

**DISTRICT OF COLUMBIA**  
**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**  
Office of Dispute Resolution  
1050 First Street, NE, 3<sup>rd</sup> Floor  
Washington, DC 20002

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STUDENT, by and through  
MOTHER, Attorney-in-Fact,<sup>1</sup>

Date Issued: April 22, 2022

Petitioner,

Hearing Officer: Peter B. Vaden

v.

Case No: 2022-0015

DISTRICT OF COLUMBIA  
PUBLIC SCHOOLS,

Online Video Conference Hearing

Date of Hearing: April 18 and 19, 2022

Respondent.

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**HEARING OFFICER DETERMINATION**

**INTRODUCTION AND PROCEDURAL HISTORY**

This matter came to be heard upon the Administrative Due Process Complaint Notice filed by Petitioner, under the Individuals with Disabilities Education Act, as amended (the IDEA), 20 U.S.C. § 1400, *et seq.*, and Title 5-E, Chapter 5-E30 of the District of Columbia Municipal Regulations (“D.C. Regs.”). Petitioner’s Due Process Complaint, filed on January 26, 2022, named DCPS as Respondent. Petitioner seeks relief for DCPS’ allegedly not ensuring that Student’s January 10, 2022 provided Occupational Therapy related services.

The undersigned hearing officer was appointed on January 27, 2022. On February 7, 2022, the parties met for a resolution session and were unable to resolve the issues in dispute. On February 8, 2022, I convened a telephone prehearing conference

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

with counsel to discuss the issues to be determined, the hearing date and other matters. The due process hearing was originally scheduled for March 22, 2022, but was continued to April 18-19, 2022 due to illness of counsel. On April 5, 2022, I granted DCPS' request, opposed by Petitioner, to extend the final decision due date from April 18, 2022 to May 6, 2022.

With consent of the parent, the due process hearing in this case was held online and recorded, using the Microsoft Teams video conference platform. The hearing, which was open to the public, was convened before the undersigned impartial hearing officer on April 18 and 19, 2022. Mother appeared online for the hearing and was represented by PETITIONER'S COUNSEL. Respondent DCPS was represented by LEA REPRESENTATIVE and by DCPS' COUNSEL.

Counsel for the respective parties made opening statements. Mother testified at the hearing and called PRIVATE OCCUPATIONAL THERAPIST (PRIVATE OT), and EDUCATIONAL ADVOCATE as additional witnesses. DCPS called as witnesses LEA Representative, DCPS OCCUPATIONAL THERAPIST (DCPS OT) and RESOLUTION SPECIALIST. Petitioner's Exhibits P-1 through P-3, P-6 through P-15 and P-17 through P-35 were admitted into evidence, including Exhibits P-6, P-7, P-10 and P-11 admitted over DCPS' objections. DCPS' Exhibits R-3 through R-9, R-11 through R-17 and R-19 through R-21 were admitted into evidence without objection. At the conclusion of the taking of the evidence, counsel for each party made an oral closing argument. There was no request to file post hearing briefs.

**JURISDICTION**

The hearing officer has jurisdiction under 20 U.S.C. § 1415(f) and D.C. Regs. tit. 5-E, § 3029.

**ISSUES AND RELIEF SOUGHT**

The issue for determination in this case, as certified in the February 8, 2022 Prehearing Order, is:

- Did DCPS deny the student a FAPE by failing to propose an appropriate IEP on or about January 10, 2022, which provided for Occupational Therapy (OT) services?

For relief in this case, the Petitioner requests that DCPS be ordered to amend Student’s IEP to provide for two forty-five minute sessions of OT related services per week, OT consult and a formalized typing program and keyboard instruction, as well as assistive technology. Petitioner also seeks an award of compensatory education for the denial of FAPE alleged in the complaint.

**FINDINGS OF FACT**

After considering all of the evidence received at the April 18 and 19, 2022 due process hearing in this case, as well as the argument of counsel, my findings of fact are as follows:

1. Student, an AGE adult student, resides with Mother in the District of Columbia. Testimony of Mother. Student has executed an educational decision-making power of attorney naming Mother as attorney-in-fact. Exhibit P-27.
2. Student is eligible for special education services under the IDEA disability

classification Other Health Impairment/Attention Deficit or Attention Deficit Hyperactivity Disorder (OHI-ADHD). Exhibit P-30. Student has had an IEP since 3<sup>rd</sup> Grade. Testimony of Mother. Student is currently in GRADE at NONPUBLIC SCHOOL, under a DCPS nonpublic placement. Exhibit P-30.

