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Office of Review and Compliance

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CONFIDENTIAL

In the Matter of: STUDENT, Petitioner, v. LOCAL EDUCATIONAL AGENCY, Respondent.	Case No. (LSD) **HEARING OFFICER DECISION**

I. PROCEDURAL BACKGROUND

Petitioner, by and through her parents, filed a due-process complaint on January 14, 2009. Petitioner waived the resolution session. Fifteen days later, Respondent answered the complaint.

On February 13, 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, seven documents marked P-1 to P-7. Respondent entered into evidence, without objection, three documents marked R-1 to R-3.

II. ISSUES RAISED AND RELIEF SOUGHT

In the due-process complaint, Petitioner alleged Respondent denied her a free and appropriate education ("FAPE") by failing to reevaluate.

For this lapse, Petitioner requests that Respondent complete the reevaluation and that she be awarded appropriate compensatory education.

III. FINDINGS OF FACT

Based on the documentary evidence presented by the parties and the representations made by counsel, I find:

1. Petitioner is a -year old, multiple-disabled student who attends School A.

2. A multidisciplinary team met regarding Petitioner on November 5, 2008. At that meeting, Petitioner requested, and the team determined, that the student be reevaluated with cognitive psychological, speech and language, and psychiatric evaluations.

3. On January 12, 2009, Petitioner, through her attorney, wrote to Respondent requesting copies of the promised evaluations. Respondent did not respond to this letter.

4. At the hearing, the parties represented that the cognitive psychological and speech and language evaluations had been completed. But Respondent's counsel did not know whether the psychiatric evaluation had been completed or if it had been undertaken at all.

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).

Respondent, through a multidisciplinary team, agreed to evaluate Petitioner. That evaluation should have been completed within a reasonable time. The cognitive psychological and speech and language evaluations were undertaken, apparently, with dispatch. The psychiatric

evaluation, however, languished. Given the multidisciplinary team's expressed concern that Petitioner's reevaluation was needed to confirm her disability classification, *see* R–2 at 2, the delay in completing the last part of the test is inexplicable since that information was needed, presumably, to ensure the appropriateness of Petitioner's educational program.

At the time of the hearing, it was unclear what steps, if any, Respondent had taken to complete the remaining evaluation. It was clear, then, that, but for Petitioner filing a due-process complaint, the last evaluation would have remained in limbo, leaving Petitioner's parent without the necessary clinical assessments to make informed choices about their child's special-education program, placement, and related services.

The team's professed need, the unexplained delay, and the undemonstrated effort[1] to resolve that delay combine to cast doubt on the reasonableness of period of time Respondent has taken to reevaluate Petitioner and to significantly impede Petitioner's parents' decision-making regarding Petitioner. Accordingly, Petitioner met her burden and prevails on the single issue raised in the complaint.

V. ORDER

On the 13th day of February 2009, it was orally–

ORDERED that Respondent inform Petitioner on or before February 14, 2009, whether a psychiatric evaluation has been undertaken for Petitioner, and it is further

ORDERED that, if the psychiatric evaluation was not undertaken, Respondent fund an independent evaluation of Petitioner, and it is further

ORDERED that Respondent hold a multidisciplinary team meeting within ten days of receiving the results of Petitioner's evaluation, and it is further

[1] After the hearing, Respondent's counsel confirmed that no psychiatric evaluation had been undertaken on behalf of Petitioner.

ORDERED that this was 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.

Dated: March 21, 2009, *nunc pro tunc*

Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office