

**District of Columbia**  
**Office of the State Superintendent of Education**  
Office of Review and Compliance  
State Enforcement and Investigation Division  
Student Hearing Office  
Van Ness Elementary School  
1150 5<sup>th</sup> St., S.E., Washington, D.C. 20003  
Phone: (202) 698-3819      Facsimile: (202) 698-3825

2009 JUN 16 AM 10:01  
STUDENT HEARING OFFICE

**In Re the Matter of :** )  
) )  
**Parent on behalf of Student,** )  
) )  
**Petitioner,** )  
) )  
) )  
) )  
**v.** )  
) )  
) )  
**The District of Columbia Public Schools** )  
**825 North Capitol Street, N.W.** )  
**Washington, D.C. 20002** )  
**(DCPS" or "District")** )  
) )  
**Respondent.** )

**Date of Complaint:** May 18, 2009  
**Date of Pre-hearing:** June 11, 2009  
**Date of Hearing:** June 18, 2009

**Voluntary Withdrawal of Complaint**

**Student Case Number:**  
**Student Identification Number:**

*\* Amended*

**HEARING OFFICERS' DECISION (HOD)**

**Hearing Officer:** Attorney Ramona M. Justice

**Counsel for Petitioner:** Attorney Chike Ijeabunwu  
6495 New Hampshire Avenue  
Suite 211  
Hyattsville, Maryland 20783-3245

**Counsel for Respondent:** Assistant Attorney General Candace Sandifer  
Office of the Attorney General  
825 North Capitol St., N.E., 9<sup>th</sup> Floor  
Washington, D.C. 20002

1 Personally identifiable information is provided in the "Index" which is located on the last page of this Order and must be removed for public distribution. \* The HOD is amended merely to accurately reflect the date of the pre-hearing conference.

**INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004  
(IDEIA), (Public Law 108-446)  
DISTRICT OF COLUMBIA PUBLIC SCHOOLS  
IMPARTIAL DUE PROCESS HEARING**

**I. INTRODUCTION**

On May 18, 2009, Petitioner filed a due process complaint, alleging that D.C. Public Schools, hereinafter referred to as "DCPS", denied the student a Free and Appropriate Public Education ("FAPE"); in violation of "The Individuals with Disabilities Education Act ("IDEA")"; reauthorized as the "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")."

The due process hearing is scheduled to convene on June 18, 2009, at 9:00 a.m., at Van Ness Elementary School, located at 1150 5<sup>th</sup> Street, S.E., Washington, D.C. 20003.

**II. JURISDICTION**

This proceeding was invoked in accordance with the rights established pursuant to "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")", Public Law 108-446 and 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; the Rules of the Board of Education of the District of Columbia; the D.C. Appropriations Act, Section 145, effective October 21, 1998; and Title 38 of the District of Columbia Municipal Regulations ("DCMR"), Chapter 30, Subtitle VII, Chapter 25.

**III. DUE PROCESS RIGHTS**

The due process hearing failed to proceed as scheduled, as a result, waiver or a reading of parents' due process rights was not entered on the record.

**IV. ISSUE(S)**

The following issues are identified in the *May 18, 2009* due process complaint::

- 1) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to evaluate the student in all areas of suspected disability?
- 2) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to complete a Functional Behavioral Assessment; develop and implement a Behavioral Improvement Plan (BIP)?

- 3) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to convene an IEP team meeting to review the students' evaluations?
- 4) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to convene an IEP team meeting, consisting of relevant and necessary team members?
- 5) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to develop an appropriate IEP?
- 6) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to review and revise the student's IEP?
- 7) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to develop and implement a transition plan?
- 8) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to convene a manifestation determination meeting?
- 9) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to invite parent and the student to a meeting, pursuant to 34 C.F.R. §300.322?
- 10) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to provide an appropriate placement, in violation of 34 C.F.R. §300.327?
- 11) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to provide special education and related services?
- 12) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to provide the student compensatory education services?
- 13) Whether D.C. Public Schools denied the student a free appropriate public education (FAPE); by failing to determine the student's disability classification?

