

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**

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STUDENT HEARING OFFICE
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I. PROCEDURAL BACKGROUND

Petitioner, by and through his parent, filed a due-process complaint on February 27, 2009. Petitioner waived the resolution session. On March 9, 2009, Respondent answered the complaint.

I attempted to hold a prehearing in this matter, but Plaintiff failed to appear despite selecting and agreeing to its date and time.

On April 3, 2009, at 1:00 p.m. in Room 1, 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 seven documents marked P-1 to P-7. I admitted P-1, P-2, P-4, P-6, and P-7 without objection. Respondent, however, objected to the lack of foundation for

P-3 and P-5. Those documents (The Snap-IV Teacher and Parent Rating Scale) appear on their face appear to be ones created by Respondent. Witness One, Petitioner's mother, testified she received them from Petitioner's teacher. Respondent objected to the foundation for the documents, not their authenticity. If Respondent created the documents, Petitioner would be in no position to call the witness—a Respondent employee—to testify about the creation of the document. Because I had no reason to believe the documents to be inauthentic and because I believed Witness One's testimony that the documents were created and provided to her by an employee of Respondent, I admitted P-3 and P-5 over the objection of Respondent. Witness One was the only witness that testified on Petitioner's behalf.

Respondent entered into evidence, without objection, six documents marked R-1 to R-6.

Two witnesses testified on its behalf.

II. ISSUES RAISED AND RELIEF SOUGHT

In the due-process complaint, Petitioner alleged Respondent denied him a free and appropriate education ("FAPE"), raising eleven issues for consideration. All the issues stem from a single allegation fairly raised in the complaint: Respondent failed to identify Petitioner for special-education services because it failed to complete his comprehensive psychological evaluation. For this lapse, Petitioner declaratory and injunctive relief.

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 student who attends School A.

2. Last school year, Petitioner was suspended four times for fighting, hitting peers, being disrespectful to teachers, being otherwise disruptive in the classroom, and leaving class without permission. *See* Testimony of Witness One.

3. This school year, 2008-09, Petitioner was retained in first grade.

4. Witness One, Petitioner's mother, testified that she asked Petitioner's school principal at the beginning of this school year to evaluate her child for special-education services.

5. When the school failed to act on Witness One's request, she had Petitioner independently evaluated herself. Petitioner was diagnosed with attention deficit hyperactive disorder and prescribed medication. She provided the psychiatric evaluation to the principal in late September or early October of 2008. *See* P-7. Witness One said the principal promised to pass the evaluation on to the school special-education coordinator.

6. On November 17, 2008, a student support team convened to develop and implement an intervention plan for Petitioner. The team apparently did not have a copy of the evaluation Witness One had provided the principal and the team asked Witness One to get another independent evaluation of Petitioner.

7. Witness One acquired another psychological evaluation of Petitioner as the SST requested. Petitioner's diagnosis remained the same, but his medication was changed. Witness One provided evidence that the second evaluation had been undertaken at another meeting of the SST held in March 2009.

8. By the time of the due-process hearing, Petitioner's evaluations had not been completed and, thus, his eligibility for special-education services had not been determined.

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 has the affirmative responsibility to determine the eligibility of a student for special education on the request of a parent. That determination must be made within 120 days of a parent's request.

Witness One testified that she gave School A's principal a copy of a psychological evaluation she had completed for her son and asked the principal to evaluate her son for special-education services. Witness One says the principal agreed to provide the evaluation to the special-education coordinator. Witness One also testified that she attended the SST meeting on November 17, 2008, where she was told that her child needed to be reevaluated.

Witness Two, the school counselor and SST coordinator, testified that the SST met to determine if Petitioner should be placed in special education because he was not following directions, was leaving class and hiding from faculty, and was not completing assignments. She stated that the team reviewed Petitioner's independent evaluation, but she did not recall if Witness One asked about special education for Petitioner.

Witness Three, the special education coordinator, testified that she agreed that Petitioner's behavior in school was inappropriate and required correction. She denied that School A's principal provided her with a copy of Petitioner's independent evaluation. She said she attended the November 17, 2008 SST meeting, not as a special-education coordinator, but just as any other team member. She further testified that Petitioner's mother never mentioned requesting special education for her child. Finally, she said that she was unaware Petitioner was repeating the first grade.

I found the testimony of Witness One to be more credible than that of Witnesses Two and Three for three reasons.

First, Witnesses Two and Three conflicted on whether the SST reviewed the independent evaluation Witness One said she provided to the school principal. Witness Two said the team reviewed it. Witness Three said the team did not review because it was not available. What I know is that the document was created early enough to have been provided to the team by the date of the SST meeting on November 17, 2008. Given the short amount of time between the completion of the evaluation and the meeting of the SST, it is more likely that the evaluation caused the meeting than it is that the SST convened without any prompting from the parent or school principal. What is most telling, however, is that Respondent had a copy of the evaluation in its student file before Petitioner disclosed it in connection with the hearing. Thus, I find that Witness One provided the principal with the evaluation in late September or early October of 2008 and asked that her child be evaluated for special education. (I also note that Respondent could have, but did not, call School A's principal to refute Witness One's testimony.)

Second, the notes from the SST meeting state that Petitioner needed to be evaluated immediately. That begs the question, "Evaluated for what?" It makes sense, then, as Witness One testified that she requested for a second time at the SST meeting that Petitioner be evaluated for special education. This is consistent with Witness Two's testimony that the team convened to determine if he should be placed in special education. And it makes sense that Witness Three, the special-education coordinator, would be invited to sit in on that meeting.

Third, and finally, Witness Three's testimony simply was not believable. She testified that she attended two meetings for Petitioner and never asked Witness One why she had her son independently evaluated. Witness Three said she was incurious about the purpose of his

evaluation and was not alerted to his potential for special needs when Witness One informed the team at two separate meetings that Petitioner had been diagnosed and prescribed medicine for ADHD. If Witness Three's testimony is to be believed, then, as School A's special-education coordinator, she was derelict in her duties.

Accordingly, I find that Respondent failed to identify and evaluate Petitioner in a timely manner, having exceeded the 120 day deadline. Those failures denied Petitioner a FAPE because he was deprived of educational benefit and because his parent was impeded in her participation in the decision-making regarding his receipt of special services. Petitioner, therefore, prevails on the issue identified in Section II of this memorandum order.

V. **ORDER**

It is this 13th day of April 2009—

ORDERED that Respondent shall fund an independent comprehensive psychological evaluation of Petitioner, and it is further

ORDERED that Respondent shall—within ten school days of Respondent's receipt from Petitioner of the complete and final results of Petitioner's comprehensive psychological evaluation— hold a multidisciplinary meeting to review his evaluative results, his individualized educational program, and his placement and take immediate and appropriate action, 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

8. The hearing-officer decision issued by me on April 13, 2009.

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

Latif Doman, Hearing Officer