

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Dispute Resolution  
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<b>Parent,</b> <sup>1</sup>	)	
<b>Through Student,</b>	)	<b>Room: 2006</b>
	)	<b>HOD Date: November 15, 2015</b>
<b>Petitioner,</b>	)	<b>Date Issued: November 15, 2015</b>
	)	<b>Case No.: 2015-0292</b>
<b>v.</b>	)	<b>Hearing Date: November 9, 2015</b>
	)	<b>Hearing Officer: Michael Lazan</b>
	)	
<b>District of Columbia Public Schools,</b>	)	
	)	
<b>Respondent.</b>	)	

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**HEARING OFFICER DETERMINATION**

**I. Introduction**

This is a case involving a [REDACTED] year old student who is eligible for services as a student with a Specific Learning Disability. (“the Student”)

A Due Process Complaint (“Complaint”) was received by District of Columbia Public Schools (“DCPS” or “Respondent”) pursuant to the Individuals with Disabilities Education Act (“IDEA”) on September 1, 2015 in regard to the Student. On September 11, 2015, Respondent filed a response. A resolution meeting was held on September 10, 2015. The resolution period expired on October 1, 2015.

**II. Subject Matter Jurisdiction**

This due process hearing was held, and a decision in this matter is being rendered, pursuant to the Individuals with Disabilities Improvement Act (“IDEIA”), 20 U.S.C.

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<sup>1</sup>Personally identifiable information is attached as Appendix A and must be removed prior to public distribution.

Sect. 1400 et seq., its implementing regulations, 34 C.F.R. Sect. 300 et seq., Title 38 of the D.C. Code, Subtitle VII, Chapter 25, and the District of Columbia Municipal Regulations, Title 5-E, Chapter 30.

### **III. Procedural History**

On October 6, 2015, a prehearing conference was held. Domiento Hill, Esq., counsel for Petitioner, appeared. Daniel McCall, Esq., counsel for Respondent, appeared.

A prehearing conference order issued on October 9, 2015 summarizing the rules to be applied in this hearing and identifying the issues in the case.

On November 9, 2015, the hearing was held. This was a closed proceeding. Petitioner was represented by Domiento Hill, Esq. Respondent was represented by Daniel McCall, Esq. Petitioner moved into evidence Exhibits 1-13. There were no objections. Exhibits 1-13 were admitted. Respondent moved into evidence Exhibits 1-18. There were no objections. Exhibits 1-18 were admitted.

Petitioner presented as witnesses: the Parent; Witness D, an educational advocate; Witness A, an occupational therapist (expert: IEP development with respect to occupational therapy). Respondent presented Witness B, an occupational therapist; and Witness D, the LEA representative for School A.

### **IV. Credibility**

I found the testimony of all witnesses to be credible in this proceeding, though I did find Witness A's occupational therapy assessment to be overreaching in its scope since, for instance, it addressed such extraneous issues as the Student's ability to generate writing ideas.

## **V. Issues**

As identified in the Prehearing Conference Summary and Order and in the Due Process Complaint, the issues to be determined are as follows:

1. Did DCPS fail to adequately consider the independent occupational therapy assessment from June, 2015 by 1) failing to have an IEP meeting and 2) failing to change the existing IEP to reflect the recommendations in the assessment? If so, did DCPS violate 34 CFR Sect. 300.305(a)(1)(i) and 300.304(b)(1)? If so, did DCPS deny the Student a FAPE?

2. Did DCPS fail to conduct an assistive technology assessment for the Student after the parental request at the resolution meeting on August 15, 2015? If so, did DCPS fail to assess the Student in all areas of suspected disability and thereby violate 34 CFR Sect. 300.304(c)(4)? If so, did DCPS deny the Student a FAPE?

Issue #2 in the prehearing order was withdrawn before the testimony at the hearing, on the record.

As relief, Petitioner seeks compensatory education in the form of direct occupational therapy services (15-20 hours), an assistive technology assessment, and an amendment to the IEP reflecting the recommendations in the June, 2015 occupational therapy evaluation.