## **V. PROCEDURAL POSTURE**

A due process complaint was filed on May 18, 2009; and the Student Hearing Officer scheduled the hearing for July 22, 2009, at 11:00 a.m., based on a 75 day time frame. However, on May 20, 2009, DCPS filed a waiver of the Resolution Meeting; resulting in rescheduling of the due process hearing, to ensure compliance with the 45 day time frame to complete the hearing and issue a decision. The Hearing Officer rescheduled the hearing for June 18, 2009, at 9:00 a.m..

On May 21, 2009, the Hearing Officer issued a Pre-hearing Notice scheduling the pre-hearing conference for June 18, 2009, at 3:30 p.m.. On May 27, 2009, DCPS filed "District of Columbia Public School's Response to Parent's Administrative Due Process Complaint Notice".

The pre-hearing conference convened on June 11, 2009, at 3:30 p.m., to accommodate the parties' schedules; and rescheduled for a status conference on June 15, 2009, at 5:30 p.m.. On June 12, 2009, DCPS filed disclosures with the Student Hearing Office. On June 18, 2009, the Hearing Officer was advised that on June 15, 2009, Petitioner's Attorney forwarded to the Hearing Officer a "Notice of Withdrawal of Due Process Hearing", requesting to withdraw the due process complaint filed on May 18, 2009, "without" prejudice.

## **VI. DISCLOSURES**

DCPS submitted disclosures on June 12, 2009; however, the disclosures were not admitted into the record.

## **VII. ANALYSIS**

### **Motion to Dismiss/Withdraw a Complaint "with prejudice" or "without prejudice"**

Generally, if a party fails or refuses to prosecute a complaint, there exist grounds for the court to dismiss the complaint, "with prejudice". However, when a complaint is withdrawn voluntarily, the court has not ruled on the merits of "plaintiff's cause of action", and is precluded from dismissing the complaint, "with prejudice".

On June 15, 2009, Petitioner's Attorney, forwarded to the Hearing Officer a "Notice of Withdrawal of Due Process Hearing", requesting to withdraw the due process complaint filed on May 18, 2009, "without" prejudice. The court has not ruled on the merits of the issues identified in the May 18, 2009 due process complaint, precluding dismissal of the complaint, "with prejudice".

In addition, according to **Standard Operating Procedures (SOP), Section 1002.3:**

"If the party requesting the hearing decides it does not want to proceed to hearing, that party shall inform the Student Hearing Office and the other party (ies) in writing of the decision to withdraw at the earliest opportunity. "...It is within the discretion of the Hearing Officer whether to grant the withdrawal with or without prejudice."

Based on the aforementioned, it is the Hearing Officer's decision that Petitioner's voluntary request to withdraw the May 18, 2009 due process complaint is granted; and the complaint is dismissed "without" prejudice. Dismissal of the complaint "without prejudice" is not a final judgment from which an appeal may be taken; therefore, Petitioner is not precluded from refileing [the suit] in the same forum."

### VIII. ORDER

Based on the aforementioned, it is hereby:

(1) **ORDERED**, that Petitioner's request to withdraw the due process complaint filed on May 18, 2009, "without prejudice"; is hereby **GRANTED**; and it is further

(2) **ORDERED**, that this decision and order are effective immediately.

### IX. APPEAL RIGHTS

This is the **FINAL ADMINISTRATIVE DECISION**. Appeals may be made to a court of competent jurisdiction within ninety (90) days from the date of this Decision and Order, in accordance with 20 U.S.C. 1415 (i)(1)(A) and 34 C.F.R. Section 516(b).

*Ramona M. Justice*

6/16/2009

Date Filed: \_\_\_\_\_

\_\_\_\_\_  
Attorney Ramona M. Justice  
Hearing Officer

cc: Assistant Attorney General Candace Sandifer  
Attorney Chike A. Ijeabunwu (301) 270-9173