

**DISTRICT OF COLUMBIA  
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office  
810 First Street, N.E., 2<sup>nd</sup> Floor  
Washington, DC 20002

OSSE  
Student Hearing Office  
March 24, 2014

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STUDENT, <sup>1</sup>	)	
through the Parent,	)	
	)	
Petitioner,	)	
	)	Hearing Officer: Virginia Dietrich
v.	)	
	)	
District of Columbia Public Schools	)	
	)	
Respondent.	)	
	)	

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**HEARING OFFICER DETERMINATION**

**Background**

Petitioner, the paternal grandmother and legal guardian of Student, filed a due process complaint notice on January 9, 2014, alleging that Student had been denied a free appropriate public education (“FAPE”) by the District of Columbia Public Schools (“DCPS”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioner alleged that DCPS had failed to comply with a prior Hearing Officer Determination (“HOD”) that required DCPS to (1) provide Student with a specific assistive technology (“AT”) device no later than November 27, 2013, and (2) provide training on the AT device to Student, Petitioner and relevant school staff no later than December 4, 2013. Petitioner alleged that timely providing Student with the AT device was essential to providing Student with a FAPE because the AT device would enable Student, who was unable to communicate at all with words, to express his needs and desires at home and in school, through the use of a computerized communication device that connected visual icons with preprogrammed speech.

DCPS asserted that a loaner AT device had been provided to Student while the permanent AT device was on order, that the permanent AT device had been provided to Student on February 7, 2014, and that some training had taken place for Petitioner and staff at Student’s current school. DCPS denied that any delays had resulted in the denial of a FAPE.

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<sup>1</sup> Personal identification information is provided in Appendix A.

**Subject Matter Jurisdiction**

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

**Procedural History**

The due process complaint was filed on 01/09/14. This Hearing Officer was assigned to the case on 01/13/14. DCPS timely filed a response to the complaint on 01/13/14 and made no challenges to jurisdiction.

Petitioner waived the resolution meeting, but DCPS did not. A resolution meeting took place on 02/20/14, after the resolution period had ended. The 30-day resolution period ended on 02/08/14, the 45-day timeline to issue a final decision began on 02/09/14 and the final decision was due by 03/25/14.

A prehearing conference took place on 01/28/14. A Prehearing Order was issued on 01/28/14. An Amended Prehearing Order was issued on 01/31/14 that addressed requested revisions to the Prehearing Order that were submitted by Petitioner via email dated 01/28/14.

On 02/19/14, DCPS filed a Motion for Summary Adjudication. On 02/23/14, Petitioner filed an Opposition to the Respondent’s Motion for Summary Adjudication of the Petitioner’s Administrative Due Process Complaint Notice. On 02/24/14, DCPS filed a Reply in Support of Motion for Summary Adjudication. On 03/03/14, the Hearing Officer issued an Order on District of Columbia Public Schools’ Motion for Summary Adjudication that denied DCPS’ motion.

The due process hearing was a closed hearing that took place on 03/11/14. Petitioner was represented by Domiento C.R. Hill, Esq. DCPS was represented by William Jaffe, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person.

On 03/07/14, DCPS filed a Motion to Strike Duplicative or Unnecessary Testimony. On 03/10/14, DCPS filed a Motion To Strike Petitioner’s Alleged Compensatory Education Claim for Failure to Meet the Reid Standard. Both of these motions were withdrawn by DCPS at the start of the due process hearing.

Petitioner’s Five-Day Disclosure Letter, dated 03/04/14, consisted of a witness list of five (5) witnesses and documents P-1 through P-14. Petitioner’s disclosures were admitted into evidence without objection.

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DCPS' Disclosure Statement, dated 03/04/14, consisted of a witness list of two (2) possible witnesses and documents R-01 through R-03. DCPS' disclosures were admitted into evidence without objection.

Parties agreed to the following stipulated fact: The Accent 1000 communication device was provided to Student by DCPS on 02/07/14.

Petitioner presented the following three (3) witnesses in her case in chief: (1) Petitioner; (2) Assistive technology assessment and Individualized Education Program ("IEP") needs expert ("AT expert"), and (3) speech-language pathologist and assistive technology specialist ("SLP & AT specialist"). Petitioner presented herself as the sole rebuttal witness.

DCPS presented one witness: (1) DCPS assistive technology specialist ("DCPS AT specialist"), who participated in the hearing as the Local Education Agency ("LEA") representative.