## **VI. Findings of Fact**

1. The Student is a [REDACTED] year old who is eligible for services as a student with a Specific Learning Disability. He has been receiving special education services since elementary school. (Testimony of Petitioner; Testimony of Witness C)

2. He is currently performing on or about the 4<sup>th</sup> grade level in mathematics. In math, he has difficulty recalling basic facts, regrouping, and converting fractions to decimals. He is currently reading on or about the 8<sup>th</sup> grade level, though his letter word recognition is at about the 11<sup>th</sup> grade level. His writing skills are poor. He is able to write simple sentences, but there are deficits in broad written language, written expression, writing topic sentences, writing fluency, and word choices. (P-4-5-10)

3. He has attended School A for the 2014-2015 and 2015-2016 school years, and is currently a varsity football player. At School A, he has had issues with memory. He has trouble with remembering such basic details as the combination to his school locker. He also has difficulty breaking down what it is he is supposed to do on a given task and on timed assignments. He is not progressing as much as his teachers want, but is responding positively to redirection from teachers to get back on task. (Testimony of Witness A; Testimony of Petitioner; P-4-10; P-12-1-2)

4. He has particular difficulty with organization of materials. Petitioner has noticed this when trying to do homework with him. When she reviews his homework notes, she cannot understand what he wrote down for assignments. The Student has had difficulty understanding what he wrote down also. To address his organizational issues, the Student has met with his social worker regularly. (Testimony of Petitioner; Testimony of Witness C)

5. An IEP meeting was conducted for the Student on May 21, 2015. The IEP team included the parent, Witness B (an occupational therapist), and the Student's Social Worker. The team reviewed a comprehensive psychological assessment and an occupational therapy assessment, and discussed the Student's academic challenges. It

was reported to the team that the Student had difficulty keeping track of assignments. There was also discussion of his difficulty with math, his struggles with telling time, and his ability to count money. At the meeting, the parent's advocate, Witness D, requested that an occupational therapy assessment be done, but DCPS declined, feeling such an assessment was not warranted. (Testimony of Witness D; P-4-2)

6. The resultant IEP contained math goals, reading goals, writing goals, emotional, social, and behavioral goals, and motor skills/physical development goals. It recommended ten hours per week of specialized instruction inside general education, and 2.5 hours per week of specialized instruction outside general education. It also recommended behavioral support services for sixty minutes per month. (P-4)

7. After the meeting, on June 14, 2015, DCPS was provided with an occupational therapy assessment written by Witness A. This assessment defined occupational therapy as "meaningful activities to help people achieve functionality in everyday life tasks." The assessment characterized the occupational therapist's mandate as "the consideration of the entire young person" including their "cognitive, physical, spiritual and emotional health, what matters to them, and what is expected of them and what environments help them thrive." (P-6-2)

8. To write this assessment, Witness A conducted a student interview, a teacher interview, and a student interview. She also reviewed a report card, a 2014 occupational therapy evaluation from DCPS, and a 2015 psychological evaluation. She did not conduct an observation of the Student. Testing was conducted on the Beery-Buktenica Developmental Test of Visual Motor Integration and on the Test of Visual Perceptual Skills, 3<sup>rd</sup> Edition. (P-6)

9. The therapist concluded that the Student has poor motor coordination ability and struggles with motor planning. She also concluded that he has difficulties with self-confidence, self-concept, visual motor integration, visual memory, “form constancy,” “figure ground,” spatial relationships, sequential memory, and “visual closure skills.” She concluded that these difficulties cause him difficulty in managing school materials, using his locker, recalling his locker combination, planning a course of action to carry out assignments, ignoring information that is not important, using strategies to reduce feeling overwhelmed, and being able to generate original ideas in writing. (P-6-13)

10. She recommended occupational therapy that focuses on “functional visual memory.” She also recommended a speech and language evaluation, a system to help with his memory, that he be allowed to listen to instrumental music while working or be provided with noise cancelling headphones to support his focus, that his teachers should check in on him daily, that he should be encouraged to participate and contribute to any team meetings about him, that he receive counseling after school, that he receive an adult mentor, that he have an eye exam to rule out the need for corrective lenses, that he have a visual checklist to break down tasks, that his workload be reduced, and that he have extended time to complete assignments. (P-6)

11. Another IEP meeting was held for the Student on August 10, 2015. This meeting doubled as a resolution meeting for a previous Due Process Complaint. Again, at this meeting, the parent talked about the Student’s frustration with organization. She reported that his assignments were written down in ways that were incomplete. The parent complained about the school’s homework communication system, whereby the

Student's teachers compile a list of missed assignments and then leave those assignments for the parent to review every Friday. The advocate suggested that the school let the Student use a phone to keep track of his assignments, to which DCPS responded in the negative. However, at the meeting, DCPS agreed to let him use an iPad tablet at school for organizational purposes and committed to performing an assistive technology assessment. First, however, they wanted to monitor his usage of the iPad. They also committed to conducting an observation of the Student. The parent agreed with this approach. (Testimony of Witness C; Testimony of Witness D; P-11-2; P-5; P-9-1-2)

