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OSSE
Office of Dispute Resolution
December 25, 2023

Confidential

<p>District of Columbia Public Schools (“DCPS”) Local Educational Agency (“LEA”)</p> <p>Petitioner,</p> <p>v.</p> <p>Parent ¹</p> <p>Respondent.</p> <p>Case # 2023-0173</p> <p>Date Issued: December 25, 2023</p>	<p>HEARING OFFICER’S DETERMINATION</p> <p>Hearing Dates: December 18, 2023 December 19, 2023</p> <p>Counsel for Each Party listed in Appendix A</p> <p><u>Hearing Officer:</u> <u>Coles B. Ruff, Esq.</u></p>
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¹ Personally identifiable information is in the attached Appendices A & B.

JURISDICTION:

The hearing was conducted, and this decision was written, pursuant to the Individuals with Disabilities Act (“IDEA”), P.L. 101-476, as amended by P.L. 105-17 and the Individuals with Disabilities Education Improvement Act of 2004, the District of Columbia Code, Title 38 Subtitle VII, and the District of Columbia Municipal Regulations, Title 5 Chapter 5-A30.

BACKGROUND AND PROCEDURAL HISTORY:

The student who is the subject of this due process hearing (“Student”) resides with Student's parent in the District of Columbia, and the District of Columbia Public Schools (“DCPS”) is Student's local education agency (“LEA”). Student is age _____ and in grade _____.² Student has been found eligible to receive special education services with a disability classification of autism spectrum disorder (“ASD”) or autism. Student currently attends a DCPS school (“School A”).

A comprehensive occupational therapy (“OT”) reevaluation was conducted by a DCPS occupational therapist on December 9, 2022. The evaluation was completed and provided to Student’s parent (“Respondent” or “Parent”) on December 9, 2022, by email.

School A held a meeting to review the OT reevaluation and update Student’s individualized educational program (“IEP”) on April 27, 2023, with the multidisciplinary team (“MDT”) including Student’s mother, attorney and educational advocate.

In an email sent August 4, 2023, Parent, through counsel, expressed her disagreement with the December 9, 2022, OT evaluation because she believed it was not appropriate or comprehensive for several reasons, including no standardized fine motor skills testing, and no standardized visual perceptual testing. Parent, through counsel, requested an independent educational evaluation (“IEE”) at public expense.

Relief Sought:

DCPS requests an order finding that the OT evaluation DCPS completed is appropriate and that Parent is not entitled to an IEE at public expense.

Parent’s Response to DCPS’s Complaint:

Parent’s Counsel filed a response to the DPC on September 8, 2023. In her response, the Parent stated, inter alia, the following:

In May 2018, DCPS’ Early Stages conducted an OT evaluation of Student. DCPS did not conduct the legally required triennial OT evaluation of Student in 2021. There was an IEP meeting for Student on June 22, 2022, at which counsel for Parent raised the concern that Student was overdue for a triennial OT evaluation.

² The student’s current age and grade are indicated in Appendix B.

DCPS's June 22, 2022, prior written notice ("PWN"), issued after Student's IEP meeting stated, "The educational attorney also proposed that the student receive an Occupational Therapy Re-Eval [sic], but the IEP Team asserted that the best time to re-evaluate [Student] for Occupational Therapy would be the incoming fall." DCPS did not provide the consent to evaluate form for the required OT reevaluation to Parent until October 2022.

DCPS did not conduct a subsequent OT evaluation of Student until what it called a "Comprehensive Occupational Therapy Re-evaluation" with a report date of December 9, 2022, was completed over four years after the May 11, 2018, evaluation.

DCPS's 2022 OT evaluation report recommended that Student have "[a]ccess to assistive technology to support completion of written work." Yet, the Dec. 2022 OT evaluation did not assess Student in assistive technology, nor did it recommend a stand-alone assistive technology evaluation.

