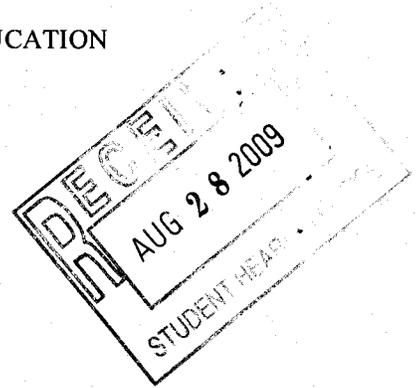


DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
State Enforcement and Investigation Unit
Office of Review and Compliance

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 June 24, 2009. Petitioner waived the resolution session. Respondent answered the complaint on July 9, 2009, seeking dismissal.

On August 5, 2009, in hearing room 7B, 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, five documents marked P-1 to P-5. One witness testified on Petitioner's behalf. Respondent entered into evidence, without objection, five documents marked R-1 to R-3. 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 provide him with ESY services this summer and not placing him in a different setting for such services. For this lapse, he requests compensatory education in the form of a private placement.

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. A multidisciplinary team determined that Petitioner required ESY services for this past summer and included it in his most current IEP.
3. During the regular school year, Petitioner receives transportation from Respondent. He needed the same for the summer; however, his name was not included on the summer transportation list.
4. Petitioner's mother made several efforts to have transportation provided to her son for the summer, including calling Respondent's department of transportation and the special education coordinator at Petitioner's school.
5. The bus never came and Petitioner sat at home all summer.

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 does not dispute the facts alleged by Petitioner. Rather, it contends that he put on no evidence of harm, need for compensatory education, or need for a private placement. I agree in part.

Petitioner presented no evidence that Respondent's failure to provide ESY services by not arranging for public transportation is properly addressed with placement at a private school. Nothing Petitioner offered would lead to that conclusion.

However, a team of education professionals employed by Respondent determined that Petitioner required and would receive ESY services. He did not receive it because of what appears to be a clerical error in his name not being included on school bus pick-up list. If Petitioner needed the services then, he continues to need them now and Respondent presented no evidence to rebut its own employees' determination. The appropriate remedy is to ensure that Petitioner receive ESY services this upcoming school year.

Accordingly, Petitioner was denied a FAPE.

V. **ORDER**

It is this 26th day of August 2009—

ORDERED that Respondent shall provide Petitioner with ESY services for the 2009–2010 school year, this requirement shall be included in his IEP, and public transportation shall be provided for him so that he may receive ESY services, 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

Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office