12. Also at the August meeting, DCPS representatives concluded that the occupational therapy assessment of Witness A was "valid" but discrepant with a previous DCPS occupational therapy assessment that was conducted on November 18, 2014 by Witness B. They noted that Witness A's assessment made speech and language recommendations even though Witness A was not a speech and language pathologist, and that there was no finding of any motor coordination issues in previous assessments. They also noted that the Student is a football player who should have scored better in certain areas given his physical abilities. (P-11-2; P-5)

13. On September 3, 2015, Witness B conducted an occupational therapy observation report of the Student. She found that the Student had age appropriate motor skills but had issues implementing his organizational strategies. Witness B did not recommend occupational therapy, however, since she felt that issues relating to organization are not issues that are dealt with by an occupational therapist. Witness B felt that, typically, planning out assignments is something that a teacher or a co-teacher or a social worker works on. She pointed out that he had strengths in fine motor

coordination, upper limb coordination, and visual motor skills and recommended such interventions as checks of his desk/binder, use of a monthly assignment calendar, providing bins and/or organizing trays for materials, and color coding of books and important notices. (Testimony of Witness B; R-8)

14. There was an MDT meeting for the Student on October 30, 2015, during which occupational therapy was not really discussed. The parent said the Student had continued difficulty copy assignments, and it was reported that the Student was not allowed to bring his iPad into the building at School A after the first few attempts. Additionally, DCPS promised to add “occupational therapy consult” to the Student’s IEP. Finally, DCPS agreed to conduct an assistive technology assessment without any preconditions. (Testimony of Witness D; P-103; R-14-2)

## **VII. 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 burden of proof in a special education due process hearing lies with the party seeking relief. 5-E DCMR 3030.3; Schaffer v. Weast, 546 U.S. 49 (2005).

The central purpose of the IDEA is to ensure that all children with disabilities have available to them special education and related services designed to meet their unique needs and provided in conformance with a written IEP (i.e., free and appropriate public education, or “FAPE”). 20 U.S.C. Sects. 1400(d)(1)(A), 1401(9)(D), 1414(d); 34 C.F.R. Sects. 300.17(d), 300.320; Shaffer v. Weast, 546 U.S. 49, 51 (2005).

Pursuant to the Supreme Court's decision in Board of Education of the Hendrick

Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176, (1982), the IEP must, at a minimum, “provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction.” Branham v. District of Columbia, 427 F.3d 7 (D.C. Cir. 2005).

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 CFR Sect. 300.513(a).

**1. Did DCPS fail to adequately consider the independent occupational therapy assessment from June, 2015 by 1) failing to have an IEP meeting and 2) failing to change the existing IEP to reflect the recommendations in the assessment? If so, did DCPS violate 34 CFR Sect. 300.305(a)(1)(i) and 300.304(b)(1)? If so, did DCPS deny the Student a FAPE?**

Petitioner alleged that DCPS failed to conduct an IEP meeting after receiving the Witness A assessment. Petitioner contended further that DCPS failed to incorporate the recommendations of the assessment on the Student’s IEP.

As part of any reevaluation, the IEP Team must review existing evaluation data on the child, including evaluations and information provided by the parents of the child; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. 34 CFR Sect. 300.305(a)(1). The IEP must use a variety of assessment tools in evaluating a student. 34 CFR Sect. 300.304(b)(1).

Witness A’s assessment was provided to DCPS on June 14, 2015, just a few weeks after DCPS had conducted an IEP meeting. Thereafter, on August 11, 2015,

DCPS *did* conduct an IEP meeting (which doubled as a resolution meeting). Attending the meeting were the parent (by phone), a special education teacher, an evaluator who was qualified to interpret Witness A's assessment results, an LEA school representative, a general education teacher, a social worker, and the parent's advocate, Witness D.

At the IEP meeting, DCPS reviewed Witness A's assessment, which discussed not only the Student's organizational issues but many of the Student's other issues in school including his issues with speech, vision, self-confidence, self-esteem and testing. DCPS did not agree with this assessment and ultimately did not make any corresponding changes to the IEP. There was nothing inappropriate about DCPS's response. School districts are not required to agree with every assessment that is put forth before them. Cases hold that a good faith review of the assessment by the school district is enough to pass muster under the IDEA pursuant to 34 CFR Sect. 300.305(a)(1). See, e.g., M.Z. and M.Z. v. New York City Dep't of Educ., 2013 WL 1314992, @ \*8 (S.D.N.Y. March 21, 2013)(even where the parent's evaluator's assessment was *not* reviewed at the meeting but was reviewed by a team member prior to the meeting, no FAPE violation).