3. On December 31, 2020, Mother filed a prior due process complaint on behalf of Student (Case No. 2020-0222), in which she alleged, *inter alia*, that DCPS had denied Student a FAPE by failing to comprehensively evaluate him/her during the 2018-2019, 2019-2020 or 2020-2021 schools years. Exhibit P-25. The prior complaint was settled by the parties. The settlement agreement, executed on January 22, 2021, provided, *inter alia*, that DCPS would initiate a comprehensive psychological evaluation of Student; if after completing that assessment it was determined that Student required an OT or speech language evaluation, DCPS would initiate an OT evaluation and/or a speech language evaluation; and if it were determined that Student was eligible for speech language and/or OT services, DCPS would fund 60 hours of independent services to be used for either speech and language services and/or OT services at the Petitioner's discretion. Exhibit P-16.

4. On September 29, 2021, Private OT conducted an independent OT evaluation of Student on referral of Mother and Petitioner's Counsel. In her evaluation report, Private OT reported that Student had some foundational deficits that contributed to his/her challenges in school. Student's visual-perceptual skills were low for a student his/her age, making tasks like reading very challenging. Writing, copying,

and drawing were also made more challenging. Student also demonstrated difficulty in the area of balance and strength. Scores from the visual-motor integration (VMI) test indicated challenges with visual-motor integration. Evidence from the Behavior Rating Executive Functioning - 2 (BRIEF-2) rating scale, completed by Mother, suggested that Student had significant difficulty with organization, self-management and emotional control. Private OT recommended, *inter alia*, Student should receive OT services in two 45-minute sessions per week focused on improving Student's self-regulation and arousal. Additional intervention would be used to support Student's use of assistive technology. Private OT recommended that the occupational therapist should also focus on the organizational skills necessary to reach target goals, as well as help in the development of a strength and conditioning program. Exhibit P-12.

5. Private OT assessed Student in her office. She did not observe Student at school or conduct a classroom observation. Private OT did not speak with Student's teachers or other staff at Nonpublic School. Testimony of Private OT.

6. The IEE OT evaluation was submitted to DCPS on November 18, 2021. Exhibit R-14. On December 6, 2021, DCPS OT completed an IEE checklist assessment review of Private OT's assessment of Student. DCPS OT reported that additional information was needed, because, *inter alia*, the independent report did not include teacher interviews, classroom observations or a description of Student's performance in the current school environment. Exhibit R-10.

7. On December 9, 2021, DCPS OT completed a Independent Occupational

Therapy Assessment Review Report, reviewing Private OT's IEE evaluation of Student. In connection with the review report, DCPS OT conducted a classroom observation, a teacher interview and an interview of Mother and obtained a questionnaire response from Student's math teacher. In her review report, DCPS OT reported that, based on teacher interviews and classroom and clinical observations, Student had the necessary gross, fine, visual, and sensory motor skills needed to access his/her school classroom and environment. Exhibit R-9.

8. On January 10, 2022, DCPS convened an Analysis of Existing Data (AED) and IEP review meeting for Student. Mother, Petitioner's Counsel and Private OT participated in the meeting. One of the purposes of the meeting was to review Private OT's IEE evaluation of Student. DCPS OT reviewed Private OT's evaluation for the team. DCPS OT expressed that the independent OT evaluation was not a complete assessment because there was a lack of a classroom observation, school staff input, raw scores for certain assessments, and a review of classroom work samples. It was determined by the DCPS team members that Student was not eligible for OT services based on the OT IEE, DCPS OT's report and observations, school staff feedback, and other data. Petitioner disagreed with this determination and Mother's representatives stated that Student required direct OT services on his/her IEP. LEA Representative stated that DCPS OT would conduct an updated OT assessment upon obtaining signed consent from the parent, after which the IEP team would promptly reconvene to revisit the topic. Petitioner disagreed with this decision. Exhibit R-4, Testimony of LEA

Representative.

9. The January 10, 2022 IEP identified Mathematics, Reading, Written Expression and Emotion/Social/Behavioral Development as areas of concern for Student. For Special Education and Related Services, the IEP provided for Student to receive full-time, 31 hours per week, Specialized Instruction Services outside general education and 240 minutes per month of Behavioral Support Services. The IEP states that Student was currently being served at Nonpublic School, which includes: learning environment with 10 or fewer students, a Special Education Teacher, a school-based mental health service provider, and an instructional aide. Exhibit P-8.

10. On January 24, 2022, Mother provided written consent, by email, for DCPS OT to conduct an additional OT assessment of Student. Exhibit R-13.

