

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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M.W., ON BEHALF OF D.W.

V.

CRANSTON SCHOOL COMMITTEE  
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DECISION

Held: School Committee violated procedural requirements of Section 504, but it did not deny student a free appropriate public education.

Date: May 1, 2001

## **Introduction**

This matter concerns a complaint by M.W., on behalf of her daughter D.W., against the Cranston School Committee alleging violations of Section 504 of the Rehabilitation Act of 1973 that resulted in the denial of a free appropriate public education for D.W.<sup>1</sup>

## **Background**

D.W. enrolled in the Cranston school system in 1993. She qualified for special-education services under the Individuals with Disabilities Act (IDEA).<sup>2</sup> In August 1996 M.W. wrote a letter to the district revoking her consent to have her daughter classified as a child with a disability under IDEA. M.W. requested an education plan for D.W. under Section 504. She also asked for formal notice of parental rights and procedural safeguards under that statute.

M.W. subsequently requested a due process hearing to have D.W. declassified as an IDEA-eligible student. In an interim order entered on August 20, 1997, the due process hearing officer found that D.W. qualified as a student in need of special-education services under IDEA. The interim order set forth an education program for D.W. for the beginning of school, and it directed the parties to meet in order to draft and conclude D.W.'s individualized education program (IEP) for the 1997-98 school year. Following a review hearing, a final order was entered on November 24, 1997. The hearing officer found D.W. to be "progressing well to date," and he denied the petition to declassify her as eligible under IDEA. [Complainant's Exhibit E-4].<sup>3</sup> M.W. did not appeal the final order.

During the same period, the parties were involved in a proceeding before the Commissioner of Education regarding M.W.'s access to D.W.'s education records. In a

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear and decide the complaint. Hearings were conducted on October 5, December 15, 16 and 22, 1999, and March 22, 2000. Complainant and the School Committee filed post-hearing memoranda on September 5 and October 4, 2000, respectively. All exhibits referenced in this decision have been treated as full exhibits.

<sup>2</sup> Formerly known as the Education of the Handicapped Act.

<sup>3</sup> During the November 20, 1997 hearing, M.W. acknowledged that her daughter needed services, but took the position that these services constituted a reasonable accommodation under Section 504, not special-education services under IDEA. The hearing officer stated that he had no authority to conduct a Section 504 hearing, whereupon M.W. responded that "I'm not asking you to assume authority under 504, I'm asking that under IDEA this child be determined not to be eligible for classification." [Complainant's Exhibit E-4(a)].

decision on remand dated February 26, 1998, the Commissioner affirmed his previous finding that D.W.'s education records included copies of documents sent to district staff, telephone logs, and newspaper articles.<sup>4</sup>

In April 1998 agreement was reached to declassify D.W. as an IDEA-eligible student. At this time M.W. received a Section 504 notice entitled "Parent/Student Rights in Identification, Evaluation and Placement."<sup>5</sup> On May 6, 1998 the parties signed a 504 service plan for D.W. The plan, which provided D.W. with a laptop computer<sup>6</sup>, stated that it would be reviewed quarterly.

In September 1998 M.W. complained to the chairperson of the 504 committee at D.W.'s school about the absence of D.W.'s teachers at a review meeting and the lack of instruction in the software D.W. was using in her laptop computer. In November 1998 M.W. was notified by the 504 committee chairperson that the teachers' responses to the quarterly review indicated that D.W.'s current plan was meeting her needs.

On January 27, 1999 M.W. met with four of D.W.'s teachers and the assistant principal to review her 504 plan. The following day, the 504 committee chairperson wrote to M.W. stating that

the consensus was that all of the necessary accommodations are being made and that the Plan is meeting [D.W.'s] needs adequately. [Guidance counselor] Mrs. Flynn has advised us that you feel you do not need to meet with the 504 Committee. We also agree there is no need to meet with you on February 4, 1999 as everything has met with your approval." [Complainant's Exhibit E-9].

In a letter dated January 30, 1999, M.W. stated that the January 27th review meeting did not comply with Section 504 because there was no prior notice of the assistant principal's attendance. The letter also stated:

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<sup>4</sup> The Commissioner's original decision issued on March 31, 1997. The decision on remand was affirmed by the Board of Regents on July 23, 1998. The Rhode Island Supreme Court denied certiorari on September 24, 1998.