It is noted that DCPS did have an occupational therapist at the meeting who was qualified to review this assessment. While that therapist found the assessment to be "valid," she questioned the conclusions of the evaluation because, among other things, it offered conclusions on areas which are not clearly within the domain of an occupational therapist.<sup>2</sup> For instance, Witness A found that the Student he had an inability to generate

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<sup>2</sup> Occupational therapy means services provided by a qualified occupational therapist and includes:  
a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;  
b) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and  
c) preventing, through early intervention, initial or further impairment or loss of function. 34 CFR Sect. 300.34(c)(6).

ideas in writing. Counsel for DCPS also correctly noted that Witness A came to her many conclusions without ever having observed the Student in the classroom.

Moreover, after the meeting, DCPS conducted its own occupational therapy assessment which concluded that the Student's needs could be met by interventions by his teachers and not by an occupational therapist.

This claim has no merit and is dismissed.

**2. Did DCPS fail to conduct an assistive technology assessment for the Student after the parental request at the resolution meeting on August 15, 2015? If so, did DCPS fail to assess the Student in all areas of suspected disability and thereby violate 34 CFR Sect. 300.304(c)(4)? If so, did DCPS deny the Student a FAPE?**

Petitioner argued that DCPS did not conduct an assistive technology assessment after she requested it at the August, 2015 resolution meeting.

An LEA must assess a Student in all areas of suspected disability, including, "if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities." 34 CFR Sect. 300.304(c)(4). However, a parent may not *select* the assessments for a school district. The types of assessments to be employed in a reevaluation are within the reasonable discretion of the school district. Idea Public Charter School v. Belton, 2007 WL 2071668 (D.D.C. 2007); Mackey v. Board of Educ., 373 F. Supp.2d 292, 299 (S.D.N.Y. 2005).

At the IEP meeting in August, 2015, the parent raised the issue of whether the Student's issues with organization could be analyzed through an assistive technology assessment. The parent also suggested that the Student receive an iPad for organizational purposes, and mentioned that the Student might be more successful if he could use a phone to organize his assignments.

DCPS did not agree to provide the tablet or the assessment, but agreed to let the Student use his own iPad tablet<sup>3</sup> at school. DCPS then committed to performing an assistive technology assessment after the Student had used the iPad in school to address his organizational issues. At this meeting, DCPS did assess the Student's organizational issues by reviewing the assessment of Witness A with an occupational therapist. It is noted that, though Witness A's assessment contains fourteen different recommendations for the Student, Witness A did not recommend an assistive technology evaluation.

I find that, at the August meeting, DCPS did adequately assess the area of concern, *viz.*, the Student's organizational issues. DCPS then again assessed the Student's organizational issues with its own occupational therapy observation by Witness B just a few weeks later, on September 3, 2015.

Parenthetically, regulations providing that a parent may request an evaluation are inapposite to this claim. 34 C.F.R. Sect. 300.303; see also 5 DCMR Sect. 3005.7. An assistive technology *assessment* is not an *evaluation*. Additionally, the record shows that DCPS agreed to conduct an assistive technology assessment of the Student on October 30, 2015.

This claim is without merit and is dismissed.

### **VIII. Order**

As a result of the foregoing, this matter is hereby dismissed with prejudice.

Dated: November 15, 2015

*Michael Lazan*  
Impartial Hearing Officer

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<sup>3</sup> The record makes clear that School A unfortunately did not allow the Student to bring the tablet into school after the first few attempts. However, a claim relating to this issue was not raised in the Due Process Complaint, and this issue was not raised by Petitioner during the closing argument.

cc: Office of Dispute Resolution  
Parent's Representative: Domiento Hill, Esq.  
Respondent's Representative: Daniel McCall, Esq.  
OSSE Division of Specialized Education  
[Contact.resolution@dc.gov](mailto:Contact.resolution@dc.gov)  
Chief Hearing Officer

### **IX. Notice of Appeal Rights**

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 USC §1415(i).

Date: November 15, 2015

*Michael Lazan*  
Impartial Hearing Officer