The sole issue to be determined in this Hearing Officer Determination is as follows:<sup>2</sup>

Whether DCPS denied Student a FAPE by failing to provide Student with an assistive technology service that was necessary to assist Student in accessing the general education curriculum and receiving educational benefit; specifically, a Hearing Officer Determination ("HOD") dated 11/12/13 required DCPS to provide Student with an Accent 1000 communication device by 11/27/13 and train Student, Petitioner and school staff on its use no later than 12/04/13, none of which occurred.

The relief requested by Petitioner is as follows:<sup>3</sup>

- (1) A finding of a denial of a FAPE on the issue presented;
- (2) Within ten (10) business days, DCPS to provide Student and Petitioner with no less than 10 hours of training each or until each is able to effectively use the Accent 1000, or fund no less than twenty (20) hours of training on the device;<sup>4</sup> and
- (3) Within thirty (30) days following the conclusion of Student's training on the Accent 1000, DCPS to convene a Multidisciplinary Team to determine Student's progress towards the educational curriculum using the Accent 1000 communication device, and review and revise the Individualized Education Program ("IEP") as appropriate.

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<sup>2</sup> The issue of whether DCPS denied Student a FAPE by failing to implement Student's Individualized Education Program ("IEP"); specifically, Student's IEP provided for the Accent 1000 communication device and training since 11/27/13 and 12/04/13 respectively, and DCPS failed to provide either; was withdrawn without prejudice by Petitioner at the prehearing conference.

<sup>3</sup> Petitioner withdrew her request that Student be provided with the Accent 1000 communication device within five days. Parties stipulated that the Accent 1000 communication device had been provided to Student on 02/07/14.

<sup>4</sup> Petitioner withdrew her request to train the staff at Student's current school because the school staff had been invited to previously scheduled training at a school in Gaithersburg, MD on 03/28/14 that was sponsored by the AT device manufacturer. Petitioner's request for compensatory education is incorporated into the request for training for Student and Petitioner.

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Footnotes hereinafter refer to the testimony of a witness or an exhibit admitted into evidence.

### **Findings of Fact**

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer's Findings of Fact are as follows:

#1. Student is a nine-year old resident of the District of Columbia who qualifies as a child with a disability under the IDEA.<sup>5</sup> Petitioner is Student's grandmother and legal guardian.<sup>6</sup> Student currently attends a nonpublic school as a third grader.<sup>7</sup>

#2. Student has a very significant developmental delay with essentially absent speech and very limited communication.<sup>8</sup> Student was diagnosed in April 2013 with a severe and rare neurodevelopment genetic disorder that is characterized by severe intellectual disability, poor to absent speech development, frequent and recurrent respiratory infections, and a number of different brain anomalies. There is no specific treatment or cure for Student's genetic disorder that brings with it the expectation of disabilities in the severe to profound range and a general life expectancy of 20-25 years.<sup>9</sup>

#3. Student's physical maladies consist of silent seizure epilepsy, reoccurring pneumonia, asthma, obstructive sleep apnea, and scoliosis. Student is fed through a gastrointestinal tube ("GI-tube"). On a day-to-day functioning level, Student requires assistance with all daily living activities. He wears pampers, has autistic like behaviors, and can't read, write or make decisions on his own. Student is totally nonverbal; he points to what he wants. He uses some signs to communicate, but does not use universal signs.<sup>10</sup>

#4. Student's most current Individualized Education Program ("IEP"), dated 06/20/13, classifies Student with a disability of Other Health Impairment and prescribes the following special education services for Student: 19.7 hours/week of specialized instruction, 240 minutes/month of physical therapy, 240 minutes/month of occupational therapy, 4 hours/month of speech-language pathology services, and 1 hour/week of school health and school nursing services, with all services to be provided outside of general education.<sup>11</sup> Student's IEP also provides for a full time dedicated aide, GI-tube device feeding, and the following assistive technology for communication: (a) voice output device, (b) sign language, (c) gestures, and (d) pictures.<sup>12</sup> Student's IEP has goals in the areas of mathematics, reading, written expression, adaptive/daily living skills, communication/speech and language, health/physical, and motor skills/physical development.<sup>13</sup>

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<sup>5</sup> P-7.

<sup>6</sup> Petitioner.

<sup>7</sup> Petitioner.

<sup>8</sup> P-4-1.

<sup>9</sup> P-4, Petitioner.

<sup>10</sup> P-5-1, Petitioner, SLP & AT specialist.

