

DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
State Enforcement and Investigation Unit  
Office of Review and Compliance

**STUDENT HEARING OFFICE**  
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**CONFIDENTIAL**

In the Matter of:

STUDENT,

Petitioner,

v.

LOCAL EDUCATIONAL  
AGENCY,

Respondent.

Case No. (LSD)

**HEARING OFFICER  
DECISION**

2009 MAY 26 AM 10:00  
OSSE  
STUDENT HEARING OFFICE

**I. PROCEDURAL BACKGROUND**

Petitioner, by and through his parent, filed a due-process complaint on March 27, 2009. Petitioner waived the resolution session. Respondent untimely answered the complaint.

On May 15 and 22, 2009, I held a due-process hearing under the applicable sections of the Individuals with Disabilities Education Improvement Act of 2004 (*see* 34 C.F.R. §§ 300.1-300.718) and of the District of Columbia municipal regulations (*see* 5 DCMR §§ 2500-3033). At the hearing, both parties were represented by counsel. Petitioner entered into evidence, without objection, thirty documents marked P-1 to P-30. Three witnesses testified on Petitioner's behalf.

Respondent entered into evidence, without objection, twelve documents marked R-1 to R-12.

One witness testified on its behalf.<sup>1</sup>

## **II. ISSUES RAISED AND RELIEF SOUGHT**

In the due-process complaint, Petitioner alleged Respondent denied him a free and appropriate education (“FAPE”) by failing to perform certain evaluations on him and inappropriately placing him at School A.<sup>2</sup> At the hearing, Petitioner clarified and put on evidence that his true issue was School A’s failure to implement his individualized educational program (“IEP”). For this lapse, Petitioner requests an award of compensatory education in the form of life-skills vocational training.

## **III. FINDINGS OF FACT**

Based on the witnesses’ testimony, the documentary evidence presented by the parties, the arguments made by counsel, and my own observations at the due-process hearing, I find:

1. Petitioner presents with a host of special needs. He attended School A during the first part of this school year.
2. While he attended School A, Petitioner’s IEP, dated November 5, 2008, called for him to receive 29.25 hours of specialized instruction from a special-education teacher. He also was to receive an additional 1.25 hours of psycho-social counseling and 1 hour of speech/language therapy. Throughout the 32 hours of specialized instruction and related services, his IEP required that he be attended to by a dedicated aide.
3. Some of the goals in Petitioner’s IEP include the following:

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<sup>1</sup> I excluded one of the witnesses Respondent sought to substitute, first, for School A’s Educational Director, then, as a substitute for School A’s Counselor. Petitioner objected to the witness because her name had not been disclosed prior to the five-day cutoff. I sustained the objection and excluded the witness.

<sup>2</sup> At the hearing, Petitioner clarified that School A was not an appropriate placement because it could not implement his IEP. Petitioner withdrew his claim for neurological and neuropsychological evaluations because Respondent agreed to fund them.

a. "When given letters of the alphabet, [Petitioner] will name each letter of the alphabet as each letter is presented to him in 4/5 trials.

b. "When asked to write his full name, [Petitioner] will read and write his first and last name with 100% accuracy."

c. "When given a traffic safety signal, [Petitioner] will read and obey the signal with 100% accuracy."

d. "When given money in dollars up to \$10.00, [Petitioner] will count the bills correctly in 4/5 trials."

e. "When given a phone and an emergency scenario, [Petitioner] will use the phone to dial the correct emergency response in 5/5 trials."

4. Petitioner's progress reports at School A for 2008-09 show he took Life Skills English, Vocabulary Development, Algebra 2, Chemistry, Life Skills History, Drama, and Vocational Training.

5. When I swore Petitioner in to testify, I asked him to raise his right hand. He raised his left. I, then, asked him to take an oath that his testimony would be based on personal knowledge. His confused response indicated to me that he did not understand my question.

6. Witness Two, Petitioner's mother, testified that her son cannot read and that she does not believe he could have earned the high grades he received while attending School A.

7. Witness Three, Petitioner's educational advocate, testified that she observed Petitioner in the classroom for at least one hour. She observed him in an English class in which the teacher was instructing the class on grammar. She also observed a Chemistry class. She testified that she inquired about the special-education certification of Petitioner's Chemistry teacher and dedicated aide. She was told by an unidentified person they were not special-

education certified. Witness Three, a former special-education teacher, recommended 150 hours of life-skill tutoring as compensatory education as a result of Petitioner not receiving specialized instruction from a special-education teacher.

8. Witness Four, Petitioner's teacher for English, Life Skills History, and Vocational Training, testified that Petitioner's grades reflect participation, not performance. He also testified that he is not special-education certified, but has taken two special education courses at the University of the District of Columbia.

#### **IV. CONCLUSIONS OF LAW**

Petitioner shoulders the burden of proof in this due-process proceeding, *see* 5 DCMR § 3030.3, and must carry it by a preponderance of the evidence. *See* 20 U.S.C. § 1415 (i)(2)(c). He has done that, demonstrating that he was denied a FAPE.

Petitioner's IEP is full-time. It calls specifically for his reading, math, life skills, and vocational training to be provided by "Special Education Teachers." Witness Four, Petitioner's teacher, testified he was not certified to teach special education. Yet, he taught Petitioner English (Petitioner had no Reading class), Life Skills History, and Vocational Training. He also said Petitioner's dedicated aide regularly worked with Petitioner on vocational skills. He did not know, however, whether the aide was certified to teach special education.

In the face of Petitioner's allegation that his teachers were not qualified to work with him, Respondent offered no evidence that any of the professionals who worked with Petitioner at School A were special-education certified.

The fact that Respondent failed to provide Petitioner with an educator trained to address his special needs alone is a substantive denial of FAPE. But more evidence points to the lack of educational benefit Petitioner was receiving at School A.

Petitioner's mother testified that her son cannot read; yet, was receiving A's and B's in school. This student, who must be taught to recognize letters accurately, cross the street on signal, and count the number of bills he has up to sat in an Algebra and Chemistry class for half a year. Witness Three testified that the English class she observed Petitioner in involved a lesson in grammar. Petitioner could not understand my request that he tell the truth or risk punishment. It is unlikely that he could benefit from a grammar class.

Petitioner, therefore, has demonstrated that Respondent failed to implement his IEP and denied him educational benefit.

Petitioner requests compensatory education based solely on the testimony of Witness Three. She recommends 150 hours of life-skills training but offered no explanation why that amount was appropriate given the weeks of special education Petitioner was denied. The documents also show Petitioner was absent from school several times. She offered no method to adjust for time out of school for which Petitioner was responsible.

Petitioner's requested life-skills training makes sense in light of the fact that he more likely than not received no benefit from Algebra and Chemistry. But Petitioner offered no specific program that indicated what he would be taught, who would teach it, and how long he would need to be in the program.

Because Petitioner failed to propose fact-specific relief that would compensate him for what he lost, I am not able to fashion an appropriate award. *See Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). Plaintiff has failed to meet his burden.

V. **ORDER**

It is this 25<sup>th</sup> day of March 2009—

**ORDERED** that this matter is DISMISSED, and it is further

**ORDERED** that this shall be a FINAL DECISION from which the parties have ninety days from today to file an appeal in a court of competent jurisdiction, and it is further

**ORDERED** that this matter is closed for all purposes.

A handwritten signature in black ink, appearing to read "Latif Doman". The signature is written in a cursive style with a large initial "L".

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Hearing Officer Latif Doman

Copies to: Counsel for the Parties  
Student Hearing Office