

Jurisdiction

This proceeding was conducted in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Background

Petitioner is a _____ year-old student attending _____ School
On February 20, 2009, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to provide necessary services. The due process hearing was convened on March 23, 2009. The parties' Five-Day Disclosure Notices were admitted into evidence at the inception of the hearing.

Record

Due Process Complaint Notice dated February 20, 2009
District of Columbia Public Schools' Notice of Insufficiency and Respond to Petitioner's Due Process Complaint dated March 2, 2009
Prehearing Order Dated March 5, 2009
DCPS' Five-Day Disclosure dated March 13, 2009 (Exhibit Nos. 1-4)
Petitioner's Five-Day Disclosure dated March 16, 2009 (Exhibit Nos. 1-17)
Attendance Sheet dated March 23, 2009
CD-Rom of Hearing conducted on March 23, 2009
Post-Hearing Disclosure Document for [Petitioner] dated March 24, 2009

Witnesses for Petitioner

Dr. Ida Jean Holman, Educational Advocate
Petitioner's Mother

Witnesses for DCPS

Special Education Coordinator,

School

Findings of Fact

1. Petitioner is a _____ year-old student attending _____

2. On June 12, 2008, DCPS convened a Multidisciplinary Team (“MDT”) meeting and developed an Individualized Education Program (“IEP”). The MDT classified Petitioner with multiple disabilities and prescribed five hours per week of specialized instruction and thirty minutes per week of psychological services.³ The MDT also prescribed the following “Resources needed for program implementation:”

Portable word processor e.g. Alpha Samrt – ANA, Word prediction; text to talk soft ware e.g. co-writer/write out loud, Organization software e.g. Inspiration Speaking dictionary/thesaurus, voice recorder.⁴

3. On January 22, 2009, Petitioner’s counsel sent a letter _____ Special Education Coordinator at _____ advising _____ that Petitioner had not yet received the voice recorder or dictionary/thesaurus.

4. On January 30, 2009, Ms. Sabrina Brown responded to the January 22nd letter and assured Petitioner’s counsel that “I will follow up to ensure what [Ppetitioner] is owed or needed in reference to assistive technology devices will be given to the student.”⁶

5. DCPS convened an MDT meeting on March 13, 2009. Ms. Brown produced the voice recorder at that meeting.⁷ Ms. Brown determined that Petitioner did not require the dictionary/thesaurus because he was “doing so well” in his classes.⁸

Conclusions of Law

Failure to Implement IEP

Despite Petitioner’s witnesses’ contrary testimony, it is apparent to the Hearing Officer that Ms. Brown presented the voice recorder to Petitioner’s representatives no later than the MDT meeting on March 13, 2009. In response to a direct question from the Hearing Officer, Dr. Holman confirmed that the recorder was presented at that MDT meeting. Nevertheless, Petitioner’s counsel insisted in his closing argument that DCPS had not yet provided the voice recorder. The Hearing Officer considers this position to be frivolous, and concludes that Petitioner has failed to meet his burden of proving that DCPS has failed to provide the prescribed voice recorder.

² *Complaint* at 1.

³ Petitioner’s Exhibit (“P.Exh.”) No. 7 at 1.

⁴ *Id.*, Justification for Setting Consideration.

⁵ P.Exh. No. 5.

⁶ DCPS Exh. No. 4.

⁷ Testimony of Ms. Brown and Dr. Holman.

⁸ Testimony of Ms. Brown.

As for the dictionary/thesaurus, the evidence is uncontroverted that DCPS has not provided it. The only dispute is as to whether Petitioner still has a need for it. Ms. Brown testified that Petitioner is progressing well, is on the honor roll, and does not need the dictionary. This testimony would carry more weight had it come from Petitioner's teacher who has a more direct perception of Petitioner's current skills. Petitioner's current IEP obligates DCPS to provide a speaking dictionary/thesaurus, and the Hearing Officer concludes that Petitioner has met his burden of proving that DCPS has failed to provide it.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the parties' Five-Day Disclosure Notices, the testimony presented during the hearing, and the representations of the parties' counsel at the hearing, this 3rd day of April 2009, it is hereby

ORDERED, that Petitioner is authorized to obtain a Franklin Speaking Language Master Electronic Dictionary at DCPS' expense. Upon submission of a receipt for the same, DCPS shall reimburse Petitioner up to _____ for expenses incurred purchasing the dictionary.

IT IS FURTHER ORDERED, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's counsel will contact the Special Education Coordinator at _____ and the DCPS OSE Legal Unit to attempt to bring the case into compliance prior to filing a hearing request alleging DCPS' failure to comply.

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision may bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within ninety (90) days of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

_____/s/_____
Terry Michael Banks
Hearing Officer

Date: April 3, 2009