<sup>5</sup> The document lists 17 "rights granted by federal law to students with identified, eligible 504 handicaps." The source of the document appears to be the Northeast Regional Office of Civil Rights of the U.S. Department of Education. Item 15 outlines a four-step grievance process, in which the first step is the building principal and the second step is the assistant superintendent. Item 16 refers to due process hearings. Dr. Paul Cardoza's name is typed in the document as being the person responsible for assuring district compliance with Section 504. [Complainant's Exhibit E-13].

<sup>6</sup> The 504 plan refers to the computer in connection with written assignments and note-taking.

I request notice of whether the District still intends to conduct a §504 meeting on February 4, 1999, without any persons directly knowledgeable about the child or notice to me as parent, or to [D.W].

I request an appropriate quarterly review with my daughter's teachers, myself, and the appropriate administrator who can commit the district's resources, be arranged for the third quarter review which is to be in April, 1999. [Complainant's Exhibit E-10].

A review meeting was conducted on April 14, 1999. On the same date, D.W. was accepted as an early admission candidate at Rhode Island College for the 1999-2000 school year. Respondent received a copy of D.W.'s acceptance letter.

On April 27, 1999 the 504 committee chairperson informed M.W. that "The Committee has reviewed quarterly teacher's reports as part of the required process. The Committee also reviewed [D.W.'s] report card. It would appear that the current 504 Plan is functioning appropriately so that [D.W.] is able to meet with success." [Complainant's Exhibit E-11].

On April 28, 1999 M.W. requested a Section 504 hearing. Her letter stated that three of D.W.'s five teachers and the 504 chairperson did not attend the April 14th review meeting, that the CD-ROM attachment to D.W.'s computer was not working, that D.W. was not receiving any technical assistance in using the computer in Algebra II and Physics, and that no clear, specific notice had been provided regarding 504 hearing procedures. The letter alleged violation of Section 504 regulations concerning the participation of knowledgeable staff in making placement decisions,<sup>7</sup> the availability of auxiliary aids, and the provision of notice of procedural safeguards. To remedy these matters, M.W. requested that a duly-constituted 504 meeting be scheduled within 10 days, that the computer be repaired within two weeks, that title to the computer be transferred to D.W., that D.W. receive instruction in using the computer for science and math assignments, and that appropriate written notice of 504 procedural safeguards be given.

On May 7, 1999 district Section 504 coordinator Dr. Paul Cardoza responded to M.W.'s hearing request. He advised M.W. that a meeting with D.W.'s teachers and

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<sup>7</sup> M.W. cited §104.35(c) of the Section 504 regulations, which addresses the interpretation of evaluation data and the making of placement decisions.

members of her 504 team had been scheduled for May 19th, that a new hard drive for D.W.'s computer had been ordered, and that technical assistance for the computer would be discussed at the upcoming meeting. Dr. Cardoza also enclosed another version of the Section 504 document entitled "Parent/Student Rights in Identification, Evaluation and Placement."<sup>8</sup>

M.W. wrote to Dr. Cardoza on May 9th. She stated:

Since [the district] refused to grant me all the remedies I requested in my April 28, 1999 letter (which you verbally confirmed was received on that date) reasonably within the time period stated, I now request that a formal hearing be conducted and that a verbatim record of the proceedings be provided to me. [Complainant's Exhibit E-14].

The May 9th letter listed three issues for hearing: (1) failure to provide a free appropriate public education by not providing functional auxiliary aids to the student, (2) failure to conduct a proper review meeting so that timely relief (equipment repair and technical assistance) could have been provided,<sup>9</sup> and (3) failure to provide adequate 504 procedural safeguards, particularly with respect to grievances and hearings.

On May 10, 1999 Dr. Cardoza wrote to M.W. He informed her that the installation of the new hard drive for D.W.'s computer should be completed "within one or two days," that the district would continue to maintain and repair the computer for as long as D.W. remained enrolled, that M.W.'s purchase of the computer could be explored, that efforts were continuing to acquire math software to assist D.W.'s note-taking, that item 14 of the document sent on May 7th "needs to be more specific" and revised language would be presented to the School Committee for its review and approval,<sup>10</sup> and that attempts were being made to schedule the May 19th meeting for an earlier date. [Complainant's Exhibit E-15].

