DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
Student Hearing Office
1150 5th Street, S.E.
Washington, DC 20003

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Parent or Guardian, on behalf of
Student, [1]

Petitioner,

v

The District of Columbia
Public Schools

Respondent.

Date Issued: June 27, 2010

Hearing Officer: Jane Dolkart

Case No:

Hearing Date: June 3, 2010
Room: 4a

HEARING OFFICER DECISION

[1] Personal identification information is provided in Appendix A.

HEARING OFFICER'S DECISION AND ORDER

I. INTRODUCTION

This is a year old student who has been attending at DCPS expense since the 2008-2009 school year. The student is eligible for special education pursuant to the classification of Learning Disabled (LD) and has a full-time out of general education IEP. The student presently receives 28.5 hours/week of specialized instruction, including 1 hour a day with a reading specialist, 1 hour/week of speech and language therapy/week (s/l), and .30 minutes/week of occupational therapy (OT). In settlement of a prior Due Process Complaint, on September 17, 2010, DCPS agreed to *inter alia,* authorize an independent assistive technology assessment. An MDT meeting was held on April 7, 2010 to review completed evaluations, including the assistive technology assessment. The assessment recommended that the student would benefit from certain technology including a lap top computer and educational software in math and reading. DCPS refused to provide the technology although it did agree to provide the student with 60 hours of tutoring.

The sole issue in the complaint is whether DCPS has denied the student FAPE by failing to provide the student with a lap top computer and educational software recommended in the assistive technology assessment.

Petitioner alleges that the student is seven or eight years behind academically and that he is unable to understand his homework. The assistive technology would help the student complete his homework.

DCPS asserts that the student is in a full time out of general education special education program and that he is provided FAPE and is making progress academically. While the assistive technology might benefit the student, it is not necessary for the student to receive FAPE and DCPS does not have an obligation to provide the equipment.

This due process complaint was filed on April 12, 2010. DCPS filed a timely response on April 23, 2010.

A prehearing conference was held on May 6, 2010, and a prehearing order was issued on May 8, 2010.

On June 8, 2010, the due process hearing in this case was held. The sole witness, the student's special education teacher testified that the student had been tested in the fall to determine his achievement level in math and reading, and that the testing was to be repeated the next week. After the hearing closed, on June 11, 2010, the Hearing Officer e-mailed the parties to indicate that she would like the parties to agree to reopen the record and obtain the results from the two testing periods. Petitioner agreed to file a motion to re-open and supplement the record and to file a continuance for the issuance of the HOD. DCPS did not object. The requested information was provided on June 16 and

17, 2010, and a motion for a 9 day continuance and to reopen the record was filed on June 17, 2010. The motion was granted on June 18, 2010.

II. JURISDICTION

The hearing was held and this decision was written pursuant to the Individuals With Disabilities Education Improvement Act (IDEA), 84 Stat.175, as amended, 20 U.S.C. ¶ 1400 *et seq.*, 34 CFR Part 300 *et seq.*, and the D.C. Municipal Regulations, Chapter 30, Title V, Sections 3000, *et seq.*

III. ISSUES

Has DCPS denied the student FAPE by failing to provide the student with a lap top computer and reading and writing software as recommended in an October 9, 2009, Assistive Technology Evaluation?

IV. DOCUMENTS AND WITNESSES

Petitioner submitted a five day disclosure letter dated June 1, 2010, containing a list of witnesses with attachments P 1-14. The disclosure was admitted in its entirety. Petitioner called as a witness the student's special education teacher at

DCPS submitted a five day disclosure letter dated June 1, 2010, containing a list of witnesses with attachments R 1-7. The disclosure was admitted in its entirety. DCPS did not call any witnesses.

The Hearing Officer is supplementing the record with HO 1-4, consisting of the fall 2009 and June 2010 reading and math tests administered by High Road.