Resolution Meeting and Pre-Hearing Conference:

Because the DPC was filed by the LEA, there is no resolution period and no resolution session was required. The due process complaint ("DPC") was filed on September 8, 2023. The 45-day period began on September 8, 2023, and ended [and the Hearing Officer's Determination ("HOD") was originally due on October 16, 2023. Respondent's Counsel filed a motion to extend the HOD due date, which was granted. The HOD is now due on December 25, 2023.

The undersigned Hearing Officer ("Hearing Officer") convened a pre-hearing conference ("PHC") on October 11, 2023, and October 12, 2023, and issued a pre-hearing order ("PHO") on October 18, 2023, outlining, inter alia, the issue to be adjudicated.

ISSUE: ³

The issue adjudicated is:

Whether the OT evaluation that DCPS conducted of Student is appropriate such that Parent is not entitled to her requested IEE at public expense.

RELEVANT EVIDENCE CONSIDERED:

This Hearing Officer considered the testimony of the witnesses and the documents submitted in each party's disclosures (DCPS Petitioner's Exhibits 1 through 12 and Parent Respondent's Exhibits 11 through 23) that were admitted into the record and are listed in Appendix 2.⁴ The witnesses testifying on behalf of each party are listed in Appendix B.⁵

³ The Hearing Officer restated the issue at the hearing, and the parties agreed that this was the issue to be adjudicated.

⁴ Any item disclosed and not admitted, or admitted for limited purposes, was noted on the record and is noted in Appendix A.

⁵ Petitioner, DCPS, presented two witnesses qualified as experts: (1) Student's former Occupational Therapist who

FINDINGS OF FACT: ⁶

1. Student resides with Student's parent in the District of Columbia, and DCPS is Student's LEA. Student has been found eligible to receive special education services with a disability classification of ASD or autism. Student currently attends School A, a DCPS school.
2. On April 23, 2018, Early Stages conducted an OT reassessment when Student was age _____. The evaluation report was dated May 11, 2018. The reassessment included the following components:
 - Record Review: Developmental Evaluation (CNMC) – 12/23/16 & 4/25/17
 - Initial Occupational Therapy Assessment –10/20/17
 - ASQ – 9/14/17 & 4/07/18
 - Family Interview – 4/23/18
 - Interviews with Parent (Student did not have teachers at the time to interview)
 - Clinical Observations and Clinical Assessment
 - Analysis of Work Samples
 - Standardized/Non-Standardized Testing
 - Peabody Developmental Motor Scales – 2nd Ed (PDMS-2) ⁷(Parent’s Exhibit 1-2)

3. Student’s Fine motor skills were evaluated using the PDMS-2. Student had the follows scores:

Subtests	*Standard Score	Description
Grasping	7	Below Average
Visual-Motor Integration	6	Below Average
Fine Motor Quotient	79	Poor

PDMS-2

*Subtest Standard Score Average: 8-12

** Fine Motor Quotient Average: 90 - 110

(DCPS Exhibit 1-4)

conducted the evaluation at issue, and (2) Student’s Special Education Teacher. Respondent, Parent, presented two witnesses: (1) Student’s parent and (2) an independent Occupational Therapist who testified an expert. The IHO found the witnesses credible unless otherwise noted in the conclusions of law. Any material inconsistencies in the testimony of witnesses that the Hearing Officer found are addressed in the conclusions of law.

⁶ The evidence (documentary and/or testimony) that is the source of the Findings of Fact (“FOF”) is noted within a parenthesis following the finding. A document is noted by the exhibit number. The second number following the exhibit number denotes the page of the exhibit from which the fact was extracted. When citing an exhibit that has been submitted by more than one party separately, the Hearing Officer may only cite one party’s exhibit.

⁷ The instrument measures gross and fine motor skills from birth through 5 years of age. Two of the six subtests assess fine motor development, specifically Grasping (the ability to hold an object with finger control) and Visual-Motor Integration (the ability to coordinate the eyes and hands to complete a task). Scores from these subtests yield a Fine Motor Quotient (Composite Score) of overall fine motor skills.

