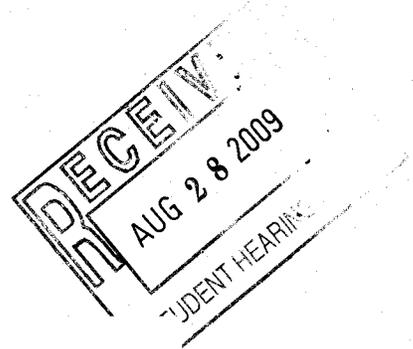


DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION  
State Enforcement and Investigation Unit  
Office of Review and Compliance

**STUDENT HEARING OFFICE**  
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**CONFIDENTIAL**

In the Matter of:

STUDENT,

Petitioner,

v.

LOCAL EDUCATIONAL  
AGENCY,

Respondent.

Case No.

**HEARING OFFICER  
DECISION**

**I. PROCEDURAL BACKGROUND**

Petitioner, by and through her parent, filed a due-process complaint on May 28, 2009. Petitioner waived the resolution session. Respondent answered the complaint on July 8, 2009, seeking dismissal.

On July 30, 2009, in hearing room 5A, 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. One witness testified on Petitioner's behalf. Respondent entered into evidence, without objection, five documents marked R-1 to R-6. No witness 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 inappropriately placing him, changing his placement by suspending him more than ten school days, failing to provide ESY services, and failing to complete his triennial comprehensive evaluation. For these lapses, he requests that he be placed at another private school at public expense.

## **III. FINDINGS OF FACT**

Based on the evidence presented at the hearing, I make the following findings of fact:

1. Petitioner is a special education student who was frequently suspended this past school year for behavioral problems.
2. His suspensions have resulted in his forced absence from school for more than ten days.
3. On April 15, 2009, Petitioner's mother requested that her son's placement be changed because he was not progressing.
4. Respondent did not complete Petitioner's triennial comprehensive evaluation, which was due to be completed on or before January 23, 2009.

## **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 raises three issues. I consider them *seriatim*.

### **A. Failure to Provide ESY Services**

Petitioner argued at the due-process hearing that he did receive ESY services this summer. Respondent noted that this issue was not raised in the complaint; therefore, it was not

put on notice of this claim. I concur. Petitioner filed his complaint on May 28, 2009. Respondent did not file a response until July 8, 2009. And the hearing in this matter did not occur until July 30, 2009. Petitioner had ample time to amend the complaint before the hearing and did not do so.

**B. Inappropriate Placement/Change in Placement**

Petitioner argues somewhat inconsistently that he was inappropriately placed at School A and that his placement was changed against his will by suspending him for more than ten days. Other than an allegation about his poor grades (no report cards were entered into evidence), Petitioner presented no evidence of being inappropriately placed at School A.

Petitioner was suspended several times because of behavioral issues. The multidisciplinary team determined his behavior was a manifestation of his disability. See P-3. It ordered testing to determine the extent of his difficulties, but determined that a change in placement was not be beneficial. Nothing about this evidence suggests that Petitioner was inappropriately placed. Rather, it indicates that the educational professionals responsible for Petitioner acted appropriately by considering his situation and ordering an evaluation to determine his present needs. The results of the evaluations were not provided to me. They may show that Petitioner's progress was in fact poor and that School A is not an appropriate placement. However, if those evaluations do show that, Petitioner should have postponed filing his complaint until he was armed with evidence of his claim.

Petitioner's mother requested a change in placement on April 15, 2009, at a multidisciplinary team meeting in which the team also considered Petitioner's extensive suspensions. The team evaluated and rejected the request; however, they promised to revisit the

issue after Petitioner's evaluations were complete.<sup>1</sup> This appears to have been an appropriate response.

Petitioner seemed to suggest at the hearing that a suspension of greater than ten days automatically resulted in a change of placement away from the existing school. To the contrary, the suspensions triggered a requirement that the multidisciplinary team consider whether the present placement was appropriate. It did so, and determined that a change in placement would not be beneficial, ordering tests to confirm its decision. Again, Petitioner presents no evidence that Respondent denied Petitioner a FAPE as a result of this action (however, see footnote 1).<sup>2</sup>

**C. Failure to Evaluate**

Respondent was required to complete a comprehensive evaluation of Petitioner by January 23, 2009. It did not. The requirements of IDIEA are not idle mandates. I am bound to assume there was a purpose for requiring special education students to be comprehensively evaluated every three years. By the time of the hearing, six months had passed and Respondent still had not completed the evaluation. This is not a negligible period of time and amounts to substantive denial of FAPE. On this issue, Petitioner prevails.

**V. ORDER**

It is this 26<sup>th</sup> day of August 2009—

**ORDERED** that Respondent shall complete Petitioner's comprehensive evaluation if it has not already done so, and it is further

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<sup>1</sup> The record is unclear, but it appears that Respondent did not issue a written notice of its reasons for rejecting the requested change in placement. This failure could be considered a technical denial of FAPE. However, Petitioner did not raise this issue in his complaint or at the hearing and he put on no evidence of any harm resulting from not receiving the prior notice.

<sup>2</sup> I note that Respondent has agreed voluntarily to place Petitioner at another private school.

**ORDERED** that Respondent shall convene a multidisciplinary team within 15 days of receiving the completed comprehensive evaluation to review and update his IEP, if that has not already been done, 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.



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Hearing Officer Latif Doman

Copies to: Counsel for the Parties  
Student Hearing Office