11. Beginning February 2, 2022, DCPS OT conducted an OT reevaluation of Student. DCPS OT interviewed Student, Mother and teachers and staff from Nonpublic School. DCPS OT made classroom observations of Student at Nonpublic School on three dates. DCPS OT administered the Motor-Free Visual Perception Test – Fourth Edition (MVPT-4) and reviewed handwriting work samples and a sensory profile. Student refused to take handwriting and typing assessments. In her March 4, 2022 Comprehensive OT Evaluation report, DCPS OT wrote that Student presented with a repertoire of neuromuscular strengths, and with areas of need impacting his/her access to the education setting, including difficulties during near and far point copying tasks, with noted difficulties following writing conventions and copying with omissions which

impacted text context. She reported that Student was noted to avoid grade-based text and prolonged copying tasks, and noted delays in task initiation, planning, and execution. DCPS OT reported that Student required the direct 1:1 support of a familiar adult to tackle assigned academic tasks, and without this support did not initiate tasks and that Student's unfamiliarity with and reduced computer and keyboarding skills impacted his/her access to research and computer software features, including voice to text, text and writing applications. DCPS OT concluded that Student's difficulties with executive functioning, copying, keyboarding and use of computer-based applications were impacting his/her access to grade expected instruction. Exhibit R-12.

12. On March 21, 2022, DCPS convened an IEP team meeting for Student. Student was determined to need OT related services. Student's IEP was amended to provide annual goals for Motor Skills/Physical Development and OT related services. The March 21, 2022 amended IEP provided for Student to receive 180 minutes per month of OT services and 30 minutes per month of OT Consultation services. Exhibit P-30. Following the meeting, Petitioner's Counsel advised LEA Representative by email that the parent did not think that what DCPS was proposing for OT, in terms of hours or goals, was sufficient. On March 22, 2022, Petitioner's Counsel wrote that added goals should be addressed for keyboarding; organization; editing/proofreading; sensory/coping and independent production/spontaneous paragraph writing/note taking. Exhibit P-31.



**CONCLUSIONS OF LAW**

Based upon the above findings of fact and argument of counsel, as well as this hearing officer's own legal research, my conclusions of law are as follows:

**Burden of Proof**

As provided in the D.C. Special Education Student Rights Act of 2014, the party who filed for the due process hearing, the Petitioner in this case, shall bear the burden of production and the burden of persuasion, except that where there is a dispute about the appropriateness of the student's IEP or placement, or of the program or placement proposed by the local education agency, in this case DCPS, the agency shall hold the burden of persuasion on the appropriateness of the existing or proposed program or placement; provided that the Petitioner shall retain the burden of production and shall establish a *prima facie* case before the burden of persuasion falls on the agency. The burden of persuasion shall be met by a preponderance of the evidence. *See* D.C. Code § 38-2571.03(6).

**Analysis**

– Did DCPS deny the student a FAPE by failing to propose an appropriate IEP on or about January 10, 2022, which provided for Occupational Therapy (OT) services?

In this matter, the Petitioner contends that DCPS denied Student a FAPE by not providing OT related services in its January 10, 2022 annual IEP for Student. Private OT conducted an IEE OT evaluation of Student in September 2021. In her evaluation report, Private OT had recommended that Student be provided 45-minute OT sessions,

twice a week, as related services on his/her IEP. At the January 10, 2022 IEP meeting, DCPS OT stated that the Private OT's evaluation was not a complete assessment because there was a lack of a classroom observation, school staff input, raw scores for certain assessments, and a review of classroom work samples. The DCPS IEP team members determined that Student was not eligible for OT services, based on the OT IEE, DCPS OT's IEE review report and observations, school staff feedback, and other data. LEA Representative stated that DCPS OT would conduct an updated OT assessment upon obtaining signed consent from the parent, after which the IEP team would promptly reconvene to revisit the OT services topic. Mother and her representatives disagreed with this decision.

Subsequent to the January 10, 2022 meeting, DCPS OT conducted an OT reevaluation of Student and recommended that Student be provided 180 minutes per month of OT related services and 30 minutes per month of OT Consultation services. These OT services were added to Student's IEP on March 21, 2022. (The appropriateness of the March 21, 2022 IEP amendment is not at issue in this case.)

The issue for decision in this case is whether the omission of OT services for Student in the January 10, 2022 IEP made the IEP inappropriate. U.S. District Judge Rudolph Contreras explained in *Middleton v. District of Columbia*, 312 F. Supp. 3d 113 (D.D.C. 2018), how a court or a hearing officer must assess an IEP:

In reviewing a challenge under the IDEA, courts conduct a two-part inquiry: "First, has the State complied with the procedures set forth in the Act? And second, is the individualized educational program developed

through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206–07, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982) (footnotes omitted).