4. The reassessment contained the following validity statement:
The assessment methods utilized were valid for assessing Student's neuromotor and musculoskeletal status, fine motor skills, and the ability to generally process sensory information. The selected test was also valid based on Student's age, and administered, scored and interpreted consistent with the test instructions. Student did not show signs of eye strain, discomfort or difficulty seeing during testing, yet ■ failed the vision screening while wearing newly prescribed glasses. Since this evaluator did not observe a clear functional impact of the screening results, it appears that the PDMS results are an accurate representation of Student's abilities.
(DCPS Exhibit 1-5)

5. The reassessment noted that Student had the following strengths:
 1. Muscle tone, ROM, strength, and postural control are within functional/normal limits
 2. Demonstrates a right-hand preference for crayon use (non-fisted grasp)
 3. Demonstrates functional grasping patterns (modified pincer, tripod) to handle small manipulatives
 4. Effective bimanual skills for basic object stabilization
 5. Developing basic self-help skills with adult support(DCPS Exhibit 1-5)

6. The reassessment noted the following growth areas for Student: Developing fine motor skills to effectively use classroom materials (containers, scissors, drawing/art supplies, etc.) (DCPS Exhibit 1-5)

7. The reassessment noted the following impact on Student's Learning and Participation: Student presented with mildly delayed fine motor skills affecting Student's ability to coordinate both hands for cutting, opening containers, and guiding a writing instrument. As a result, Student's current level of performance may hinder Student's ability to fully access and participate in learning opportunities in the school environment. (DCPS Exhibit 1-5)

8. The reassessment noted the following recommendations for Student's educational staff:

Introduce short, thick crayons and position Student's hand to hold the crayon between the pads of 2 or 3 fingers keeping the other fingers tucked into his/her palm. Be sure that the space between the thumb and index finger remains open like a square. Encourage tracing, imitating and copying pre-writing forms during artwork using varied materials (crayon, chalk, finger paint, sand, painting with brushes or craft sticks). Pre-writing forms include straight lines, a circle, cross and a square. Guide Student to place 3-4 fingers in the loops of scissors keeping the fingers bent and close together. Practice endurance and instrument control by cutting across an index card or 5" x 7" piece of construction paper progressing to cutting on a bold 5" line. It's best to learn to cut using thick textures before trying thinner paper. (DCPS Exhibit 1-5)

9. On November 3, 2021, School A developed an IEP for Student that the following services: 2.5 hours of specialized instruction in general education and the following related services: 60 minutes per month of behavior support services (“BSS”) inside general education and the following all outside general education: 60 minutes per month of BSS, 180 minutes per month of speech-language pathology (“SLP”) and 120 minutes per month of OT. (DCPS Exhibit 4A)
10. On June 22, 2022, School A convened an annual IEP review meeting. The IEP team amended Student’s IEP to increase Student’s specialized instruction to 7 hours per week in general education and 8 hours per week outside general education. The related services remained the same. (DCPS Exhibit 4B)
11. School A issued a PWN following the June 22, 2022, meeting that noted the changes to Student’s specialized instruction and noted the following regarding OT:

Parent’s attorney also proposed that the student receive an OT reevaluation, but the IEP team asserted that the best time to re-evaluate Student for OT would be the incoming fall, as Student would test best in person and with a familiar person.
(Parent’s Exhibit 4-1)
12. On October 31, 2022, School A convened an IEP review meeting. Student’s parent participated in the meeting along with her attorney and educational advocate. The resulting IEP maintained Student’s specialized instruction and related services at the same level as Student’s previous IEP. (DCPS Exhibit 5)
13. The meeting notes from the October 31, 2022, IEP meeting reflect the following discussion regarding OT:

