District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance
Student Hearing Office

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STUDENT HEARING OFFICE
2009 APR 20 AM 10: 37

Confidential

STUDENT[1], by and through his Parent Petitioners, v. DCPS Respondent. Case	HEARING OFFICER'S DETERMINATION Hearing Date: April 9, 2009 Representatives: Counsel for Petitioners: Domiento Hill, Esq. 1220 L Street NW Suite 700 Washington, DC 20005 Counsel for DCPS: Daniel McCall, Esq. Office of General Counsel 825 North Capitol St. NE Washington, DC 20002 Hearing Officer: Coles B. Ruff, Esq.

[1] Personally identifiable information is attached as Appendices A & B to this decision and must be removed prior to public distribution.

JURISDICTION:

The hearing was conducted and this decision was written pursuant to the *Individuals with Disabilities Act* (I.D.E.A.), P.L. 101-476, as amended by P.L. 105-17 and the *Individuals with Disabilities Education Improvement Act of 2004* (I.D.E.I.A.), District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapters 25 and 30 revised.

PROCEDURAL BACKGROUND:

A Due Process Hearing was convened April 9, 2009, at the Van Ness School, 1150 5th Street, SE, Washington, DC 20003. The hearing was held pursuant to a due process complaint submitted by the counsel for the parent and student filed on March 5, 2009, alleging the issue(s) outlined below.[2]

RELEVANT EVIDENCE CONSIDERED:

The Hearing Officer considered the representations made on the record by each counsel which may have resulted in stipulation of fact if noted, the testimony of the witness(es) and the documents submitted in the parties' disclosures (witness lists and documents that are identified as Petitioner's Exhibits ·1 - ·10 and DCPS Exhibit 1) which were all admitted into the record and listed in Appendix A.

ISSUE(S): [3]

Did DCPS deny the student a free and appropriate public education by failing to provide the student with her recommended assistive technology equipment as part of her educational program?

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[2] DCPS filed an untimely notice of insufficiency and motion to dismiss. Oral argument was made on the motion at the start of the due process hearing. The Hearing Officer denied the motion on the record and proceeded with the hearing.

[3] The alleged violation(s) and/or issue(s) raised in the complaint may or may/not directly correspond to the issue(s) outlined here. However, the issue(s) listed here were reviewed during the hearing and clarified and agreed to by the parties as the issue(s) to be adjudicated. Any other issue(s) raised in the complaint was withdrawn. Petitioner's counsel, on the record, specifically withdrew the claim for compensatory education because the parties had come to an agreement on compensatory education for the student being without the assistive technology (AT) up to an including the date of the due process hearing. However, Petitioner maintained the complaint because the AT had not yet been provided and Petitioner was seeking the remedy of the Hearing Officer directing DCPS to provide the AT.

FINDINGS OF FACT [4]:

1. The student is years old, currently attends School A and resides in the District of Columbia. The student is currently eligible to receive special education and its related services as a result of her learning disabilities. (Petitioner's Exhibit 6)

2. The student is currently in the grade and scheduled to graduate later this year and has expressed an interest in continuing her studies, despite her academic delays, at the Price Georges Community College. (Parent's testimony)

3. An educational evaluation was conducted on the student on or about December 11, 2008, the evaluation recommended, inter alia, that the student's "classrooms must be equipped with technology to assist her academic program." (Petitioner's Exhibit 5)

4. The student, according to the educational evaluation, recorded the following scores:

CLUSTER	GRADE EQUIVALENT
TOTAL ACHEIVEMENT	4.9
BROAD READING	4.1
BROAD MATH WRITTEN LANGUAGE	6.2
BASIC READING SKILLS	2.7
MATH CALCULATION	5.8
WRITTEN EXPRESSION	3.8
ACADEMIC SKILLS	5.6
ACADEMIC FLUENCY	3.9
ACADEMIC APPLICATIONS	5.2
LETTER WORD IDENTIFICATION	4.2
READING FLUENCY	3.8
STORY RECALL	4.8
UNDERSTANDING DIRECTIONS	13.4

[4] The evidence that is the source of the finding of fact is noted within a parenthesis following the finding.

