

**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

**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:** April 27, 2009  
**Date of Pre-hearing:** May 27, 2009  
**Date of Hearing:** June 1, 2009

**Student Case Number:**  
**Voluntary Withdrawal of**  
**Complaint**  
**(Settlement Agreement)**

OSSE  
STUDENT HEARING OFFICE  
2009 J -4 AM 9:15

**HEARING OFFICERS' DECISION (HOD)**

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

**Counsel for Parent:** Attorney Will Purcell  
1822 11<sup>th</sup> Street, N.W.  
Washington, D.C. 20005

**Counsel for DCPS:** Assistant Attorney General Nia Fripp  
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 of Proceeding" which is located on the last page of this Order and must be removed for public distribution.

**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 April 27, 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"), by failing to: (1) evaluate the student; (2) develop an appropriate Individualized Education Program (IEP); and (3) provide the student an appropriate placement; 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 June 1, 2009, at 11:00 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 convene, 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 *April 27, 2009*, due process complaint:

- (1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to evaluate the student?
- (2) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to develop an appropriate Individualized Education Program (IEP) for the student?
- (3) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate placement?

## V. RELIEF REQUESTED

- (1) DCPS must convene a meeting to review evaluations and determine if additional evaluations are required, develop and update the student's IEP, and determine an appropriate placement with transportation.
- (2) DCPS must place and fund a full-time special education program.
- (3) DCPS should develop and fund a compensatory education plan, as warranted per Reid.

## VI. PROCEDURAL POSTURE

A due process complaint was filed in this matter on April 27, 2009. On April 29, 2009, Respondent filed "DCPS Resolution Session Waiver" notice. On May 1, 2009, the Hearing Officer issued a Pre-hearing Notice scheduling the Pre-hearing Conference for May 28, 2009, at 3:30 p.m.. The Pre-hearing Conference was rescheduled to May 27, 2009, at 4:00 p.m., to accommodate the parties' schedules. Petitioner failed to appear for the Pre-hearing Conference, therefore, the pre-hearing failed to convene as scheduled. A Pre-hearing Conference Order was issued on May 27, 2009, scheduling the due process hearing for June 1, 2009, at 11:00 a.m..

On May 5, 2009, Respondent filed "District of Columbia Public School's Response to Parent's Administrative Due Process Complaint Notice". On June 1, 2009, at approximately 10:50 a.m., Petitioner filed a "Letter of Withdrawal", notifying the court that the parties resolved the issues in the complaint via settlement agreement, and the complaint was withdrawn.

## VII. DISCLOSURES

### **On behalf of Petitioner:**

None.

### **On behalf of DCPS:**

A witness list dated May 26, 2009.

## IX. DISCUSSION AND CONCLUSIONS OF LAW

### **Standard Operating Procedures (SOP), Section 1002.1 provides in pertinent part:**

"It is the policy of the D.C. Public Schools to encourage resolution of disputes in special education through negotiation and other alternative dispute devices. The Hearing Officer has authority to dismiss a hearing when informed by the parties that the case has been settled (other than those that have been formally mediated), and may, if requested, incorporate the terms of an agreement into an Order with consent of both parties." The parties failed to request the court to incorporate the terms of the settlement agreement into a Hearing Officer's Decision and Order.

**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, Petitioner’s voluntary request to withdraw the due process complaint, because the parties reached a settlement agreement, precludes the court from dismissing the complaint, for failure to prosecute.

A voluntary request to withdraw a complaint is comparable to a voluntary “Motion to Dismiss a Complaint”. When a complaint is dismissed, voluntarily, the court has not ruled on the merits of "plaintiff's cause of action", and is precluded from dismissing the complaint, “with prejudice”. The court has not ruled on the merits of Petitioner’s cause of action in this matter, precluding dismissal of the April 27, 2009 due process complaint, “with prejudice”.

As represented herein, under circumstances where the parties have reached a Settlement Agreement, a hearing on the merits of Petitioner’s due process complaint, has not been held, otherwise precluding dismissal of the complaint, “with prejudice”. Dismissal of the complaint “without prejudice”, does not preclude [the plaintiff] from refileing [the suit] in the same forum." Dismissal of the April 27, 2009 due process complaint, is not a final judgment from which an appeal may be taken."

**IX. ORDER**

Based on the aforementioned, it is on this 3rd day of June, 2009, hereby:

- (1) **ORDERED**, that the due process complaint filed on April 27, 2009, is hereby dismissed “without prejudice”; and it is further
- (2) **ORDERED**, that this decision and order are effective immediately.

## X. 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*

6-3-09

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

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

cc: Assistant Attorney General Nia Fripp  
Attorney Will Purcell (202) 518-2700