V. FINDINGS OF FACT

1. This is a year old student who has been attending at DCPS expense since the 2008-2009 school year. The student is eligible for special education pursuant to the classification of Learning Disabled (LD) and has a full-time out of general education IEP. The student presently receives 28.5 hours/week of specialized instruction, including 1 hour a day with a reading specialist, 1 hour/week of speech and language therapy/week (s/l), and .30 minutes/week of occupational therapy (OT). (P 7, 11, 12, Testimony of special education teacher (SET))

2. A comprehensive psychological report was completed on August 3, 2009. The student was administered the core subtests of the Wechsler Intelligence Scale for children –

Fourth Edition (WISC-IV) to determine his cognitive functioning. The student had a full-scale IQ of 62, in the extremely low range. His verbal intelligence was in the borderline range and his nonverbal reasoning skills were in the extremely low range. The student's processing abilities were in the extremely low range, and he was mildly impaired in his ability to sustain attention, concentrate, and exert mental control. The report concluded that "[the student's] overall cognitive functioning suggests that he may continue to experience great difficulty in keeping up with his peers in a wide variety of situations that require age-appropriate thinking and reasoning abilities, especially in the academic arena."

The student was administered the Woodcock-Johnson-III (WJ-III) to determine his academic achievement. The student earned a Broad Reading cluster score in the very low range, placing him at the 2.4 grade level. His scores on the cluster subtests were all consistent with the overall score. The student's math calculation skills cluster score was in the low range and placed him at the 4.5 grade level.

The report found that both the student's reading scores and math scores were commensurate with his cognitive functioning.

The student's spelling and writing scores were in the very low range and at the 2-2.3 grade level.

The evaluator noted that the student's academic achievement showed a lack of progress from his previous achievement testing in 2007. The student was found to be between 7 and 10 years below age expectancy. Some of the delays were due to severe cognitive limitations, but some was likely the result of the quality of his academic services.

(P 7)

3. In settlement of a prior Due Process Complaint, on September 17, 2010, DCPS agreed to *inter alia,* authorize an independent assistive technology assessment. (P 6)

4. The Assistive Technology Evaluation (AT) was completed on October 9, 2009. The student was able to do simple calculations, and required a great deal of assistance with reading and identifying words. His writing was poor, with sentence fragments, numerous spelling, grammatical, and punctuation errors, and he had poor typing skills for computer use. Various computer technology interventions were tested and the student was able to follow instructions for use of the programs.

The evaluation recommended that the student be provided with a computer and four software programs that could help the student academically. This equipment was intended to help the student complete all written assignments and reading assignments.

Co-Write is a word prediction program that aids in word processing and written expression b providing lists of potential words as the user types. The student's fluidity and spelling improved when he used the program.

Read:Outloud allows the user to have passages loaded into the computer and read aloud as the user follows along on the computer screen. The program assisted the student with overall comprehension.

Draft:Builder assists the user in organizing written assignments. It is intended to help the student organize his thoughts and produce higher quality written work with greater independence.

Write:Outloud is a talking word processor and writing software program. It allows the user to hear what he has written and helps him identify and fix errors.

5. The student's SET testified by phone. She was a credible witness because she has substantial knowledge of the student's academic performance, was at all relevant MDT/IEP meetings, and provided answers to questions that were consistent with all the documentation in the case. The SET has taught the student English, math, and home room during the 2009-2010sy. The SET testified believably that the student would benefit from a laptop computer and the recommended software because of his low levels of reading and writing. The technology would be particularly useful in helping the student with his homework.

The student has access to a wide variety of low tech and computer technology at school. The classroom has computers, spell checkers, calculators, highlighters, and sticky notes. The student has been provided with a fusion writer, a word processing device, which he uses in class and takes home.

has purchased but not yet installed Read:Outloud and Draft:Builder for classroom use. The school does not have Co-Writer or Write:Outloud.

(Testimony of SET)

6. The SET testified concerning the student's progress. For the first three quarters of the present school year, she has given the student all A's and B's in math and reading. She believes the student has been making academic progress, although it is slow. He has made progress in meeting his IEP goals, although they have not yet been met.

For reading, the student is taught by the SET and1:1 by the reading specialist. He is more comfortable reading out loud, has made progress decoding words, and is better at comprehension when read to. He has not made significant progress when doing his own reading.

