

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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**I. PROCEDURAL BACKGROUND**

Petitioner, by and through his parent, filed a due-process complaint on March 2, 2009.

Respondent did not respond to the complaint. Petitioner waived the resolution session.

The parties jointly selected and agreed to a prehearing in this matter for March 31, 2009.

Counsel for both parties failed to appear.

On April 6, 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, twenty-two documents marked P-1 to P-22. One witness testified on Petitioner's behalf. Respondent entered into evidence, without objection, thirteen documents marked R-1 to R-13. No 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”) by failing to (1) timely evaluate him, (2) timely determine his eligibility for special education and related services, and (3) provide him with compensatory education. I find the first two issues collapse into one: a failure to conduct an initial evaluation to determine special-education eligibility. The third issue is not a claim but a request for relief and will be treated as such.

## **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. Petitioner previously had been enrolled in special education as emotionally disturbed, but his parent elected not to continue with it on August 9, 2007. *See* P-2 at ¶ 2.
3. On July 24, 2008, Petitioner’s parent changed her mind and requested, through counsel, that Respondent evaluate Petitioner to determine his eligibility, again, for special education. *See* P-2 at ¶ 7.
4. Petitioner received all F’s in October 2008. *See* P-2 at ¶ 14.
5. Petitioner was suspended several times this school year. *See* P-2 at ¶ 17.
6. A speech and language pathologist recommended that Petitioner received an auditory-processing assessment. *See* P-5.
7. Witness One, a licensed clinical psychologist in the District of Columbia, testified that Petitioner continued to suffer from emotional disturbance and attention deficit hyperactivity disorder. He testified that Petitioner scored in the low average range intellectually. He also

observed that Petitioner was still healing from past emotional scars and had yet to develop adequate coping skills. He concluded Petitioner's decreasing, but continuing, disruptive behavior indicated Petitioner should still be in special education. *See* Testimony of Witness One.

8. As of the date of the hearing, Respondent had not completed Petitioner's requested evaluation by determining him eligible for special education.

#### **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).

Upon request of a parent, Respondent is obliged to evaluate and determine a student's eligibility for special education and related services within 120 days of that request. Evidence presented at the hearing showed conclusively that Respondent had not evaluated Petitioner between his parent's request on July 24, 2008, and the date of the hearing, April 6, 2009. That is 257 days—137 days beyond Respondent's statutory deadline.

Respondent presented no witnesses to dispute its failure to meet this deadline or to offer an appropriate justification for the failure. This, combined with its failure to respond to Petitioner's complaint is tantamount to conceding Petitioner's claims and allegations.

Based on Petitioner's past eligibility for special education, his present academic deficiencies, and the testimony of Witness One, I find Petitioner is eligible for special-education and related services. I further find Respondent's prolonged and continuing failure to initially evaluate Petitioner and determine his special-education eligibility to be a substantive violation of the IDEIA that denied him a FAPE.

Petitioner has met his burden of proof and, thus, prevails on the single issue raised in his due-process complaint.

Despite Petitioner's demonstration of Respondent's liability, I cannot award him all the damages he seeks. He seeks compensatory education, but provided at the due-process hearing no compensatory-education plan or other evidentiary rubric on which I could rely to fashion an award compliant with *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005) (a compensatory-education award must be fact-specific and reasonably calculated to provide the educational benefits that the student likely would have accrued but for the denial of FAPE). Nothing, however, prevents Petitioner from filing a complaint after he has been completely evaluated and can demonstrate the nature, extent, and causal connection of the harm he suffered as a result of Respondent denying him a FAPE.

V. **ORDER**

It is this 16<sup>th</sup> day of April 2009—

**ORDERED** that Respondent shall enroll Petitioner in its special-education program immediately, and it is further

**ORDERED** that, at Respondent's expense, Petitioner shall complete an auditory processing assessment as soon as possible and provide it to Respondent, and it is further

**ORDERED** that a multidisciplinary team shall meet within 15 school days of this Order to develop an individualized education program for Petitioner; to consider the appropriateness of his present placement; and to determine whether Petitioner requires any additional testing and, if so, Respondent shall fund such testing; 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.

*Latif Doman*

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Hearing Officer Latif Doman

Copies to: Counsel for the Parties  
Student Hearing Office