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<sup>8</sup> The document appears in different type with text nearly identical to the document provided to M.W. in April 1998 (see footnote 5). The text is different in that items 15 and 16 (grievance procedure and due process hearings, respectively) have been omitted. The document therefore lists 15, not 17, rights under Section 504. Dr. Cardoza again is named as being responsible for compliance.

<sup>9</sup> M.W. also challenged the use of grades in D.W.'s quarterly reviews, calling the grades "at best subjective and at worse bogus."

<sup>10</sup> Item 14 states the right to "Request mediation, grievance procedure or an impartial due process hearing (as appropriate) related to decisions or actions regarding your child's identification, evaluation, educational program or placement." [Complainant's Exhibit E-13].

In a letter dated May 24, 1999, Dr. Cardoza provided M.W. with a further update. The letter initially explained that D.W.'s 504 plan merely provided for quarterly reviews, and did not require that the reviews be meetings of teachers and/or 504 committee members.<sup>11</sup> The letter stated that the hard drive on D.W.'s computer had been replaced, that the math teacher was giving D.W. handouts to assist her with note-taking, and that the computer would remain district property and be reassigned to other students when no longer needed by D.W. In closing, the letter informed M.W. that she could appeal the matter to the superintendent of schools and a hearing would be scheduled. [Respondent's Exhibit 4].

M.W. requested a superintendent's hearing in a letter dated May 28, 1999. M.W.'s letter to the superintendent stated that she had obtained, by way of the Department of Education, two district 504 policies, one adopted in 1978<sup>12</sup> and the other in 1994<sup>13</sup>. M.W. observed that "Obviously, you do not have A policy." (emphasis in original). Her letter then stated:

If I could not access a due process procedure because of your lack of a policy, I could not get timely relief for a failure to provide adequate accommodations and related instruction to use adaptive technology, and failure to conduct meetings in which the plan could be revised by persons knowledgeable about the child. I could not address these omissions through the due process system because no system exists. Consequently, as a matter of law, [D.W.] was denied [a free appropriate public education]. [Complainant's Exhibit E-18(a)].

M.W. requested four years of compensatory education to remedy this matter.

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<sup>11</sup> The letter further stated that D.W.'s "progress has been reviewed quarterly by the Section 504 Committee members and her progress has been documented through quarterly reports (sic) cards. There has also been several meetings and contacts with you regarding progress and [D.W.'s] accommodations." The letter also disagreed with M.W.'s characterization of D.W.'s grades.

<sup>12</sup> The 1978 policy (#4116.11a) describes the grievance procedure for Section 504. Grievances are to be submitted to the building principal or director of personnel and public relations for informal hearing. Grievances can be appealed to the Section 504 coordinator for an informal hearing, and then to the superintendent or his/her designee for a formal hearing. A record is to be kept of the formal hearing and written findings are to be issued. Superintendent's decisions may be appealed to the School Committee.

<sup>13</sup> The district's 1994 policy (#1510a) is entitled "Program Accessibility – Rights of Persons with Disabilities." It designates the assistant superintendent as the district's Section 504 compliance officer. The compliance officer is to receive complaints, attempt to resolve them administratively, and, if unsuccessful, conduct an informal hearing and render a written decision. The compliance officer's decision can be appealed to the School Committee.

The superintendent scheduled a hearing for June 14, 1999 and designated assistant superintendent Mr. James Cofone to serve as hearing officer. A copy of the district's 1978 Section 504 grievance procedure accompanied the hearing notice. The notice stated that "tape recorders and stenographic machines will not be allowed at this hearing. In accordance with the procedural rules, the hearing officer . . . will make findings of fact based upon the evidence presented by each side, and those findings of fact and conclusions of law will constitute the record of the hearing." [Complainant's Exhibit E-18].

The hearing was rescheduled for June 21, 1999. On that date M.W. and counsel appeared before Mr. Cofone and protested the hearing procedures. The issues they raised included the lack of an electronic or written record of the hearing, the absence of an impartial hearing officer, the proper role of the assistant superintendent in 504 disputes, and the district's apparent failure to previously disclose the 1978 Section 504 grievance procedure. In light of these issues, M.W. did not go forward with her case, choosing to file the complaint herein instead. Mr. Cofone, in a letter dated June 22, 1999, denied M.W.'s appeal.

