

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. (LSD)

**HEARING OFFICER
DECISION**

2009 MAY -4 AM 9:25

STUDENT HEARING OFFICE OSSE

I. PROCEDURAL BACKGROUND

Petitioner, by and through his parent, filed a due-process complaint on March 17, 2009.

Petitioner waived the resolution session. Ten days later, Respondent answered the complaint.

On March 31, 2009, I held a prehearing in this matter at which both counsel failed to appear.

On April 21, 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, fourteen documents marked P-1 to P-14. Two witnesses testified on Petitioner's behalf. Respondent entered no documents into evidence. 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 conduct and review a transitional/vocational assessment for him and failing to develop a postsecondary transitional plan for him.

For these lapses, Petitioner initially requested an award of compensatory education, which he withdrew at the hearing, and, instead, requested an independent assessments to be publicly funded.

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 a -year old, full-time special education student attending School A. He is classified as multiple-disabled, emotionally disabled, mildly retarded, speech/language impaired, and other health impaired.

2. At a meeting on October 8, 2008, a multidisciplinary team agreed to conduct within sixty days a speech and language assessment and a transitional/vocational assessment. That also agreed to reconvene and review the results of those assessments within those sixty days. *See P-3, at 4.*

3. Witness One, Petitioner’s educational advocate; Witness Three, School A’s special-education coordinator; and Witness Four, School A’s assessment coordinator all testified that the agreed-upon evaluations were never conducted and, thus, no transitional/vocational plan has been implemented for Petitioner.

4. Witnesses Three and Four testified that School A had scheduled the agreed upon assessments for Petitioner several times. But, according to them, Petitioner refused to submit to the testing each time.

5. Witness Two, Petitioner's mother, testified that Petitioner turns this month, but will remain in public school until age twenty-two because of his disabilities. She further testified request that Petitioner be tested for his vocational interests because she hoped he could learn a trade during his remaining years of school and have a useful skill upon graduation. She said no one from School A ever told her—orally or in writing—that Petitioner had refused to be assessed. She said, if she had been made aware of her son's refusal by School A, she would have ensured his cooperation.

6. Respondent produced no documentation evidencing School A's claimed attempts to contact Petitioner's mother to inform her of her son's refusal to cooperate in the testing.

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).

On request of a parent, Respondent has the obligation to complete a student evaluation and convene a multidisciplinary meeting within 120 days of the request. Here, Respondent, through School A, committed itself to completing and reviewing the speech/language and transitional/vocational assessments of Petitioner within sixty days. Whether one counts sixty days or 120, Respondent failed to timely perform its statutory obligation to assess Petitioner.

In its defense, Respondent argues Petitioner refused to cooperate and, thus, relieved it of its obligation to assess him. This argument fails because Petitioner is a mentally disabled minor. As such, he cannot waive his rights under IDEIA or the District of Columbia municipal

regulations. Only his parent can give such a waiver. Respondent should have informed his parent by written notice that it could not assess Petitioner because he refused to cooperate.

The two witnesses who testified for Respondent admitted they personally had not communicated with Petitioner's parent about his refusal to sit for the assessments. Petitioner's parent testified unequivocally that she never received a phone call or a letter from School A indicating her son would not be assessed due to his lack of cooperation. Witness One, Petitioner's educational advocate who attended the October 8, 2008 multidisciplinary-team meeting, testified that he also received no letter or phone call from School A regarding Petitioner's refusal to be assessed. Finally, and most telling, Respondent entered no documents in evidence showing Respondent gave Petitioner's mother written notice that it could not conduct Petitioner's assessments.

I find that Respondent failed to timely perform and review a speech/language assessment and a transitional/vocational assessment for Petitioner. Respondent further failed to give Petitioner's parent written notice of its decision to discontinue trying to assess Petitioner. These failures impeded Petitioner's parent's ability to participate in the decision-making of providing her son a FAPE because, without the transitional/vocational assessment, she could not request a training program for her son or even reject skill-training as an option for her son.

Petitioner, thus, prevails on the issues raised in his due-process complaint. I cannot, however, award the relief he has requested.

Petitioner failed to demonstrate Respondent caused Petitioner not to receive the assessments. All Petitioner showed was that Respondent did not receive the assessments. Respondent satisfactorily showed that Petitioner refuses to cooperate with School A's assessors.

From this evidence, I cannot conclude that Petitioner would cooperate with independent assessors selected by Petitioner and funded by Respondent.

Witness Two, Petitioner's parent, testified that, if she directed him to, Petitioner would cooperate with School A's assessors. I believe her and find the added expense of another set of assessors to be unnecessary.

V. **ORDER**

Therefore, it is this 1st day of May 2009—

ORDERED that Respondent shall arrange for another speech/language assessment and another transitional/vocational assessment of Petitioner at School A within ten days of this Order on days Petitioner's mother is available to attend¹; and it is further

ORDERED that Petitioner's parent shall accompany Petitioner to the assessments to ensure his cooperation; and it is further

ORDERED that, if Respondent is unable to assess Petitioner with the assistance of his parent, then Respondent shall fund an independent transitional/vocational assessment by a private provider; 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

¹ If Petitioner's parent is unable to attend either or both of the assessments during the ten-day period, Respondent shall receive a day-for-day extension of time to conduct the assessments with her participation.

Copies to: Counsel for the Parties
Student Hearing Office