<sup>11</sup> P-7-12.

<sup>12</sup> P-7-12.

<sup>13</sup> P-7.

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#5. In May 2013, an Augmentative Alternative Communication (“AAC”) Evaluation was completed due to concerns about Student’s mode of communication in school.<sup>14</sup> The AAC Evaluation was reviewed by the Multidisciplinary Team (“MDT”) in June 2013.<sup>15</sup> At that time, Student demonstrated excellent potential for benefiting from the use of an AAC device to improve his expressive communication skills. Student had profound expressive and receptive language delays, but demonstrated the ability to answer yes/no questions, identify pictures of verbs and nouns, and the ability to learn new pictured vocabulary. Student was motivated to communicate and interact with others, but did not have a consistent and dependable mode of communication. He had demonstrated the ability and exhibited the skills to learn how to use a dynamic screen device, that with training, would enable him to clearly express his wants and needs in all settings and to better participate in school tasks and activities.<sup>16</sup>

#6. At the MDT meeting in June 2013, the MDT determined that the iPad was an inappropriate assistive technology device for Student because Student was able to consistently and quickly independently navigate it to access the entertainment/play features of the computer such as PBS Kids.<sup>17</sup> The MDT determined that the Accent 700 would be the most appropriate dedicated communication device for Student to use in school for Student’s expressive communication needs.<sup>18</sup> It would allow Student to advocate for himself and communicate with his teachers, therapists, family and peers.<sup>19</sup> The Accent 700 and Accent 1000 is a computerized communication AT assistive technology device that connects visual icons with preprogrammed speech.<sup>20</sup>

#7. On 11/12/13, a Hearing Officer Determination (“HOD”) was issued wherein it was determined that DCPS had denied Student a FAPE since September 2013 by failing to specify the Accent 1000 (the updated version of the Accent 700) as the AT device that would enable Student to effectively communicate and be involved in and make progress in the general education curriculum.<sup>21</sup>

#8. The 11/12/13 HOD ordered that: (A) Student was to be provided with an Accent 1000 communication device no later than November 27, 2013; (B) Student, Petitioner and all staff working directly with the Student were to be trained on the use of the Accent 1000 no later than December 4, 2013; and (C) Any delays that are due to the Respondent’s failure to act are a failure to comply with the HOD.<sup>22</sup>

#9. In November 2013, a loaner Accent 1000 was provided from the manufacturer to Student’s school for 1.5 weeks.<sup>23</sup> No one at the school knew how to work the Accent 1000.

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<sup>14</sup> P-5-2.

<sup>15</sup> P-9-2.

<sup>16</sup> P-5-6.

<sup>17</sup> P-5-4, Petitioner, AT expert, SLP & AT specialist.

<sup>18</sup> Petitioner, AT expert, P-5-7.

<sup>19</sup> P-5-6.

<sup>20</sup> SLP & AT expert, DCPS AT specialist.

<sup>21</sup> P-3-13.

<sup>22</sup> P-3-14.

<sup>23</sup> SLP & AT specialist.

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Petitioner never saw it.<sup>24</sup> Although Student and Student's teacher were given basic instruction on how to use the Accent 700 in May 2013 for a total of 2.5 - 3.0 hours, that instruction was part of the ACC Evaluation; it was not training.<sup>25</sup>

#10. The permanent Accent 1000 AT communication device was provided to Student by DCPS on 02/07/14.<sup>26</sup> On that same day, a two hour group training session was provided to Petitioner and the school staff by the AT manufacturer. Petitioner, Student's 1:1 aide, Student's teacher and Student's speech-language pathologist all attended. Student was not present for the training. During the first half of the training, the Accent 1000 was not available because DCPS had forgotten to bring it to the training session. During the first half of the training, the attendees received training via a projector and screen. During the second half of the training, the Accent 1000 was available on site during which time Petitioner received about 10 minutes of hands on training on its use. The training attendees were informed that they could access the manufacturer's website if they had further questions.<sup>27</sup>

#11. Although Petitioner has had some access to the Accent 1000 since 02/07/14 because Student brings it home from school, Petitioner does not know the scope of what the AT device can do or how to program it to include photos and sentences that would enable Student to convey his wants and needs. Petitioner understands the power and importance of the Accent 1000; it can be programmed to enable Student to communicate about all aspects of daily living, such as "my head hurts," or "my head itches." Petitioner is extremely excited about the use of the Accent 1000 to help Student communicate and enhance his quality of life and learning, both at home and at school.<sup>28</sup>

