

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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STUDENT HEARING OFFICE
2009 JUN 29 AM 10: 00

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 8, 2009. A hearing was scheduled for July 10, 2009, but the parties waived resolution resetting this matter from a 75-day timeline to the 45-day timeline. Nonetheless, Respondent did not answer the complaint.

II. ISSUES RAISED AND RELIEF SOUGHT

In the due-process complaint, Petitioner alleged Respondent denied her a free and appropriate education ("FAPE") by failing to (1) convene a meeting to review evaluations that I ordered on September 3, 2008; (2) determine Petitioner as eligible for special education; and (3) prepare and implement an appropriate individualized educational program.

For these lapses, Petitioner requests that Respondent be ordered to determine Petitioner eligible for special education, reevaluate her, and convene a multidisciplinary team to review and implement the evaluative findings.

III. FINDINGS OF FACT

1. Petitioner timely filed her due-process complaint.
2. Respondent received notice of the complaint because it timely waived mediation.
3. Respondent filed no answer to the complaint and did not request an extension of time to do so.

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 is required to timely respond to a complaint. As of this writing, its response has been outstanding for more than 30 days. By default, it does not object to Petitioner's allegations or request for relief. Petitioner's allegations, thus, are undisputed, which carries her burden of proof.

I, therefore, find that Respondent has denied Petitioner a FAPE by failing to timely convene a meeting to determine her eligibility for special education. That delay more likely than not limited the usefulness of Petitioner's recent evaluations. There is no evidence in the record that Respondent's failure was impossible to avoid or even was excusable neglect.

V. ORDER

It is this 27th day of June 2009—

ORDERED that Respondent shall designate Petitioner as eligible for special education immediately, and it is further

ORDERED that Respondent shall pay to have Petitioner reevaluated to determine her needs now, and it is further

ORDERED that Respondent shall convene a meeting to review and develop an IEP for Petitioner within 15 days of receiving the complete reevaluation results from Petitioner.

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