

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

STUDENT HEARING OFFICE
1150 5th Street, S.E., Washington, DC 20003
Phone: (202) 698-3819 | Fax: (202) 698-3825

CONFIDENTIAL

In the Matter of:

STUDENT,

Petitioner,

v.

LOCAL EDUCATIONAL
AGENCY,

Respondent.

Case No.

**HEARING OFFICER
DECISION**

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I. PROCEDURAL BACKGROUND

Petitioner, by and through her parent, filed a due-process complaint on May 14, 2009.

Petitioner waived the resolution session. On May 27, 2009, Respondent answered the complaint.

On July 17, 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, eight documents marked P-1 to P-8. Two witnesses testified on Petitioner's behalf. Respondent entered into evidence, without objection, ten documents marked R-1 to R-10. 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 (1) provide her an appropriate placement, (2) evaluate her, (3) perform a functional behavioral assessment (FBA), (4) implement a behavior intervention plan (BIP), (5) provide special education services, (6) conduct a manifestation determination meeting, (7) convene an multidisciplinary team (MDT) meeting, (8) review and revise Petitioner's individualized educational program (IEP), (9) convene a properly constituted MDT, (10) failing to invite the parent and child to the MDT meeting, and (11) provide Petitioner's counsel access to Petitioner's academic records.

For these lapses, Petitioner requests, among many other things, a reevaluation, an FBA, a BIP, an MDT/IEP meeting, and private placement at School B.

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 an eight-year old, emotionally-disabled student who attends School A.
2. Her current IEP calls for 26.5 hours each week of specialized instruction and 1 hour each week of speech-language training.
3. Petitioner's mother testified that Petitioner was suspended approximately ten times this past school year. She felt that Petitioner was inappropriately placed at School A because since she was kept getting suspended.
4. Witness One, Petitioner's educational advocate, testified that he had reviewed Petitioner's IEP and her evaluations. He also testified that he had requested Petitioner's academic

file from School A and did not receive her report cards or suspension notices. On cross-examination, Petitioner admitted that he had no special education certifications or training. His bachelor of arts degree is in comparative politics. He further testified that he did not attend any MDT meeting for Petitioner, speak with any of Petitioner's teachers, or observe Petitioner in class.

5. Witness Two, an admissions dean for School B, testified that School B had admitted Petitioner and could meet her special needs.

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 offered practically no evidence of any of the issues raised in the due-process complaint. The only evidence presented of any of the alleged denials of FAPE was her mother's assertion that her son's placement at School A was inappropriate because she had been suspended so many times. However, Petitioner's mother could not recall the general duration of the suspensions or the reasons for the suspensions. This evidence does not demonstrate the inappropriateness of School A or Petitioner's IEP or that the behavior Petitioner exhibited was related to her emotional deficiencies. At best, it is unscientific speculation by a concerned mother insufficient to carry Petitioner's burden of proof.

Petitioner's mother did not testify that she requested that School A perform a reevaluation of, an FBA for, or a BIP for Petitioner. And Petitioner offers no documentary evidence that she made such a request or any clinical evidence that her behavior should have alerted the personnel at School A that Petitioner was in need of reevaluation, an FBA, or a BIP in the absence of such a request by Petitioner.

I rejected Petitioner's attempt to present opinion testimony by Witness One, Petitioner's educational advocate. The advocate, based on a thorough cross-examination of his credentials by Respondent's counsel demonstrated he had no educational background in making assessments about or working with special needs children and that he had no involvement in Petitioner's academic life until a month before this due-process complaint was filed. Thus, I required that he testify only to those events or observations of which he had personal knowledge.

As a consequence, Witness One was only able to testify about the request he had made on behalf of Petitioner for her academic file. Apparently, School A failed to produce Petitioner's report cards and suspension notices. Although Respondent offered no reason why it did not produce the requested file, it was Petitioner's obligation to demonstrate that this failure resulted in a denial of FAPE. I note that the request for documents was made a month before the due-process complaint was filed. To the extent the documents were sought in anticipation of this proceeding at the very end of the school year, the failure to produce the documents could not be said to have any way affected Petitioner's ability to receive an educational benefit during the school year. It may have impeded her ability to demonstrate a denial of FAPE; however, Petitioner's counsel offered no argument or evidence of such.

Accordingly, Respondent prevails on all issues raised in the due-process complaint.

V. **ORDER**

It is this 27th day of July 2009—

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