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CONFIDENTIAL

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

I. PROCEDURAL BACKGROUND

Petitioner, by and through his parent, filed a due-process complaint on February 4, 2009. Petitioner waived the resolution session. Fifteen days later, Respondent answered the complaint. Both parties failed to appear for a prehearing in this matter.

On March 9, 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, sixteen documents marked P-1 to P-16. Two witnesses, including Petitioner's mother, testified on his behalf. Respondent entered no documents into evidence and offered no witnesses and, instead, rested on the record established by Petitioner.

II. ISSUES RAISED AND RELIEF SOUGHT

In the due-process complaint, Petitioner alleged Respondent denied him a free and appropriate education by failing to complete a requested reevaluation.

For this lapse, Petitioner requests that Respondent complete his reevaluation and convene a multidisciplinary team to review and revise his individualized education program.

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 is a -year old, learning-disabled student attending School A.

2. On November 3, 2008, Petitioner's parent, through his attorney, requested Respondent reevaluate her son because she had concerns with his academic progress and reported bad behavior in school. So, she requested a comprehensive psychological evaluation, a speech and language evaluation, and a vocational assessment. *See* P–4.

3. On or about November 19, 2008, Petitioner was recommended for expulsion from School A because of an incident involving a teacher. *See* P–6.

4. It appears that Respondent had scheduled Petitioner for evaluation on November 21, 2008. That evaluation, however, was postponed because Petitioner was required to appear in court that same day. *See* P–6.

5. On January 12, 2009, Petitioner was comprehensively evaluated by order of the Superior Court of the District of Columbia. *See* P–14.

6. By the time of the hearing, Respondent had not scheduled and, thus, had not completed Petitioner's speech and language evaluation or vocational assessment.

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 is required to evaluate a student at the request of the student's parent. *See* 34 C.F.R. § 300.301. Respondent is not held to a standard of perfection in meeting its obligations under the Individuals with Disabilities Education Improvement Act. *See Kruvant v. District of Columbia,* 99 Fed. Appx. 232, 233 (D.C. Cir. 2004) (petitioner denied relief because, while respondent failed to timely assess petitioner, who could show no harm resulting from that error).

In the face of a procedural violation, a hearing officer may find Petitioner was denied a FAPE only if the violations impeded Petitioner's right to a FAPE, significantly impeded Petitioner's parent's opportunity to participate in the decision-making process regarding provision of a FAPE, or caused the child a deprivation of educational benefits. *See* 20 U.S.C. § 1415 (f)(3)(E)(ii); *see also Lesesne v. District of Columbia*, 447 F.3d 828, 834 (D.C. Cir. 2006) (technical violations must interfere with substantive rights).

Petitioner's parent testified that, on November 3, 2008, she requested that Respondent reevaluate her son because he was failing and not attending school. She stated that Respondent's failure to evaluate Petitioner impeded her decisions about his special-education needs.

Respondent attempted to evaluate Petitioner on November 21, 2009. But, because Petitioner had a court appearance scheduled that same day, the evaluation was postponed. The record does not reflect any other efforts by Respondent to schedule Petitioner for a comprehensive evaluation, a speech and language evaluation, or a vocational assessment.

Fortunately, Petitioner's court appearance resulted in him being comprehensively evaluated by the Child Guidance Clinic of the Family Court–Court Social Service Division of the

Superior Court of the District of Columbia. That evaluation did not include a speech and language evaluation or vocational assessment.

Witness One, a mental health counselor and Petitioner's educational advocate, testified that Petitioner exhibited a speech and language deficiency and required testing. He also stated that, because Petitioner would soon be graduating, he needed to be assessed to determine which vocation he might be best suited. The witness observed that, while Petitioner clearly was a special-education student, School A could not produce any IEP for him, let alone a current one, and that Petitioner's report cards reflect he does not have a single special-education class on his roster. Because of these gross failures, Witness One indicated he believed Petitioner had been deprived of educational benefit.

Respondent offered no documentary or testimonial evidence to rebut the testimony of Petitioner's parent or educational advocate. Petitioner, therefore, carries his burden of proof in that he demonstrated (1) he properly requested a comprehensive reevaluation, speech and language evaluation, and vocational assessment; (2) Respondent failed to do so despite an initial attempt to do so; (3) the requested speech and language evaluation and vocational assessment were warranted by behaviors observed by his parent and educational advocate; (4) Respondent failed to timely inform Petitioner that the two additional evaluations were unwarranted and, therefore, would not be conducted; and (5) Respondent's failures as a whole impeded Petitioner's parent's special-education decision-making and probably denied Petitioner educational benefit.

Accordingly, Petitioner prevails on the sole issue raised in his due-process complaint.

V. ORDER

It is this 19th day of March 2009–

ORDERED that, if it has not already done so, Respondent shall complete or fund a speech and language evaluation and vocational assessment of Petitioner, 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.

Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office