DISTRICT OF COLUMBIA

Office of the State Superintendent of Education

Office of Review & Compliance

Student Hearing Office

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OSSE
STUDENT HEARING OFFICE
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Confidential

STUDENT[1], by and through parent, Petitioner, *vs.* District of Columbia Public Schools, Respondent.	**HEARING OFFICER'S DETERMINATION** Counsel for Petitioner/Parent: Roberta Gambale, Esq. Asst. Attorney General for DCPS: Tanya Chor, Esq. Hearing Officer H. St. Clair, Esq.

[1] Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

BACKGROUND

The student attended a private special education day school. On December 6, 2008, the MDT met at the day school and completed an IEP for the student; the December 6, 2008 MDT also agreed that the student should receive an Alpha Smart as an assistive technology device (ATD). DCPS did not provide the Alpha Smart.

On January 23, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), complaining the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent complained DCPS failed to provide an Alpha Smart to the student as the December 6, 2008 MDT recommended and, for relief, requested an order to DCPS to provide the Alpha Smart to the student.

The Student Hearing Office, OSSE, scheduled a hearing in this matter for 9:00 A.M., Wednesday, February 25, 2009 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 4B, Washington, D.C. 20003. The hearing convened as scheduled.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

ISSUE: **Did DCPS inappropriately fail to provide an Alpha Smart to the student as an ATD?**

FINDINGS of FACT

By facsimile dated February 17, 2009, the parent disclosed 5 witnesses and 7 documents.

By facsimile dated February 17, 2009, DCPS disclosed 10 witnesses and 3 documents.

The documents were placed into the record and are referenced/footnoted herein where relevant.

In consideration of the testimony, documents and arguments herein, the hearing officer found the following facts:

1. The December 6, 2008 IEP disability coded the student Multiply Disabled (MD) with 100% Out of General Education; the disabilities were Learning Disabled (LD) and Other Health Impaired (OHI)/ Attention Deficit Hyper-activity Disorder (ADHD).

2. Also on December 6, 2008, the MDT recommended that the student receive an Alpha Smart, an ATD, and requested DCPS to provide one.[2]

3. To date, DCPS had not responded to the MDT recommendation to provide an Alpha Smart to the student.

CONCLUSIONS of LAW

DCPS is required to make FAPE available to all children with disabilities within the jurisdiction of the District of Columbia.

IDEIA 2004 requires DCPS to fully evaluate every child suspected of having a disability within the jurisdiction of the District of Columbia, ages 3 through 21, determine eligibility for special education services and, if eligible, provide same through an appropriate IEP and Placement; the requirement includes the provision of ATDs to children with disabilities.

Regulation 34 CFR 300.5 defines an ATD. The next regulation, 34 CFR 300.6, defines Assistive Technology Services and regulation 34 CFR 300.105 sets out the obligation on the part of LEAs to provide ATDs to students with disabilities. These regulations required DCPS to provide the ATD to the student after the student's MDT decided it is necessary for the student to receive FAPE.

The December 6, 2008 MDT recommended an Alpha Smart for the student, and to date, DCPS had not. DCPS violated the above setout regulations.

SUMMARY of the DECISION

At the hearing, DCPS advanced the argument that any assistive technology device (ATD) must be directed at an educational need of the student and pointed to the Comments at page 46547 of the Federal Register.[3] The undersigned rejected the argument.

First, regulation 34 CFR 300.5 reads, "Assistive technology device . . . is used to increase, maintain, or improve the functional capabilities of a child with a disability."

[2] DCPS Document No 1, page 7; -testimony of Educational Advocate
[3] DCPS Doc. No 3, (Fed. Reg./ Vol. 71, No 156/ Monday, August 14, 2006/ Rules and Regulations)

Second, the relied upon recommendation in the Comments in the Federal Register was that the ATD definition be changed to, " . . . a device that is needed to achieve educational outcomes . . .." The regulators in the immediately following Discussion rejected the recommendation.[4]

The regulators chose not to replace the word "capabilities" with the narrower " . . . is needed to achieve educational outcomes" wording.

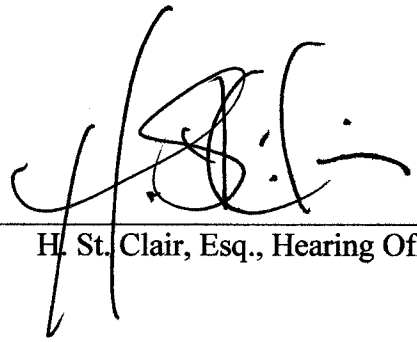
Herein, the parent was the prevailing party.

In consideration of the foregoing, the hearing officer made the following

ORDER

Within 30 days hereof, DCPS will have delivered to the student the Alpha Smart as the December 6, 2008 MDT recommended.

Dated this 6th day of March, 2009



H. St. Clair, Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.

[4] *ibid*