Student’s occupational therapist (“OT provider”) reviewed OT goals. Reviewed that Student is receiving 120 minutes / month to address visual motor skills for writing name & copying from near and far point. OT provider proceeded to review present levels, while sharing specific examples from sessions. Reverse letters J & Z. Student can copy one letter per visual fixation, Student copies one letter & then looks at the board, then goes back and forth. Presents with a low arousal level during sessions, benefits from more time to complete activities. Benefits from additional wait time. Indications that Student may have challenges with executive functioning. Advocate asked how Student is doing with lines on paper. Special education teacher responded with observations from the classroom and from her sessions, sharing that it is no longer an issue. Advocate asked if the team has writing samples & teacher stepped out of the meeting to retrieve writing samples. Parent’s attorney asked about “frequent” vs. “sometimes” with reversals & clarification on how often that occurs. OT provider shared observations from her sessions, indicating that it happens often. Teacher shared that specific reversals are no longer present (b vs d), but that she does still observe reversals for letter OT provider shared that the letter J is often backwards. Parent echoed this, sharing that when Student writes Student’s name, it is often backwards. Teacher shared that visual word formation area is not fully developed & that this is common to observe prior to the end of _____grade. Teacher shared that there

should be a dwindling down of letter reversals & that this has been observed from Student. The team expressed they will continue to work on this. Advocate asked to update Student's baseline to include the letters that are still reversals. OT provider shared that she plans to update goals following evaluation and that goals will be updated based on the results of evaluation.

(DCPS Exhibit 5A-2)

14. On November 16, 2022, School A issued a PWN noting that Student's IEP had been updated and noting the following about OT:

Student will be reevaluated by the School occupational therapist to see if Student is eligible to continue receiving occupational therapy services. The educational attorney also requested that Student receive more specialized instruction hours. The data that the educational attorney presented to request more hours was the beginning of year data collected from September 13, 2022, to September 16, 2022, which was the third week of SY 2022-2023. However, as the school team increased Student's hours from 5 hours per week to 15 hours per week on June 22, 2022, during the end of SY 2022-2023, the team determined that there was not sufficient data to warrant Student receiving more hours.

(DCPS Exhibit 5B-1)

15. DCPS conducted an OT reevaluation on December 9, 2022. The evaluation was conducted by the occupational therapist ("evaluator") who was at School A at the time of the evaluation and providing Student OT services prescribed by Student IEP. The evaluation report notes that Student was referred for comprehensive occupational therapy reevaluation by the IEP team to determine if Student continues to qualify for OT services and that Student's 2018 Early Stages evaluation did not provide an accurate representation of Student's current skills and/or occupational therapy needs. (Witness 1's testimony, DCPS Exhibit 9)

16. The evaluation included a review of records, teacher interview, clinical observations, analysis of work samples/handwriting and standardized formal assessments including the Sensory Processing Measure, 2nd Edition (SPM-2),⁸ the Behavior Rating Inventory of Executive Function, 2nd Edition (BRIEF-2),⁹ and , the Test of Visual-Motor Skills, 3rd edition (TVMS-3).¹⁰ On November 9, 2023, the evaluator conducted an informal review

⁸ The SPM-2 is a subjective questionnaire appropriate for students K through age 6 that evaluates the frequency of a child's responses to various sensory experiences. Sensory Processing is the ability to organize and interpret information from the environment to produce an appropriate response and interact within the environment. The SPM-2 measures sensory processing in 7 areas and yields an overall score of a child's sensory processing ability.

⁹ The BRIEF-2 is a set of questionnaires for parents, teachers, and now older students (ages 11-18), designed to evaluate executive function from multiple perspectives.

