

Abstract: *Parent, on behalf of A.R. v. Las Vegas City Schools,*
New Mexico Public Education Department
Case No. DPH 1213-36
Jane B. Yohalem, Due Process Hearing Officer

Parent of A.R., a sixth grader who is legally blind, filed a due process complaint claiming the denial of FAPE. A.R. performs well in regular academic classes, but needs instruction in Braille and in other methods of accessing instruction, doing academic research, communicating in writing, and navigating independently. His IEP provided for such instruction.

Relying on the IDEA, 20 U.S.C. § 1414(d)(3)(B)(v), which mandates both instruction in Braille and the use of Braille by every visually impaired child unless the IEP team affirmatively decides that instruction in the use of Braille is inappropriate for that child, the hearing officer concludes that the District denied Student a FAPE from December 13, 2012, until the end of the school year by failing to provide any specialized instruction toward Student's IEP goals in reading, composing and computing in Braille. The hearing officer concluded that an IEP team is not free to leave out of Student's IEP goals and objectives for instruction in Braille, nor is the school free to fail to provide that instruction, absent individual circumstances which make this instruction inappropriate.

The hearing officer concluded that the District could not rely on shortages of trained personnel or on the use of alternative audio access devices or readers to excuse its failure to provide instruction in Braille. The District's suggestion that compensatory education in the summer in Braille and other compensatory access skills is sufficient to provide a FAPE was rejected.

As to Parent's claim that a Certified Teacher of the Visually Impaired is required to teach A.R., the hearing officer found that, although the IDEA requires only that the District meet state personnel standards which, in New Mexico, do not require certification to teach visually impaired students, the IDEA does require that personnel have sufficient training to be able to provide the services required by a Student's IEP. The District's substitution of an educational assistant and then a special education teacher who could not even read Braille, let alone teach it, denied Student a FAPE and constituted a unilateral change in placement.

Because Student's IEP provided that he would use assistive technology devices at home in order to do his homework, the hearing officer ordered the District to allow Student to take that equipment home without charge as part of a FAPE. The hearing officer rejected Parent's claim that the District's actions were retaliatory.

Based on evidence that District personnel were unfamiliar with the resources available to serve students who are visually impaired, the hearing officer ordered the District to work with an expert to develop and implement a strategy for recruiting qualified staff. The District was also required to budget adequate staff resources and funding for these efforts and to offer competitive salaries and working conditions. If staff capable of teaching A.R. cannot be found, the hearing officer reminded the District of its legal obligation under the IDEA to find an appropriate private school for Student and to pay the costs of that school. Compensatory education for two summers was also ordered.