#12. Without any type of communication device, Student has limited signs and words to use; therefore, he is limited in his interactions in school in that he cannot answer questions, he cannot interact with other children, and he cannot indicate when he needs help. The Accent 1000 gives Student a voice, a way to communicate in a way that he cannot do without the AT communication device.<sup>29</sup>

#13. Petitioner, Student's teacher, Student's speech-language pathologist, and Student's 1:1 aide have all been invited to an 8 hour group training session on 03/28/14 in Gaithersburg, MD that was scheduled for members of another school. That training is inconvenient to Petitioner who must put Student on the school bus, travel approximately one hour to the site of the training and then leave the training in time to arrive back in the District of Columbia to receive Student home from school. Petitioner would miss a great deal of the training.<sup>30</sup>

#14. Training sessions of 4-10 hours on the Accent 1000 would be appropriate training for all of those involved with the education and care of Student. People who are technology

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<sup>24</sup> Petitioner.

<sup>25</sup> SLP & AT specialist, P-5-5.

<sup>26</sup> Stipulated fact, DCPS AT specialist.

<sup>27</sup> Petitioner, DCPS AT specialist.

<sup>28</sup> Petitioner.

<sup>29</sup> SLP & AT specialist.

<sup>30</sup> Petitioner.

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savvy might require less time for training.<sup>31</sup> Petitioner is not technology savvy with respect to the Accent 1000 and would require approximately 8-10 hours of training, comprised of independent and joint training sessions with Student.<sup>32</sup>

#15. Appropriate training for Student on the use of the Accent 1000 would entail 1:1 training in a quiet environment and additional training in the classroom by the speech-language pathologist. Student requires 4-6 hours of direct training and additional ongoing training by a speech-language pathologist who has knowledge of the Accent 1000.<sup>33</sup>

### **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 overall purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 C.F.R. 300.1.

“Based solely upon 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 a FAPE.” 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. 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. 34 C.F.R. 300.513(a).

The sole issue to be determined is whether DCPS denied Student a FAPE by failing to provide Student with an assistive technology service that was necessary to assist Student in accessing the general education curriculum and receiving educational benefit; specifically, a Hearing Officer Determination (“HOD”) dated 11/12/13 required DCPS to provide Student with an Accent 1000 communication device by 11/27/13 and train Student, Petitioner and school staff on its use no later than 12/04/13, none of which occurred.

A parent may file a complaint on any matter relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. 34 C.F.R. 300.507(a).

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<sup>31</sup> SLP & AT specialist, AT expert.

<sup>32</sup> Petitioner.

<sup>33</sup> SLP & AT specialist, AT expert.

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Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 C.F.R. 300.5.

Assistive technology services 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 (a) the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment, (b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; (c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; (d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (e) training or technical assistance for a child with a disability or, if appropriate, that child's family; and (f) training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. 34 C.F.R. 300.6.

Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education, related services, or supplementary aids and services. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. 34 C.F.R. 300.105(b), 5 D.C.M.R. 3016.1.

Petitioner met her burden of proof by a preponderance of the evidence that Student was denied a FAPE by DCPS' failure to provide Student with the Accent 1000 AT communication device by 11/27/13 and training on its use to Petitioner, Student and relevant school staff by 12/04/13. Petitioner's testimony was very credible. Among the other witnesses, the testimony of the SLP & AT specialist was given the most weight because she had completed the AAC Evaluation of Student, she was very familiar with the operations of the Accent 1000 and had trained people on its use, and she had observed Student using the Accent 700.

The Accent 1000 AT communication device and training on it for Student, Petitioner and relevant school staff were all part of Student's special education program and services.

Student's IEP, dated 06/20/13, required that Student be provided with a voice output device. The school had provided the iPad for that purpose, but Student quickly and consistently navigated the iPad to access games and recreation. Despite Student's non-verbal limitations and severe physical disabilities, Student's ability to steer the iPad in the direction he wanted it to go bespoke his ability to comprehend, learn and communicate if given the appropriate dynamic screen device. The Multidisciplinary Team realized this and after reviewing the results of the AAC Evaluation, agreed in June 2013 that the Accent 700 would be the most appropriate

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dedicated voice output communication device for Student to use to access the educational curriculum.