D.W. completed the 11th grade in June 1999 with grades of As and Bs and one C (in Algebra II).<sup>14</sup> D.W. enrolled at Rhode Island College beginning with the 1999-2000 school year. She turned 16 in September 1999.

### **Positions of the Parties**

Complainant alleges that the School Committee violated Section 504 in the following respects: (1) by continuously failing to provide timely notice of procedural safeguards and grievance procedures since the adoption of policy #1510a in 1994; (2) by continuously denying access to the proper grievance procedure and disregarding its own grievance procedures; (3) by continuously failing to provide access to D.W.'s education records and/or making placement decisions without giving careful consideration to information obtained from all sources; and (4) by "denying [D.W.] a free appropriate public education as a result of the continuous deprivation of procedural due process resulting in the Complainants' inability to acquire substantive due process, from the time

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<sup>14</sup> D.W.'s courses included two advanced placement subjects.

that Policy #1510a was adopted until the present.” [Complainant Exhibit D].<sup>15</sup> Complainant seeks compensatory and punitive damages as a remedy.

The School Committee asserts that M.W. should be estopped from alleging Section 504 violations regarding matters that occurred prior to D.W.’s declassification as an IDEA-eligible student in 1998. It contends that the 1978 and 1994 Section 504 policies are complementary, that M.W. received both of them, and that M.W. received similar notices under IDEA since 1993. The Committee claims it complied with Section 504 requirements by designating a 504 coordinator and providing grievance and hearing procedures. Education records were provided to M.W. upon request. She did not demonstrate that the records withheld pending litigation were relevant to D.W.’s educational program. Furthermore, M.W. did not establish that any purported procedural violations adversely affected D.W.’s education. The Committee questions the Commissioner’s jurisdiction to award damages under Section 504. It also contends that there is no evidentiary proof of actual harm or injury to support an award of compensatory damages, and therefore no basis whatsoever for punitive damages.

## **Discussion**

Jurisdiction in this matter exists under Rhode Island General Law 42-87-5(c), which authorizes the Commissioner of Education to hear complaints alleging violations of Section 504.<sup>16</sup>

Under §34 CFR 104.33(a) of the federal regulations that implement Section 504, public school districts must provide a free appropriate public education to each qualified disabled child in the district’s jurisdiction. Under §104.33(b)(1) an “appropriate education” is defined as the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled children as adequately as the needs of non-disabled children are met and (ii) are based upon

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<sup>15</sup> Complainant relies on Board of Education of the Hendrik Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 (1982) in support of her procedural due process claim. The alleged Section 504 violations were outlined in Complainant’s “Plain Statement of Alleged Violations of Section 504 and/or the Regulations Thereunder” filed at the outset of this proceeding. [Complainant’s Exhibit D].

<sup>16</sup> 29 USC §794.

adherence to required procedures, including procedural safeguards.<sup>17</sup> Section 104.33(b)(2) then states that:

Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

The evidence in this matter shows that D.W. was an IDEA-eligible student and received special-education services pursuant to IEPs until her declassification in April 1998. We particularly note the November 24, 1997 final order of the due process hearing officer, which found that D.W. still qualified for special-education services under IDEA and that she was “progressing well to date.” We therefore find, on the basis of §104.33(b)(2), that Respondent was in compliance with §104.33(b)(1)(i) as of April 1998.

Respondent’s compliance with the procedural requirements of §104.33(b)(1)(ii) is another matter, however. M.W. did not receive notice of Section 504 until April 1998 when she was given the “Parent/Student Rights” document that listed 17 rights under the statute. The document contained the brief dispute resolution provision in item 14 (see footnote 10), the four-step grievance process (with the building principal being step 1 and the assistant superintendent being step 2) in item 15, and it named Dr. Cardoza as the 504 compliance person. In May 1999 M.W. received the other version of the “Parent/Student Rights” document, which contained item 14 but omitted items 15 and 16 (the latter referring to due process hearings). Later in May 1999 M.W. obtained the district’s 1994 “Program Accessibility -- Rights of Persons with Disabilities” policy (#1510a). The policy designates the assistant superintendent as the Section 504 compliance officer, and provides a three-step grievance procedure, with the compliance officer handling the first two steps.<sup>18</sup> In June 1999 the superintendent provided M.W. with a 1978 Section 504 grievance procedure (#4116.11a). This procedure begins with the building principal or

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<sup>17</sup> Section 104.36 requires “a system of procedural safeguards that includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with opportunity for participation by the person’s parents or guardian and representation by counsel, and a review procedure.” Section 104.7 requires the designation of a compliance coordinator and “grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.” Section 104.8 requires continuing notification of Section 504 rights and the designation of a compliance coordinator.

