

Services and Modifications that states: "the vision teacher is to interline his Braille for or provide a printed copy for sighted teachers and his family members in order to assist the student with his work." The due process complaint states: "Since early March 2010, DCPS has failed to provide the mother, despite numerous requests, the translated Braille work for her minor child in order for her to assist her son with his work, as called for under his IEP." Counsel for petitioner requests as relief compensatory education in the form of one hundred (100) hours of one-on-one tutoring and that DCPS ensure that the student's Braille materials be translated to print so that the parent can work with the student. Counsel for DCPS filed a response on July 9, 2010 stating: "Any failure to comply with the letter of the Maryland IEP was *de minimus* and did not cause the student educational harm; he is making progress." A Pre-hearing conference was held on July 30, 2010 and the parties agreed that the above single issue is to be decided at the hearing. Counsel for the parties agreed to develop a stipulation of facts and provide to this hearing officer including that the draft IEP developed by DCPS has not yet been finalized and another MDT/IEP meeting will be held to finalize the student's IEP. It was also discussed that a January 23rd 2010 HOD was issued by this hearing officer holding that counsel for the parent had not met his burden of proof that DCPS denied a FAPE to the student by failing to implement the student's Maryland IEP. The case was dismissed.

On September 1, 2010 this due process hearing was convened at 9 a.m. as scheduled in room 4B at the Student Hearing Office, OSSE, 1150 Fifth Street, S.E., Washington, D.C. 20003. At the outset of the hearing, petitioner's documents P-1-P-17 and DCPS documents R-1-R-7 were entered into the record without objection. All witnesses were sworn in and testified under oath. Counsel for the parties did not provide this hearing officer with a written stipulation of fact as agreed to at the pre-hearing conference, but did stipulate orally that the DCPS IEP has not

full-time day special education program of DCPS, at the beginning of the 2009-2010 School Year. To this date DCPS has not finalized a DCPS IEP for the student.

3. The Maryland IEP at p.16 of that IEP under Supplementary Aids and Services and Modifications states: "the vision teacher is to interline his Braille for or provide a printed copy for sighted teachers and his family members in order to assist the student with his work." (P-7)
4. In a letter dated April 5, 2010 the parent wrote to the vision teacher stating: "During the Spring Break [student's] Braille work was sent home with a teacher's manual attached. I had to place the Print on the sheets above the Braille so that I could follow [student] as he read his work or if someone else were to help him in my absence could do so too. I have requested several times before that his Braille assignments be sent home in Braille/Print and not a teacher's manual to follow, this is unacceptable and any work that is sent home like that will not be completed in the future." (R-5)
5. The vision teacher had been sending home sometimes a printed sheet from the teacher's manual that includes a box with the Braille material for that lesson translated to English print. Sometimes the vision teacher sent an interline of his Braille with the English word above the Braille symbol. The vision teacher found the interline method very time consuming in comparison to sending a printed sheet from the teacher's manual. The interline method also poses problems to someone assisting a blind student because the blind student's hand reading the Braille symbol could block the sighted person assisting from seeing the English word. A review of the printed copy from the teacher's manual shows that it is an effective way for a

person who does not know Braille to understand the homework and assist a blind person on that assignment. (See examples at R-6, Testimony of vision teacher)

6. After receipt of the parent's letter of April 5th, the vision teacher stopped sending to the parent homework materials either in interline or printed sheets from the teacher's manual. The vision teacher then had the dedicated aide go over the homework assignments with the printed teacher's manual in the classroom to see how he was doing. At the beginning of the school year the student was identifying the alphabet and by the end of the year he was reading complete sentences and knowing punctuation in Braille.
7. On July 22, 2010 the principal at _____ sent the parent, after a discussion with the parent prior to a resolution meeting, a transcription of all eight books from Braille to MS Word print document that the vision teacher had given the student for summer reading. (R-7)
8. The most recent educational assessment in the record, which was entered into the record by DCPS, was the January 19, 2010 education assessment report done by the Maryland School for the Blind. (R-2) The summary of that report stated: "When compared to others his age, [the student's] achievement is in the very low range. It should be noted however, this assessor has known him for many years, and in comparison to previous assessments, he is showing great progress. The structure and level of expectation, particularly with behaviors, have served him well." (R-2 p.5) The petitioner's counsel and counsel for the respondent both submitted into the record a diagnostic assessment report. The testing dates differ on this report with the unsigned petitioner's submission indicating the testing date is January 19, 2010 and

the respondent's signed submission stating the testing was January 7, 2010. (P-12, R-3) Both of these 2010 reports were done before the contested time when the homework stopped after the April 5th letter or the due process complaint time stated as follows: "Since early March 2010, DCPS has failed to provide the mother, despite numerous requests, the translated Braille work for her minor child in order for her to assist her son with his work, as called for under his IEP." Counsel for the petitioner presented no evidence such as educational assessments or expert testimony that the student was educationally harmed by the failure to provide homework to the parent during the above contested time.

