Johns Hopkins and Carnegie Melon recommend that Students demonstrate 85-90% mastery of a grade level curriculum before being accelerated to the next grade level. These researchers further recommend DT-PI for gifted students who demonstrate between 50-85% mastery of a grade level curriculum. Only in the apparently rare cases of highly motivated students do the researchers recommend grade-skipping with less than 85% mastery. (N.T. 53, 57, 60; SD 5)
 - b. DT-PI apparently involves testing for a student's skill deficits and instructing that student in those particular skills. (N.T. 48-53)
 - c. Despite the evidence regarding DT-PI, this was not the educational program and placement contained in the proposed GIEP that is at issue in this case. (SD 2)
17. School District exhibits SD 1-5 were admitted into the record without objection. (N.T. 162) Student exhibits P1 through P4, and P6 through P 10 were admitted without objection. Student exhibit P 5 was withdrawn, and Student exhibit P 11 was admitted over the School District's objection. (N.T. 91-99, 164)

18. This decision is issued:

- a. 50 days after the due process hearing request; and
- b. 12 days after my receipt of the hearing transcript.

DISCUSSION

The term “Gifted Education” is defined as specially designed instruction to meet the needs of a gifted student. 22 Pa. Code §16.1 “Specially Designed Instruction” is defined as adaptations or modifications to the general curriculum, instruction, instructional environments, methods, materials, or a specialized curriculum. 22 Pa. Code §16.1 A Student’s GIEP team shall base educational placement decisions on the gifted student's needs. In doing so, the GIEP team shall provide opportunities to participate in acceleration or enrichment, or both, as appropriate for the student's needs. These opportunities shall go beyond the program that the student would receive as part of a general education. 22 Pa. Code §16.41(a)(b) The determination whether a school district's program of gifted instruction is compliant with state standards depends upon whether it provides a program of instruction tailored to meet a gifted student's individual needs. See generally, Centennial School District v. Department of Education, 617 Pa. 540, 539 A. 2d 785 (1988); Brownsville Area School District v. Student X, 729 A. 2d 198 (Pa. Cmwlth. 1999).

The Pennsylvania Department of Education (PDE) has provided guidance to GIEP teams with its Basic Education Circular (BEC) No. 22 Pa. Code Chapter 16 (2003). This BEC states that specially designed instruction for gifted students may result in the adaptation or modification of the general curriculum, including the placement of the student in more than one grade level. It further states that strands of the state’s academic standards may need to be reorganized across grade levels to allow the gifted student to show mastery at an earlier stage of development.

The School District has concerns about accelerating this 4th grade Student into a 6th grade math class. These concerns are based upon a fear that Student may experience stress and feel frustration if he lacks foundational math skills when encountering new, higher level, abstract mathematical concepts. (N.T. 44, 51, 58, 85, 87, 127, 132) I do not discount lightly the judgment of the School District’s experienced gifted education teacher. I also do not doubt that the 6th grade math curriculum is more abstract than the 4th grade curriculum, and I acknowledge that, theoretically, it is possible that Student will feel anxiety or frustration during this upcoming school year if he lacks various foundational math skills. With regard to this particular Student, however, the School District’s concerns are speculative, without actual support in the record.

It is undisputed that this Student has the ability to understand the 6th grade math curriculum. (N.T. 104) Further, this Student has demonstrated the ability to master new math curriculum quickly, even when he has not shown 80-85% mastery of that curriculum before acceleration. Last year, Student scored only 52% on the 3rd grade end-of-book math curriculum assessment before moving up to the 4th grade math class. (N.T. 65) Yet, his acceleration into the 4th grade math class was successful, he was consistently among the top 25% of the class, and his year-end average in 4th grade math was 96%. (N.T. 109, 135, 141, 157; SD 2, p.2) While other 4th grade math students caught on more quickly than Student in some areas involving new math

concepts, Student always caught up and remained among the top students in his class. (N.T. 158) His gifted teacher never observed frustration in Student, and his 4th grade math teacher described only the type of frustration that I associate with persistence rather than with fear and anxiety. (N.T. 144, 150)