<sup>18</sup> I.e., administrative review and informal hearing.

director of personnel and public relations, proceeds to the 504 coordinator for informal hearing, moves to the superintendent for a formal hearing, and continues to the School Committee for further hearing.

We agree with Complainant that Respondent's notice of Section 504 was untimely, incomplete, and contradictory. Furthermore, these defects flawed the processing of M.W.'s grievance and the handling of her hearing request in May and June 1999. We find that the grievance process and hearing offered to M.W. did not comply with Section 504 requirements.<sup>19</sup>

We are thus left with the question whether the procedural defects regarding the notice, grievance process and impartial hearing resulted in the denial of a free appropriate public education to D.W. Complainant argues in the affirmative, citing Board of Education v. Rowley, 458 U.S. 176 (1982). Respondent claims otherwise, saying there is no record evidence to establish that such a denial took place in this case.

In the 1982 Rowley decision, the United States Supreme Court determined that, to meet the requirements of IDEA, an IEP must be reasonably calculated to provide the student with some educational benefit. While the benefit must be meaningful, IDEA does not require that school districts attempt to maximize each child's potential.

The Court also recognized the critical importance of IDEA's procedural safeguards to the effective operation of the statute. Under Rowley, a district's failure to follow the procedural requirements of IDEA may result in a finding that a student was denied a free appropriate public education.<sup>20</sup> Procedural violations must be material, however, and courts in this circuit and elsewhere have consistently held that only violations which (1) deny parents a meaningful opportunity to participate in the IEP

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<sup>19</sup> M.W.'s objections to the lack of a record and impartial decision-maker at the hearing are valid. The hearing officer's findings of fact cannot serve as the official record of the proceeding nor can a school department employee be an "impartial" hearing officer. As for other procedural issues, we do not agree with Complainant's assertion that Respondent denied her access to a 504 hearing when it did not schedule one following the due process hearing officer's refusal to conduct a 504 hearing on November 20, 1997 (see footnote 3). The record shows that the IDEA due process hearing was held to consider M.W.'s petition to declassify D.W. as an IDEA-eligible student. M.W. did not request the hearing pursuant to §504. In any event, the hearing officer found that D.W. still qualified for special-education services under IDEA. We further find that Respondent did not deny M.W. access to relevant education records. Although M.W. did not obtain access to duplicate records, telephone logs, and newspaper articles until Respondent's last appeal in the Commissioner's proceeding was denied in September 1998, it was not shown that her inability to inspect these documents had any bearing on D.W.'s education.

process or (2) somehow deprive the student of an educational opportunity will result in a finding that a student has been denied a free appropriate education.<sup>21</sup> Procedural violations must be assessed on a case-by-case basis and a determination made as to the seriousness of the violations and whether any harm flowed from them. In doing so, Complainant bears the burden of proof to establish the harmfulness of the procedural violations.<sup>22</sup>

The record shows that M.W. signed a Section 504 plan for D.W. on May 6, 1998. The plan provided for quarterly reviews. In January 1999 M. W. complained about the absence of certain staff at that month's review. She requested that an appropriate third quarter review be conducted in April 1999. A review meeting was held on April 14, 1999, the same date D.W. was notified of her acceptance into college. On April 28th, M.W. asked for a formal Section 504 hearing to address three issues: (1) quarterly review meetings, (2) auxiliary aids and (3) notice of procedural safeguards. Section 504 Coordinator Dr. Cardoza initially responded to the issues raised by M.W. A 504 hearing was later scheduled before Mr. Cofone, who rendered a decision on June 22, 1999. In the meantime, D.W. completed the 11th grade. She enrolled at Rhode Island College and did not return to the Cranston School system.