9. The hearing officer found the testimony of the vision teacher very credible based on her experience and daily work with the student.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The student's current IEP is from his former school in Prince George's County, Maryland. The student and his parent moved to the District of Columbia at the end of the 2008-2009 School Year and he is currently enrolled in the _____ a full-time day special education program of DCPS. *34 CFR 300.323 (f)* states:

IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency) until the new public agency---

- (1) Conducts an evaluation pursuant to 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 300.320 through 300.324.

Counsel for the parent argues that DCPS failed to implement the student's Maryland IEP at p.16 of that IEP under Supplementary Aids and Services and Modifications that states: "the vision teacher is to interline his Braille for or provide a printed copy for sighted teachers and his family members in order to assist the student with his work" from March 2010 to July 22, 2010.

The above Findings of Fact show that DCPS provided homework to the parent either in interline form or a printed copy from the teacher's manual until the parent wrote a letter to the vision teacher dated April 5, 2010 objecting to sending a printed copy from the teacher's manual instead of the interline method she preferred. The parent's letter specifically stated the printed copy from the teacher's manual was unacceptable and that homework sent in that form would not be completed. The vision teacher responded by not sending any more homework home. The vision teacher found the interline method too time consuming compared to the printed copy from the teacher's manual. The above quoted Maryland IEP specifically states the IEP could be implemented by either providing Braille materials in interline form or a printed copy. The vision teacher choose ,after trying the more time consuming interline form, to send a printed copy from the teacher's manual and that is consistent with the Maryland IEP which provides for that choice. The vision teacher's response of not sending any more homework after the parent's letter stated that any work sent in printed form from the teacher's manual would not be completed in the future and then having the dedicated aide go over the homework using a printed page from the teacher's manual with the student in the classroom was a reasonable way to ensure the student did his homework and that it was reviewed in class to make sure he understood it. The vision teacher's response to the parent's objections was a way to make sure the student received educational benefit from the homework assignments. This hearing officer has found the

testimony of the vision teacher very credible. *See Shore Reg'l High Sch. Bd. of Educ. v. P.S ex rel. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004)

Courts have held that minor discrepancies between the services provided and the services called for in the IEP do not give rise to a denial of a FAPE. The standard applied is whether the aspects of the IEP not followed were "substantial or significant" or whether the deviations from the IEP were material. *Van Duyn v. Baker School District*, 481 F. 3d 770 (9th Cir. 2007) *See also Catalan v. District of Columbia*, 47 IDELR 223 (D.DC. 2007) where not receiving all speech and language therapy sessions did not result in denial of a FAPE. In this case, the vision teacher followed the Maryland IEP at p.16 by providing to the parent homework in either interline form or a printed copy of the teacher's manual. She stopped when the parent objected to the printed copy from the teacher's manual, and instead had the homework done in class with the dedicated aide. During the period from April to the end of the school year when homework assignments were not sent home, the teacher testified the student made progress in his Braille skills and was able to end the year reading complete sentences and punctuation. This hearing officer concludes that the failure to provide homework assignments from April to July 22nd 2010 were not aspects of the IEP that were "substantial or significant" pursuant to the above court standards.

The D.C. U.S. Court of Appeals has held that a claim based on violation of IDEA's procedural requirements is viable only if those procedural violations affected the student's substantive rights. *Kingsmore ex rel Lutz v. D.C.*, 466 F.3d 118 (CADC 2006) and *Lesesne ex rel B.F. v. D.C.*, 447 F.3d 828 (CADC 2006). *Section 300.513* of the Regulation states: "In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies-(i) Impeded the child's right to a FAPE; (ii) Significantly

impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit." Counsel for the petitioner has presented no evidence either in expert testimony or educational evaluations that during either the contested time from April 5th, 2010 to July 22nd 2010 or early March 2010 to July 22nd 2010 that the student suffered any educational harm or was deprived of educational benefit because homework was not sent home in interline form or printed form from the teacher's manual. Counsel for the petitioner has failed to meet his burden of proof that DCPS has denied a FAPE to the student. DCPS has complied with *34 C.F.R. 300.323 (f)* quoted above providing comparable services to those described in the child's IEP from the previous public agency.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

Counsel for the petitioner's request for relief is DENIED and the case is DISMISSED with prejudice

NOTICE OF RIGHT TO APPEAL

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination 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 from the date of the Hearing Officer Determination in accordance with 20 USC §1415(i).

Date: September 4, 2010

Seymour DuBow /s/

Hearing Officer