While no one can predict the future, the evidence concerning this particular Student only points in the direction of quick success in the 6th grade curriculum. In May 2006, Student jumped from 25% to 49% on the 5th grade end-of-book math curriculum simply by studying the 5th grade book for three weeks at home. (N.T. 36, 65; SD 2, p.2) I further note that the School District realistically expects Student to be in the 6th grade math classroom by November 2006, regardless of which proficiency level is used in assessing his mastery of the 5th grade math curriculum. (N.T. 71, 73) In addition, the School District is capable and willing to provide Student with any instruction that he may require to enhance any specific math skill deficits that may be discovered. (N.T. 31-32, 48, 74, 76, 117, 122-123; SD 3)

Thus, when I weigh the parties' arguments regarding whether Student should begin the 2006-2007 school year in the 5th grade or the 6th grade math classroom, I find myself balancing speculative concerns of potential adverse impact against actual evidence of potential positive impact. In seeking a result that is based upon Student's own, unique gifted education needs, I conclude that Student's GIEP should provide, at the beginning of the 2006-2007 school year, for instruction in the 6th grade math curriculum, with additional instruction that may be necessary to enhance any specific math skill deficits.

I further note, as described in the Background section of this opinion above, that both parties appear to have framed the issue in this case around an arbitrary administrative structure involving grade placement. I see no reason for the parties to argue over whether Student must achieve a 70% or an 80% score on an end-of-book test before he can sit in a 6th grade math class that everyone knows he will be attending by November 2006. Who says that Student is limited to either 5th grade math instruction or 6th grade math instruction, but not some combination of both? There is no rule, other than the School District's own policy to not combine 5th and 6th grade math students of similar ability (N.T. 31, 122-123, 154), that prohibits the School District from instructing this Student in both 5th and 6th grade math curricula simultaneously – if that is what his needs require. It might seem burdensome (or perhaps it might not) for a teacher to combine and compact the geometry or ratio/probability chapters from the School District's 5th and 6th grade math books in order to design geometry or ratio/probability lessons that meet Student's individualized needs. That is, however, exactly what is anticipated by references in PDE's Gifted Education regulations and BEC to "specially designed instruction."

As a GIEP goal, 80% mastery of the 5th grade math curriculum is appropriate, as is 80% mastery of the 6th grade math curriculum. As an admission criterion for sitting in a 6th grade math class, however, neither 70% nor 80% is appropriate for this Student. Rather, Student's individualized needs are the only appropriate criteria for determining whether or not he should begin the 2006-2007 school year in the 6th grade classroom. As I have already described above, the record demonstrates to me that Student's individualized needs require that he begin the 2006-2007 school year in the 6th grade classroom, with any additional instruction that may be necessary to enhance any specific math skill deficits.

CONCLUSION

The parties anticipate that, for the upcoming school year, Student will accelerate through the 5th grade math curriculum and be ready for the 6th grade math curriculum by November 2006, at the latest. Their dispute is over the proficiency level that Student must demonstrate on a 5th grade math curriculum test before he will be moved into the 6th grade math class. For the reasons described above, I find for the Student, but not quite in the manner requested. I conclude that the School District's position is based upon speculation and not in response to Student's individualized needs. I further conclude that both parties have unnecessarily framed the issue in this case around an arbitrary administrative structure involving grade placement. I conclude that, to meet Student's individualized gifted education needs, his Gifted Individualized Education Program (GIEP) must provide that Student be taught to 80% proficiency in the 5th and 6th grade math curricula while simultaneously attending 6th grade math classes at the beginning of the 2006-2007 school year.

ORDER

For the reasons described above, I ORDER that:

- Student's GIEP shall include a goal that Student shall be taught to 80% proficiency in the 5th grade math curriculum; and
- Student's GIEP shall include a goal that Student shall be taught to 80% proficiency in the 6th grade math curriculum; and
- Student's GIEP shall provide that Student shall be placed in a 6th grade math class at the beginning of the 2006-2007 school year.

Daniel J. Myers

Hearing Officer

August 1, 2006

Re: Due Process Hearing
6684/05-06 KE and 6685/05-06 KE.
Student