¹⁰ The TVMS-3 is an accurate assessment of visual-motor skills that may be administered to individuals or small groups. These skills (eye-hand coordination and, specifically, copying) are utilized in common academic and everyday activities. The TVMS-3 is untimed and requires the examinee to copy 2 practice designs and 39 target designs that remain in sight; it is not a memory-based copying task. The designs are presented in developmental order of increasing difficulty and complexity.

of Student's handwriting administering the Shore Handwriting Screening for Early Handwriting Development on November 9, 2022. The evaluator collected another handwriting sample during Student's occupational therapy session on December 6, 2022. (Witness 1's testimony, DCPS Exhibit 9)

17. The evaluation report included a description of Student's behavior during the standardized testing:

Testing Behavior: Student was tested in the occupational and speech therapy room which is a familiar environment. The environment was free of distractions. The table and chair were the appropriate size for Student. Student completed the TVMS-3 and a handwriting screening across one day. Student was polite and participated in all parts of the assessment. Notably, Student was observed to become frustrated due to difficulty recalling the letters of the alphabet during the handwriting screening. Student wrote the uppercase letters but did not write the lowercase letters due to fatigue and frustration. Student then asked to return to class. Overall, Student put forth Student's best effort during testing. It should not go unnoticed that during testing, Student was observed to squint during visual motor tasks as Student did not have access to his/her glasses. Student was tested in the occupational and speech therapy room which is a familiar environment. The environment was free of distractions. The table and chair were the appropriate size for Student. Student completed the TVMS-3 and a handwriting screening across one day. Student was polite and participated in all parts of the assessment. Notably, Student was observed to become frustrated due to difficulty recalling the letters of the alphabet during the handwriting screening. Student wrote the uppercase letters but did not write the lowercase letters due to fatigue and frustration. Student then asked to return to class. Overall, Student put forth Student's best effort during testing. It should not go unnoticed that during testing, Student was observed to squint during visual motor tasks as Student did not have access to his/her glasses. (Witness 1's testimony, DCPS Exhibit 9)

18. The evaluation report included the following validity statement:

The evaluation procedures performed included standardized assessment tools, observations, interviews, and a review of Student's records. All testing was performed in English, Student's native language. Testing was administered by a licensed occupational therapist. Notably, Student is prescribed glasses for astigmatism. However, Student did not have access to glasses during the evaluation process. This may have implications on Student's performance with handwriting and the Test of Visual Motor Skills, 3rd Edition. However, the results of the Sensory Processing Measure, 2nd edition and Behavior Rating Inventory of Executive Function, 2nd Edition are felt to be a true representation of Student's skills and/or classroom performance. (Witness 1's testimony, DCPS Exhibit 9)

19. The evaluation included clinical observations of Student and analysis of the following areas: Student's neuromotor/muscular skills, postural control, muscle strength, range of motion, motor planning, fine motor skills, bilateral coordination skills, ocular motor skills,

visual motor integration (VMI) skills, visual perceptual skills, handwriting, sensory process, and activity of daily living. (Witness 1's testimony, DCPS Exhibit 9)

20. The evaluation report also included a statement about equipment and assistive technology considerations. The statement notes that Student has access to an iPad and headphones in the classroom to complete lessons and that Student may benefit from the use of assistive technology to support Student's delays in reading and writing. (DCPS Exhibit 9)
21. The evaluation report has a summary of the evaluator's findings, a statement regarding the impacts on Student's learning and participation, and lastly a list of recommendations for Student's educators and for Student's home. The evaluation report notes that it will be reviewed by the MDT to determine Student's need for OT as a related service within the educational curriculum. (DCPS Exhibit 9)
22. On April 27, 2023, School A convened a meeting to review the OT reevaluation and update Student's IEP. Student's mother, attorney, and educational advocate participated in the meeting. (Respondent's Exhibit 6)
23. August 4, 2023, Parent, through counsel, expressed her disagreement with the December 9, 2022, OT evaluation because she believed "it was not appropriate or comprehensive for several reasons, including, but not limited to the following: despite historical and reported fine motor concerns, the evaluation did not include standardized fine motor skills testing, and due to [Student's] challenges such as visual motor integration and reversals, standardized visual perceptual testing should have been administered, but was not." Parent, through counsel, requested an IEE at public expense because she did not believe it was a comprehensive evaluation. (DCPS Exhibit 12-2)

CONCLUSIONS OF LAW:

Pursuant to IDEA §1415 (f)(3)(E)(i) a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education ("FAPE").