CALCULATIONS	**7.3**
MATH FLUENCY	**3.7**
SPELLING	**6.6**
WRITING FLUENCY	**4.2**
PASSAGE COMPREHENSION	**4.5**
APPLIED PROBLEMS	**4.5**
WRITING SAMPLES	**2.6**
WORD ATTACK	**1.6**
SOUND AWARENESS	**3.3**
HANDWRITING	**5.3**

(Petitioner's Exhibit 5)

5. On January 30, 2009, DCPS convened a multidisciplinary team (MDT) meeting at School A on behalf of the student. The MDT reviewed the student's educational progress and determined that the student was in need of various types of assistive technology (AT) as part of her educational program due to her low academic functioning in reading and math. (Petitioner's Exhibit 6)

6. The student's current teacher stated at the meeting that had the student received the educational software, the student would more likely than not made increases in her academic areas. ([redacted]s testimony)

7. The MDT agreed that the student would be provided the following educational software: Co-Writer, Solo Edition; Draft: Builder SOLO Edition; Write: Outloud SOLO Edition and Destination Math. (Petitioner's Exhibit 6, [redacted] testimony)

9. On March 6, 2009, DCPS convened another MDT meeting for the student at School A. As of the date of that meeting and as of the date of the due process hearing the AT software had still not been received by the student. (DCPS Exhibit 1, [redacted] testimony)

8. Ms. Briana Harrison the DCPS placement specialist assigned to School A verified that the AT software has been ordered by DCPS. She has attempted to obtain the software without effect. She acknowledges the effort of others in DCPS might result in the software being obtained promptly. [redacted] testimony)

CONCLUSIONS OF LAW:

Pursuant to IDEIA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

Pursuant to IDEIA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision making process regarding provision of FAPE, or caused the child a deprivation of educational benefits.

Pursuant to 5 DCMR 3030.3 the burden of proof is the responsibility of the party seeking relief. [5] In this case the student/parent is seeking relief and has the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

Did DCPS deny the student a free and appropriate public education by failing to provide the student with her recommended assistive technology equipment as part of her educational program? Conclusion: Petitioner's counsel sustained the burden of proof by a preponderance of the evidence.

34 C.F.R. 300.6 states:

An ***assistive technology service*** means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes - ... (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities.

At the January 30, 2009,mee ting the MDT agreed that various assistive technology (AT) was to be a part of the student's educational program. However, nearly three months later the AT has not been provided. There is evidence the student has not made the educational progress that she would have made had the AT been promptly provided. The student is nearing the end of her educational program as she is graduating at the end of the semester. The AT is even more critical to her as a result of her low academic levels and her desire to enter college when she completes her program. The Hearing Officer concludes failure by DCPS to provide the student the AT the MDT ordered to be a part of her individualized educational program is a denial of a FAPE and the AT equipment should be provided the student promptly pursuant to the Order below.

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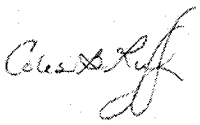
[5] Based solely upon the evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and /or inaction or proposed placement is inadequate or adequate to provide the student with FAPE.

ORDER:

DCPS shall, within fifteen (15) business days of the issuance of this Order, provide to the student the assistive technology software and/or equipment that was agreed to at the student's January 30, 2009, MDT meeting, specifically the following: Co-Writer, Solo Edition; Draft: Builder SOLO Edition; Write: Outloud SOLO Edition as well as Destination Math.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have 90 days from the date of the decision of the hearing officer to file a civil action with respect to the issues presented at the due process hearing in a district court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. § 415(i)(2).



Coles B. Ruff, Esq.
Hearing Officer
Date: April 19, 2009