DCPS' delay in providing the Accent 700 caused Petitioner to file a due process complaint that resulted in a HOD on 11/12/13. The HOD ordered DCPS to provide Student with the Accent 1000 by 11/27/13 and training on its use to Petitioner, Student and relevant school staff by 12/04/13. That didn't happen.

The complaint in this case was filed on 01/09/14 to spur DCPS to provide Student with the much needed AT communication device and training on its use. DCPS finally made the Accent 1000 available to Student on 02/07/14; approximately 10 weeks later than it should have been provided. Although DCPS did make an effort to have a loaner AT communication device available while the permanent one was being procured, it was of no consequence. The Accent 1000 was only at Student's school on loan for 1.5 weeks and during that time no one knew how to use it.

Adequate training on the use of the Accent 1000 for Student, Petitioner and relevant school staff still had not taken place as of the date of the due process hearing on 03/11/14. At most, DCPS had arranged for Petitioner and relevant school staff to participate in a two-hour group training session provided by the AT manufacturer on 02/07/14. That training session, where the Accent 1000 was not on site for half of the training period and where Petitioner received only 10 minutes of hands on time with the Accent 1000, was inadequate. Consulting a website for additional information on the use of the Accent 1000 does not constitute proper training for Petitioner, Student and relevant school staff. DCPS has arranged for a lengthier group training session on 03/28/14 that is sponsored by the AT manufacturer at a site that is very inconvenient for Petitioner. Student still has not received any training on the use of the Accent 1000.

Every day of delay by DCPS in providing the Accent 1000 and training on its use constituted a denial of a FAPE for totally non-verbal Student, age 9, with a life-expectancy of 20-25 years, who has never been able to communicate his wants and needs at home or at school other than by using non-universal signs and gestures. Student's IEP requires many special education services in the areas of mathematics, reading, written expression, adaptive/daily living skills, communication/speech and language, health/physical, and motor skills/physical development. The Accent 1000 AT communication device is critical for Student's access to the educational curriculum.

The Accent 1000 is Student's lifeline to the world of communication. Communication is the underpinning of learning and growth for Student in the educational environment. The Hearing Officer determines that Student was deprived of a huge educational benefit by DCPS' delay in providing the Accent 1000 since 11/27/13 and appropriate training on its use since 12/04/13.

**ORDER**

(1) If Student's teacher, Student's 1:1 aide, and Student's speech-language pathologist do not participate in the Accent 1000 training offered by the AT manufacturer on 03/28/14, DCPS shall ensure that each of the above mentioned personnel receives 8 hours of training sponsored by the AT manufacturer, no later than 04/30/14; and

(2) After the speech-language pathologist has received 8 hours of training on the Accent 1000 or after the speech-language pathologist has a good working knowledge of the Accent 1000, whichever occurs first, the speech-language pathologist shall begin providing Student with 6 hours of direct 1:1 training on the Accent 1000 in a quiet environment, separate and apart from any speech-language services required by Student's IEP, with training to Student to be completed by 05/30/14; and

(3) After the speech-language pathologist has received 8 hours of training on the Accent 1000 or after the speech-language pathologist has a good working knowledge of the Accent 1000, whichever occurs first, the speech-language pathologist shall begin providing Petitioner with 3 hours of individual training on the operation and use of the Accent 1000, with training to take place at Student's school; and a total of 7 hours of joint training on the Accent 1000 to Petitioner and Student, consisting of 4 hours at school and 3 hours at Petitioner's home or whatever combination of hours at home and school that the Petitioner and speech-language pathologist jointly agree upon; with all training to be completed no later than 05/30/14; and

(4) DCPS to convene a Multidisciplinary Team meeting no later than the last day of the regular 2013/14 school year to review Student's progress on the Accent 1000 AT communication device, review and revise Student's IEP as appropriate with respect to Student's AT communication needs and services, and discuss and determine who is authorized to program the Accent 1000 for Student's use and establish a brief written protocol for the programming of the Accent 1000; and

(5) At the meeting convened pursuant to (4) above, Student's IEP shall be revised to include speech-language pathology consultation services for Petitioner to meet with the speech-language pathologist once every other month for a one hour duration, with consultation services to extend for a period of one year beginning on the date of the meeting in (4) above, for Petitioner to consult with the speech-language pathologist about Student's AT communication needs, including programming of the AT communication device.

**IT IS SO ORDERED.**

**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

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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 U.S.C. §1415(i), 34 C.F.R. 300.516(b).

Date: March 23, 2014

*/s/ Virginia A. Dietrich*  
Hearing Officer

Copies to:

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