*Middleton* at 128. In *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 998 (2017), the U.S. Supreme Court elaborated on the standard, first enunciated in *Rowley*, for what constitutes an appropriate IEP under the IDEA:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Endrew F.*, 137 S.Ct. at 999. . . . The ‘reasonably calculated’ qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.* . . . Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.* (emphasis in original.) . . . The IEP must aim to enable the child to make progress. . . . [T]he essential function of an IEP is to set out a plan for pursuing academic and functional advancement. *Id.* . . . A focus on the particular child is at the core of the IDEA. The instruction offered must be “*pecially designed*” to meet a child’s “*unique needs*” through an “*individualized* education program.” An IEP is not a form document. It is constructed only after careful consideration of the child’s present levels of achievement, disability and potential for growth. *Id.* (emphasis in original.) . . . A reviewing court may fairly expect [school] authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.

*Endrew F.*, 137 S.Ct. at 1002. *See, also, Z. B. v. District of Columbia*, 888 F.3d 515 (D.C. Cir. 2018). The Petitioner made a *prima facie* showing in the case-in-chief that the January 10, 2022 IEP was inappropriate for want of OT services. Therefore, the burden of persuasion on the appropriateness of the IEP falls on DCPS.

In her closing argument at the due process hearing, Petitioner’s counsel

contended that at the January 10, 2022 IEP review meeting, the IEP team had enough information to determine that Student required OT services on his/her IEP and DCPS should not have insisted on conducting its own OT evaluation before adding those services. In effect, Petitioner is arguing that DCPS failed to comply with IDEA procedures by conducting an OT reevaluation. I disagree.

The IDEA requires that in reviewing an IEP, the IEP team must identify what additional data, if any, are needed to determine whether any additions or modifications to the special education and related services are needed. 20 U.S.C. § 1414(c)(1)(B)(iv). The IEP Team is expected to act in the best interest of the child. At any IEP team meeting, if additional information is needed to finalize an appropriate IEP, there is nothing in the IDEA that prevents an IEP team from reconvening after the needed information is obtained, as long as the IEP is developed in a timely manner. *See* Department of Education, *Assistance to States for the Education of Children with Disabilities*, 71 Fed. Reg. 46540 at -676 (August 14, 2006).

At the January 10, 2022 IEP team meeting, after conducting its review of existing data, the IEP team, over the objections of the Petitioner's representatives, determined that a new OT evaluation of Student was needed to determine whether Student required OT services in his/her IEP. At the due process hearing, DCPS showed a cogent and responsive reason for that decision. Student was already placed at Nonpublic School, a very restrictive setting with intensive services, which provided a learning environment with 10 or fewer students, a Special Education Teacher, a school-based mental health

service provider, and an instructional aide. Private OT had recommended OT related services for Student in her IEE evaluation. But even though Nonpublic School had reopened for in-person classes, Private OT did not go to the school to observe Student in the classroom and speak with any of Student's teachers about his/her OT needs. DCPS OT, as part of her review of Private OT's IEE assessment, determined that additional information was needed, because, *inter alia*, the independent report did not include teacher interviews, classroom observations or a description of Student's performance in the current school environment. I found DCPS OT to be a credible witness and her reason for reevaluating Student persuasive. I conclude that the January 10, 2022 IEP team appropriately determined that additional data were necessary to assess whether OT services were required to assist Student to benefit from special education. *See* 34 C.F.R. § 300.34(a).

I also find that the March 21, 2022 amendment to Student's IEP to add OT related services was timely. The parent provided written consent for DCPS to conduct an OT reevaluation of Student on January 24, 2022. DCPS OT issued her comprehensive OT reevaluation report on March 4, 2022. On March 21, 2022, DCPS reconvened Student's IEP team, which decided to add Motor Skills/Physical Development annual goals and OT services to Student's IEP. This lapse of some 8 weeks between obtaining Mother's consent to reevaluate Student and revising the IEP was a reasonable period of time. *See Herbin ex rel. Herbin v. District of Columbia*, 362 F.Supp.2d 254, 259 (D.D.C.2005) (Reevaluations should be conducted in a reasonable

period of time, or without undue delay, as determined in each individual case.) I conclude that the decision of the January 10, 2022 IEP team to obtain additional information before adding OT services to Student's IEP was not a procedural violation of the IDEA. It follows that the IEP team's decision to complete the January 10, 2022 IEP, without the provision of OT related services for Student, was appropriate. I find that DCPS has met its burden of persuasion that the January 10, 2022 IEP was reasonably calculated to enable Student to make progress appropriate in light of his/her circumstances. *See Andrew F., supra.*

**ORDER**

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

All relief requested by the Petitioner herein is denied.

Date: April 22, 2022

s/ Peter B. Vaden  
Peter B. Vaden, Hearing Officer

**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 U.S.C. § 1415(i).

Case No. 2022-0014  
Hearing Officer Determination  
April 22, 2022

cc: Counsel of Record  
Office of Dispute Resolution  
OSSE - SPED  
DCPS Resolution Team  
[REDACTED]@k12.dc.gov  
[REDACTED]@k12.dc.gov