The student has made a lot of progress in math. He has made progress in mental computation, integers, equations, applied problem solving, division, and multiplication.

(Testimony of SET, R 6)

7. conducted baseline testing in reading and math at the beginning of the school year, and again in June 2010. The W-J Reading Mastery Test and Key Math Test were administered. The test results show that the student has made substantial progress during the school year in almost all aspects of reading. The student's total Reading Cluster score went from 52 or a 2.5 GE to 65 or an 8.2 GE. Almost all of his reading subtest scores are also now at the 8-9 grade level. The sole reading score that is troubling is the Basic Skills score which has gone from a 60 to a 62, leaving the student at the 2.4 GE.

The student's math scores do not show the same progress and are much lower than the 4th grade or higher level testified to by the SET. The student had a grade equivalent (GE) of 2.8 on math applications, 4.0 on math operations, and a 3.1 on basic concepts.

(HO 1-4)

VI. DISCUSSION AND CONCLUSIONS OF LAW

The Individuals with Disabilities Act (IDEA), 20 U.S.C. ¶ 1400 *et seq.,* guarantees "all children with disabilities" "a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living." 20 U.S.C. ¶ 1400 (d)(1)(A). The IDEA defines FAPE as

> Special education and related services that – (a) Are provided at public expense, under public supervision and direction, and without charge; (b) Meet the standards of the State educational agency…, (c) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 – 300.324.

Pursuant to IDEA § 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). Petitioner has the burden of proof in this case. *Schaffer et al. v. Weast,* 546 U.S. 49 (2005).

The inquiry concerning weather a student has been provided FAPE is two-fold. First, has the school "…complied with the procedures set forth in the Act? In this case, no procedural violations are alleged. Second, "is the individualized education program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits." *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200 (1982).

Central to the IDEAs guarantee of FAPE "is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Bd. Of Educ. Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. at 200 (1982). The educational agency must provide a "basic floor of opportunity" for students with disabilities. It need not provide the best education possible, but the educational

benefit must be more than de minimus or trivial. *Polk v. Central Susquehanna Intermediate Unit 16,* 331 IDELR 10 (3rd Cir. 1988).

The central inquiry in this case to whether DCPS has provided sufficient educational benefits to the student that refusal to provide the recommended computer and software is not a denial of FAPE. There is little question but that the computer and software are likely to benefit the student educationally. However, if DCPS is providing a basic floor of opportunity, it cannot be required to provide more. The burden of proof on this question is with the Petitioner and Petitioner has failed to prove that the student is not presently receiving a FAPE from DCPS.

The student is presently in a full-time, private, special education program. He is being provided with 28.5 hours of specialized instruction, 1 hour of S/L therapy and .30 minutes of OT, per week. He receives the 1:1 services of a reading specialist for 1 hour each day. The student has just been granted 60 hours of tutoring. He is provided access to computers and two of the four software programs recommended by the Assistive Technology Evaluation as well as his own word processing devise.

Most important, based on the testimony of the student's SET and the results of the W-J Reading Mastery Test, the student has made significant academic progress this school year in reading. The student's total Reading Cluster score went from 52 or a 2.5 GE to 65 or an 8.2 GE. Almost all of his reading subtest scores are also now at the 8-9 grade level. The sole reading score that is troubling is the Basic Skills score which has gone from a 60 to a 62, leaving the student at the 2.4 GE.[2]

VII. SUMMARY OF RULING

Based on the testimony, the documents in the record, and applicable law, Petitioner has failed to prove that DCPS has denied the student a FAPE by refusing to provide recommended assistive technology.

VIII. ORDER

Having considered the documentary record, the testimony of the witness, and the applicable law, it is hereby **ORDERED** that the due process complaint be **dismissed with prejudice.**

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[2] All of the software in question is intended to address aspects of the student's reading, writing, and spelling problems. Therefore evidence concerning the student's progress in math is not relevant to this inquiry.

This is the final administrative decision in this matter. Appeals on legal grounds may be made to a court of competent jurisdiction within 90 days of the rendering of this decision.

/s/ Jane Dolkart
Impartial Hearing Officer

Date Filed: June 27, 2010