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State Enforcement and Investigation Unit
Office of Review and Compliance

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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**

I. PROCEDURAL BACKGROUND

Petitioner, by and through his parent, filed a due-process complaint on February 23, 2009. Petitioner waived the resolution session. On March 9, 2009, Respondent answered the complaint.

On March 20, 2009, Petitioner requested a continuance of the due-process hearing from March 26, 2009, to April 1, 2009, due to the unavailability of a witness. That request was not opposed by Respondent, so I granted it.

On April 1, 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-seven documents marked P-1 to P-27. Four witnesses testified on Petitioner's

behalf. Respondent entered into evidence, without objection, five documents marked R-1 to R-5.

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”) by failing to place him in an appropriate academic setting.

For these lapses, Petitioner requested at the due-process hearing an award of compensatory education in the form of tutoring for the seven months between May and November of 2008.¹

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 an eight-year old, emotionally disturbed student. *See* Complaint, ¶¶ 1 & 3. He is presently repeating the second grade.
2. During the 2007–08 school year, Petitioner attended School A.
3. In April or May of 2008, Petitioner’s special-education teacher at School A left her position, and Petitioner’s behavior became dramatically worse.
4. The following school year, 2008–09, Petitioner was uncontrollable on many days. He was profane, disrespectful to teachers, unable to sit still for more than ten minutes, and combative with another student. On those days, his mother picked him up early from school. On other days, she kept him home from school the entire day. *See* Testimony of Parent.
5. On October 6, 2008, a multidisciplinary team agreed to change Petitioner’s placement from School A to School B because he required a more restrictive environment.

¹ At the due-process hearing, Petitioner withdrew part of his request for an award of compensatory education because certain facts disproved the premise on which Petitioner based his request.

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).

Petitioner alleged in his complaint and at the due-process hearing that his teacher—after his first special-education teacher at School A left—was not certified to teach special education. This allegation (that Petitioner was deprived of special education from a certified teacher) was the basis for part of Petitioner’s request for compensatory education. However, Witness Five testified that she worked with Petitioner’s replacement teacher in Petitioner’s classroom and knew from personal knowledge that the replacement had been provisionally certified by the District of Columbia to teach special education. Petitioner offered no evidence to dispute this statement and offered no clinical evidence to show a negative change in Petitioner’s behavior due to his teacher being replaced.

In the face of the parties’ conflicting assertions, Respondent, not having the burden of proof, wins all ties. I, therefore, find that Petitioner’s replacement teacher was probably special-education certified and that Petitioner probably was not denied special-education services during the latter part of the 2007–08 school year as a result of not having a special-education teacher.

Petitioner next alleges that, during the first part of the 2008–09 school year, he was so uncontrollable that he missed significant class time from being pulled out of school early or being kept at home. Witness Three, Petitioner’s mother, testified that on several occasions she had been summoned to Petitioner’s school to pick him up because he was uncontrollable. Witness Five disputed that anyone from the School A demanded Petitioner’s mother pick him up since that would violate school district policy. Given the contradictory testimony, without more, Petitioner must lose. In addition, Petitioner’s mother never identified who specifically made the

demand that she pick up her son early, and she never said on how many occasions she had been required to do that or what hours of the day she in fact picked him up. Thus, even if I had determined that Petitioner had been deprived of special-education services from a certified teacher, I would not have been able to estimate how much time (one hour or four?) Petitioner lost each day he left school early in order to fashion an appropriate award of compensatory education.

Petitioner's mother admitted to choosing to keep Petitioner at home on some days to avoid having to "run up to the school every time they called." She did not testify as to how many days she chose to keep her child out of school. But, of course, an absent child cannot receive educational benefit, and Respondent is not responsible for any time Petitioner's parent kept Petitioner out of school.

Finally, the professionals working with Petitioner at School A recognized within a relatively short time that his changed behavior was no longer solely attributable to the replacement of his special-education teacher. Witnesses Five and Six testified to interventions they took to address Petitioner's behavior: they essentially assigned him a dedicated aide and they placed the school social worker in the class full-time. In less than three months into the new school year, those professionals realized Petitioner required greater assistance, so they held a multidisciplinary team meeting on October 6, 2008, and changed his placement to School B, a more restrictive environment.

On these facts, I cannot find Respondent denied Petitioner a FAPE. Respondent prevails on the sole issue raised in the due-process complaint.

V. **ORDER**

It is this 11th day of April 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.



Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office