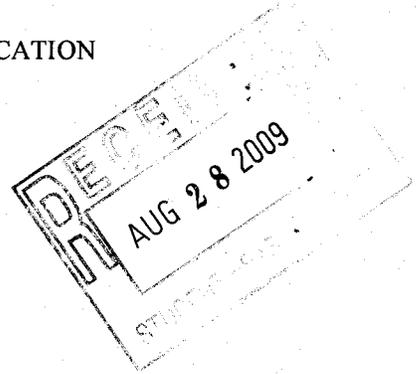


DC OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
State Enforcement and Investigation Unit
Office of Review and Compliance

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 22, 2009. Petitioner waived the resolution session. Respondent answered the complaint on July 9, 2009, seeking dismissal. This matter was consolidated with Case No. _____ which involves the same Petitioner.

On August 24, 2009, in hearing room 6A, 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, fourteen documents marked P-1 to P-14. One witness testified on Petitioner's behalf. Respondent entered into evidence, without objection, five documents marked R-1 to R-5. No witnesses testified on its behalf.

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 timely evaluate her.

III. FINDINGS OF FACT

Respondent filed a motion to dismiss on July 9, 2009, on the grounds that offering Petitioner reimbursement for an independent evaluation mooted the complaint. The parties agree on the facts underlying the motion to dismiss:

1. On April 21, 2009, the multidisciplinary team determined that Petitioner required a clinical psychological evaluation and that it should be completed within 60 days (or June 21, 2009). See P-12.
2. Respondent failed to perform the evaluation in that time and, instead, offered Petitioner on July 6, 2009, an independent evaluation after he sued.
3. Petitioner had the evaluation performed and mailed it to Respondent a week before the due-process hearing on August 4, 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 has demonstrated by the documentary evidence that Respondent determined that she needed a clinical evaluation within 60 days. The record reflects, and Respondent implicitly admits, that it did not perform the evaluation, offering reimbursement for an independent evaluation almost two weeks after the evaluation was to be completed. This added another month to the evaluation process and apparently only was offered because Petitioner filed this complaint.

Petitioner has demonstrated that she was harmed by Respondent's negligence. The extent of the harm is unclear, but the interference with Petitioner's parent's ability to make decisions with regard to the special needs of her child is. She was denied a FAPE.

V. **ORDER**

It is this 26th day of August 2009–

ORDERED nunc pro tunc that the motion to dismiss is denied because the issue raised in the complaint was not moot at the time of its filing, and it is further

ORDERED nunc pro tunc that Respondent shall fund an independent clinical evaluation of Petitioner, and it is further

ORDERED nunc pro tunc that Respondent shall convene an multidisciplinary team to review the evaluation and update her IEP with fifteen days of this ORDER, if it 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.



Hearing Officer Latif Doman

Copies to: Counsel for the Parties
Student Hearing Office