Pursuant to IDEA §1415 (f)(3)(E)(ii) in matters alleging a procedural violation a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding provision of FAPE, or caused the child a deprivation of educational benefits. An IDEA claim is viable only if [DCPS'] procedural violations affected the student's substantive rights." *Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006)

34 C.F.R. § 300.17 provides:

A free appropriate public education or FAPE means special education and related services that--
(a) Are provided at public expense, under public supervision and direction, and without charge;
(b) Meet the standards of the SEA, including the requirements of this part; (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved;

and (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Sec. 300.320 through 300.324

Pursuant to 5E DCMR 3030.14 the burden of proof is the responsibility of the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). In this case, Petitioner, DCPS, held burden of persuasion on the issue adjudicated.

ISSUE: Whether the OT evaluation that DCPS conducted of Student is appropriate such that Parent is not entitled to her requested IEE at public expense.

Conclusion: DCPS sustained the burden of persuasion by a preponderance of the evidence that its December 9, 2022, OT evaluation of Student was appropriate, and Parent is therefore not entitled to an IEE at public expense.

Pursuant to 34 C.F.R. § 300.304 (c) a school district must ensure that a student has been appropriately evaluated in all areas of suspected disability. D.C. law requires that "a full and individual evaluation is conducted for each child being considered for special education and related services."

The evaluators shall utilize "a variety of assessment tools and strategies [to] gather relevant functional and developmental information about the child, including information provided by the parent, and information related to enabling the child to be involved in and progress in the general curriculum ... that may assist in determining whether the child is a child with a disability." D.C. Mun. Regs. Title 5A § 3006.7(a).

All areas "related to the suspected disability" should be assessed, including academic performance, health, vision, hearing, social and emotional status, general intelligence (including cognitive ability and adaptive behavior), communicative status, and motor abilities. D.C. Mun. Regs. Title. 5E § 3005.9(g). The evaluations must be "sufficiently comprehensive to identify all of the child's special education and services needs." D.C. Mun. Regs. Title 5A § 3006.7(f).

The IDEA regulations provide parents with a limited right to obtain an independent educational evaluation at public expense. An independent evaluation is one "conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 C.F.R. § 300.502(a)(3)(i). The limited right arises only after the agency has procured an evaluation with which the parent "disagrees." 34 C.F.R. § 300.502(b).

The regulations limit the parent to one independent evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. *Id.* Once the parent expresses her disagreement, she may request an independent reevaluation at public expense, which the agency must either provide or, as DCPS has done in this case, file a due process complaint to establish that its evaluation is "appropriate." See 34 CFR § 300.502(b)(2). If the agency's evaluation is found to be appropriate, the parent may still obtain an independent evaluation at her own expense. 34 C.F.R. § 300.502(b)(3). See *South Kingstown School Committee v. Joanna S.*, 2014 WL 197859 (D.R.I. 2014).

Generally, when a child has been evaluated for special education eligibility and the appropriateness of the agency's evaluation is at issue, the hearing officer must consider whether the agency adequately gathered functional, developmental and academic information about the child's needs to determine the content of the IEP in all areas of suspected disability and that the evaluation was sufficiently comprehensive to identify all of the child's needs. *20 U.S.C. §§ 1412(a)(6)(B), 1414(b)(1-3); 34 C.F.R. §300.304(b)(1-3), (c)(4, 6).*

Student's parent, Respondent, through counsel disagreed with DCPS's December 9, 2022, OT evaluation. In an email dated August 4, 2023, Respondent asserted that the evaluation was not appropriate or comprehensive because the evaluation did not include standardized fine motor skills testing and standardized visual perceptual testing.

