

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER**

ALBUQUERQUE PUBLIC SCHOOLS,

Petitioner,

vs.

Case No. DPH 0910-37

PARENTS on behalf of CHILD,

Respondents.

**ABSTRACT OF DECISION OF THE DUE PROCESS HEARING OFFICER
Jane B. Yohalem, DPHO; August 16, 2010**

This due process proceeding was brought by the District pursuant to 20 U.S.C. §§ 1415(b)(1) and 1415(d)(2)(A) and 34 C.F.R. 300.502 in response to the Parents' request for an independent educational evaluation (IEE) at public expense. The law provides that, when an IEE is requested by a parent, the District must provide an independent evaluation at public expense unless the District promptly requests a due process hearing and establishes at that hearing that its evaluation is appropriate. *See* 34 C.F.R. § 300.502(b) (2006).

Whether an evaluation is "appropriate" under the IDEA depends on whether it complies with all of the Act's substantive and procedural requirements for conducting an evaluation, not just the five "[a]dditional requirements" listed in 20 U.S.C. § 1414(b)(3)(A) (2004), as contended by the District. The IDEA requires that, in conducting an evaluation, a district must "use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information" which may assist in determining "the content of the child's individualized education program." 20 U.S.C. §§ 1414(b)(2) and (b)(3)(C); 34 C.F.R. § 300.304(b)(1). In the case of a reevaluation, the reevaluation must assess the present levels of academic achievement and the related developmental needs of the child, and must assess whether any additions or modifications to the special education and related services of the child are need to enable the child to meet his IEP goals and to participate in the general education curriculum. 34 C.F.R. § 300.305(a)(2)(i)(B) and 300.305(a)(2)(iv); 20 U.S.C. §§ 1414(c)(1)(B).

The District failed to carry its burden of establishing by a preponderance of the evidence that Student's occupational therapy evaluation looked at Student's progress in all relevant areas and fully assessed whether, in light of Student's regression during the past year, modifications or additions to Student's OT services were needed. In addition, the District failed to carry its burden of demonstrating that the decision that movement breaks and other somatosensory OT techniques would not be helpful was made based on valid assessments and on data collected in the manner most likely to yield accurate information on Student's needs. For these reasons, the hearing officer concludes that the District failed to carry its burden of establishing that its occupational therapy evaluation was appropriate. 34 C.F.R. § 300.502(b)(2).