As stated in her letter of May 28, 1999 [Complainant's Exhibit E-18a], the essence of M.W.'s complaint regarding lack of notice of procedural safeguards concerned her inability to gain access to a due process system that would effectively address her

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<sup>20</sup> Hall v. Vance County Board of Education, 774 F.2d 629 (4th Cir. 1985), where the school district failed to inform the parents of a dyslexic student of their procedural rights for the first 7 years of enrollment and never developed an IEP that met the requirements of IDEA.

<sup>21</sup> Roland M. v. Concord School Committee, 910 F.2d 983, 994 (1st Cir. 1990), *cert. denied*, 499 U.S. 912 (1991) ("procedural flaws do not automatically render an IEP legally defective," rather "there must be some rational basis to believe that procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits."); Burke County Board of Education v. Denton, 895 F.2d 973, 982 (4th Cir. 1990) ("the procedural faults committed by the Board in this case did not cause [the student] to lose any educational opportunity."); Independent School District No. 283 v. S.D., 88 F.3d 556, 562 (8th Cir. 1996) ("An IEP should be set aside only if 'procedural inadequacies compromised the pupil's right to an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of educational benefits.' (citation omitted)"); Salley v. St. Tammany Parrish School Board, 57 F.3d 458, 466 (5th Cir. 1995) ("St. Tammany's procedural violations therefore cannot be said to have harmed [the student]."); Doe v. Defendant I, 898 F.2d 11186, 1191 (6th Cir. 1990) ("procedural requirements of the EAHCA were met even though two items were omitted from the [IEP].")

<sup>22</sup> Roland M., at 995. In addition, to establish that a school district violated Section 504 by failing to provide an appropriate education, a plaintiff must show bad faith or gross misjudgment. Monahan v. State of Nebraska, 687 F.2d 1164 (8th Cir. 1982).

issues with D.W.'s 504 plan. As we have previously found, Respondent's notice, grievance procedure and hearing violated Section 504 requirements. As a result, M.W. was deprived of an opportunity to pursue her allegations of improperly-constituted review meetings, a nonfunctional CD-ROM drive on D.W.'s lap top computer, and the failure to provide D.W. with assistance in using the computer for science and math calculations and diagrams.

In challenging Respondent's review meetings, M.W. relies on §104.35(c)(3) of the Section 504 regulations. It states that "In interpreting evaluation data and in making placement decisions," the district "shall ensure that the placement decision be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options." D.W. had an agreed-upon 504 plan, however. It specified a placement. Review meetings were not examining evaluation data, considering placement options, or making placement decisions. We therefore cannot find that Respondent's quarterly reviews violated §104.35(c)(3).

The nonfunctioning CD-ROM on D.W.'s computer first came to light in M.W.'s April 28, 1999 letter to the superintendent. At Dr. Cardoza's initiative, the computer was repaired in two weeks. Prompt efforts also were made to obtain math software for D.W.'s computer, with Dr. Cardoza explaining that the district understood that the computer was needed to assist with writing assignments. In the meantime, the math teacher addressed the note-taking issue by providing D.W. with handouts.

Given this evidence, along with the fact that D.W. was accepted as an early admission candidate to a four-year college at the same time the 504 issues were arising, we find that the procedural violations that occurred herein did not result in the denial of a free appropriate public education for D.W. While we acknowledge the confusion and difficulty experienced by Complainant in attempting to obtain resolution of her grievances, we cannot lose sight of the responsive efforts of Dr. Cardoza and the academic achievement of D.W. We therefore are unable to find that Complainant was not given the chance to meaningfully participate in the formulation of D.W.'s education or that D.W. lost an educational opportunity to the degree required under the Roland M. line of cases.<sup>23</sup> We shall provide a remedy to address the violations found herein.

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<sup>23</sup> Given this finding, we need not reach the issue regarding the Commissioner's authority to award damages under §42-87-5(c).

**Conclusion**

Respondent violated Section 504 by failing to provide Complainant with notice of procedural safeguards, a grievance procedure, and an impartial hearing as required by §§34 CFR 104.36, 104.7 and 104.8. Respondent’s procedural violations did not deprive D.W. of a free appropriate public education.

Respondent shall adopt clear and consistent procedures for the processing of grievances and the conducting of impartial hearings as required by Section 504.

Respondent also shall provide ongoing Section 504 notice to parents and students.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Peter McWalters  
Commissioner of Education

Date: May 1, 2001