Although Student's OT evaluation conducted in 2018 noted that fine motor skills was a deficit area for Student, this was not an area of concern that warranted standardized testing at time of the reevaluation. The DCPS OT evaluator credibly testified that the evaluation did not include fine motor skills standardized testing because the handwriting screening she administered showed that Student's fine motor skills supported Student's learning and participation and thus fine motor skills was not an area of concern. She also credibly testified that she administered a visual motor skills assessment, as this was an area concern. However, there was no concern with Student's visual perceptual skills, only visual motor skills. In her opinion a visual perceptual skill test did not need to be administered.

Student had two areas of concerns based upon the evaluator's classroom observation and teacher interview: letter reversals and poor spacing and inconsistent letter alignment and casing in Student's handwriting. Although the evaluator did not obtain feedback from Parent, she obtained feedback from Student's teacher as to Student's classroom functioning which was the primary concern of the evaluation and Student's access to the general education curriculum. She credibly testified that the evaluation was valid and appropriately administered as noted in the evaluation report's validity statement and in the section regarding Student's testing behavior.

Petitioner, DCPS, put forth the credible testimony of the evaluating DCPS occupational therapist who cogently relayed her reasons and rational for choosing the assessments tools she chose. Based upon her assessment and the feedback provided from Student's teacher, the DCPS occupational therapist assessed Student's OT areas of concern with both formal and informal assessments and developed a report that was provided to and reviewed by Student's IEP team.

Although Respondent's expert witness testified that the evaluation should have included an AT assessment, this was not an area of concern that the OT evaluation was administered to assess. Parent's expert witness acknowledged that an AT consult would have been a recommendation to Student's IEP team and not an assessment conducted as a part of an OT evaluation.

Parent's expert witness testified that although she might have chosen different assessment tools, the assessment tools the DCPS occupational therapist chose were valid and reliable. The IHO found the DCPS occupational therapist's testimony more convincing than that of Parent's expert witness given that Parent's witness had never met, observed or assessed Student. She had never met Student's parent or spoken with anyone at DCPS about Student. And as noted, the areas raised

by Parent's witness as lacking assessment were not areas of concern raised by any team member or Student's teacher as areas of concern.

IDEA requires that evaluations "use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors." 20 U.S.C. § 1414(b)(2)(C). Its implementing regulations provide only that students be "assessed in all areas related to the suspected disability" and that such evaluations use "[a] variety of assessment tools and strategies ... to gather relevant functional and developmental information about the child [...] that may assist in determining -- [t]he content of the child's IEP." 34 C.F.R. § 300.304(b)(1), (c)(4). *Sylvia HILL et al., v. District of Columbia*, August 26, 2016 68 IDELR 133 citing *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 250 (3d Cir. 2012) (finding that evaluations "should be tailored to the specific problems a potentially disabled student is having" but not "designed to identify and diagnose every possible disability").

DCPS adequately gathered functional, developmental, and academic information about Student's needs to determine the content of Student's IEP in all areas of suspected disability and the OT evaluation was sufficiently comprehensive to identify all of Student's needs. Based on the evidence adduced, the Hearing Officer concludes that DCPS' December 9, 2022, OT evaluation meets the threshold for a valid and appropriate evaluation for the purpose for which it was conducted and that the DCPS occupational therapist followed the requirements of the IDEA Regulations, 34 CFR § 300.304. Therefore, the Parent is not entitled to an IEE at DCPS's expense.

ORDER:

DCPS's December 9, 2022, occupational therapy evaluation of Student is hereby determined to be appropriate and DCPS is, therefore, not required to provide Parent an IEE pursuant to 34 C.F.R. 300.502.

APPEAL PROCESS:

The decision issued by the Hearing Officer is final, except that any party aggrieved by the findings and decision of the Hearing Officer shall have ninety (90) days from the date of the decision of the Hearing Officer to file a civil action with respect to the issues presented at the due process hearing in a District Court of the United States or a District of Columbia court of competent jurisdiction, as provided in 20 U.S.C. §1415(i)(2).

/S/ *Coles B. Ruff*

Coles B. Ruff, Esq.
Impartial Hearing Officer
Date: December 25, 2023