



**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 22, 2009, Petitioner filed a due process complaint, alleging that Community School, hereinafter referred to as "Respondent", denied the student a free and appropriate public education ("FAPE"), by failing to: (1) conduct initial evaluations within sixty (60) days, as required by IDEA; (2) comprehensively evaluate the student in all areas of suspected disability; and (3) provide access to the student's educational records; 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 was scheduled to convene on July 24, 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. On June 29, 2009, Petitioner's Counsel filed with the Student Hearing Office and Hearing Officer a written request to withdraw the May 22, 2009 due process complaint, "without" prejudice.

**II. JURISDICTION**

The due process complaint filed in this matter was initiated pursuant to 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; therefore, a reading or waiver of parent's due process rights was not entered on the record.

**IV. ISSUE(S)**

The following issues are identified in the *May 22, 2009* due process complaint:

- 1) Whether School denied the student a free appropriate public education (FAPE); by failing to conduct initial evaluations within sixty (60) days, as required by IDEA?

- 2) Whether School denied the student a free appropriate public education (FAPE); by failing to comprehensively evaluate the student in all areas of suspected disability?
- 3) Whether School denied the student a free appropriate public education (FAPE); by failing to provide access to the student's educational records?

**Summary of Relief Requested:**

- (1) A finding that this student has been denied a FAPE by School;
- (2) That the Charter School shall conduct or fund a psycho-educational evaluation, a clinical evaluation, social history evaluation, functional behavioral assessment, a speech and language evaluation, occupational therapy evaluation, a hearing/vision screening, a classroom observation and any other evaluations warranted by these such as a psychiatric evaluation or adaptive assessment;
- (3) Upon completion of evaluations, the Charter School shall schedule an MDT to review the results of evaluations, determine eligibility, develop an IEP; and discuss placement and compensatory education;
- (4) That at the aforementioned meeting, Charter School shall secure the participation of all necessary IEP team members to include but not limited to the SEA representative;
- (5) That parent reserves the right to address compensatory education for denials of FAPE that have occurred until after the completion of evaluations;
- (6) That DCPS agrees to pay counsel for the parent's reasonable attorney's fees and related costs incurred in this matter;
- (7) All meetings shall be scheduled through counsel for the parent, Roberta L. Gambale, Esquire, in writing, via facsimile, at 202 742-2097 or 202 742-2098.

**V. PROCEDURAL POSTURE**

A due process complaint was filed on May 22, 2009; and the Student Hearing Office scheduled the due process hearing for July 24, 2009, at 9:00 a.m.. On June 5, 2009, the Hearing Officer issued a Pre-hearing Conference Notice, scheduling the pre-hearing conference for June 23, 2009, at 4:30 p.m...

Respondent represents that on June 1, 2009, an "Answer" to the complaint; and a "Motion to Dismiss Due Process Complaint" was filed with the Student Hearing Office; and a copy forwarded to Petitioner. The Hearing Officer acknowledge receipt of a copy of the Answer and Motion, however, the Student Hearing Office was unable to verify receipt and filing of said documents.

On June 29, 2009, Petitioner's Counsel filed with the Student Hearing Office and Hearing Officer a written request to withdraw the May 22, 2009 due process complaint, "without" prejudice.

## VI. DISCUSSION AND CONCLUSIONS OF LAW

**Standard Operating Procedures (SOP), Section 1002.3 provides:**

“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.”

### **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 29, 2009, Petitioner's Counsel, on behalf of parent and the student, voluntarily withdrew the May 22, 2009 due process complaint, by filing a “Letter of Withdrawal”, notifying the court that the issues associated with the above-captioned complaint were withdrawn. The court has not ruled on the merits of the issues identified in the May 22, 2009 due process complaint, precluding dismissal of the complaint, “with prejudice”.

Based on the aforementioned, it is the Hearing Officer's decision that Petitioner's voluntary request to withdraw the May 22, 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.”

### **Motion to Dismiss Due Process Complaint**

In United States law, a matter is **moot** if further legal proceedings with regard to it can have no effect, or events have placed it beyond the reach of the law. Thereby the matter has been deprived of practical significance or rendered purely academic.

Respondent represents that on June 1, 2009, an Answer to the complaint; and Motion to Dismiss Due Process Complaint was filed with the Student Hearing Office, and a copy served upon Petitioner. A copy of said pleadings were subsequently forwarded and received by the Hearing Officer. However, the Student Hearing Office is unable to verify receipt of the “Answer” to the complaint; or “Motion to Dismiss Due Process Complaint”. On June 29, 2009, the Student Hearing Office verified that on this date, Petitioner filed a written withdrawal of the May 22, 2009 due process complaint.

Filing of a motion to dismiss the complaint by Respondent, prior to Petitioner withdrawing the complaint, would be appropriate for review and decision by the court; however, the court is unable to verify that a motion was timely filed. Therefore, absent such a motion, the issue of whether the due process complaint should be dismissed or not, is "moot", and no longer ripe for review by the court. It is evident that further legal proceedings with regard to the matter can have no effect, and events such as withdrawal of the complaint; have placed it beyond the reach of the law. The matter has been deprived of practical significance; and to decide the issue would be purely academic.

Based on the aforementioned, the court is unable to render a decision on the Motion to Dismiss Due Process Complaint, reportedly filed by Respondent; since it is unable to verify that the motion was properly filed, in a timely manner.

### VII. ORDER

Based on the aforementioned, it is hereby:

- (1) **ORDERED**, that Petitioner's request to withdraw the May 22, 2009 due process complaint, "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*

6-29-09

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

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Attorney Ramona M. Justice  
Hearing Officer

cc: Attorney Roberta Gambale: Fax: (202) 742-2098 or (202) 742-2097  
Attorney Ellen Dalton: (703) 739-2323