

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 5th St., S.E., Washington, D.C. 20003
Phone: (202) 698-3819 Facsimile: (202) 698-3825

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In Re the Matter of :)
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Parent on behalf of Student,)
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Petitioner,)
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v.)
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Respondent.)

Date of Complaint: June 5, 2009
Date of Pre-hearing: July 7, 2009
Date of Hearing: July 15, 2009

Voluntary Withdrawal of Complaint

Student Case Number:

HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

Counsel for Petitioner: Attorney Christopher West
Law Offices of James E. Brown and Associates
1220 L Street, N.W., Suite 700
Washington, D.C. 20005

Counsel for Respondent: Attorney Daniel Kim, Assistant Attorney General
D.C. Office of the Attorney General
825 North Capitol St., N.E., 9th 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.

**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 June 5, 2009, Petitioner filed a due process complaint, alleging that hereinafter referred to as "Respondent", denied the student a free and appropriate public education ("FAPE"), by failing to provide the student school transportation; and that the student is entitled to compensatory education services, because of such failure; 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 15, 2009, at 9:00 a.m., at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. On July 15, 2009, at approximately 9:02 a.m., the Student Hearing Officer accepted for filing Petitioner's voluntary withdrawal of the due process complaint filed on June 5, 2009, "without" prejudice.

II. JURISDICTION

The due process complaint filed in this matter was initiated 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; 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 *June 5, 2009* due process complaint:

- (1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student school transportation, as a related service?
- (2) Whether the student is entitled to compensatory education services, because of DCPS' alleged failure to provide the student school transportation services?

Requested Relief:

- (1) Initiate the provision of transportation for the student within 24 hours to attend the
- (2) Provide reimbursement to the parent for all expenses incurred as a result of DCPS' failure to provide transportation;
- (3) All meetings shall be scheduled through Counsel for the Complainant, Christopher L. West, Esquire, in writing, via facsimile, at 202 742-2097 or 202-742-2098;
- (4) That DCPS shall provide compensatory education services as approved by the Hearing Officer;
- (5) That DCPS shall incur the cost of compensatory education services;
- (6) That DCPS provide any other relief deemed appropriate and related to the violations committed;
- (7) DCPS agrees to pay counsel for the parent's reasonable attorney's fees.

V. PROCEDURAL POSTURE

A due process complaint was filed on June 5, 2009; and the Student Hearing Office issued a Due Process Hearing Notice, provisionally scheduling the pre-hearing conference for July 7, 2009 at 3:30 p.m., and the hearing for August 7, 2009 at 1:00 p.m.; however on June 10, 2009, Respondent filed a written waiver of the resolution meeting, requiring that the pre-hearing and hearing dates be advanced to ensure that the complaint is processed within the 45 day time frame.

On June 11, 2009, the Hearing Officer issued a Pre-hearing Conference Notice, scheduling the pre-hearing conference for July 7, 2009, at 3:30 p. m... The hearing was rescheduled to July 15, 2009 at 9:00 a.m.. On June 18, 2009, Respondent filed "District of Columbia Public School's Response to Parent's Administrative Due Process Complaint".

The pre-hearing was held on July 7, 2009, at 4:00 p.m., and the Hearing Officer issued a Pre-hearing Conference Notice on July 7, 2009. On July 15, 2009, the Hearing Officer appeared for the due process hearing, and at 9:05 a.m., was advised by Respondent that the complaint was withdrawn by Petitioner on July 14, 2009. At approximately 9:10 a.m., the Student Hearing Office advised the Hearing Officer that Petitioner filed a letter of withdrawal on July 14, 2009 at 4:35 p.m., after the time limit for filing pleadings. The Student Hearing Office also advised the Hearing Officer that the withdrawal was not accepted for filing until July 15, 2009 at 9:05 a.m.. The letter of withdrawal represented Petitioner's voluntary withdrawal of the 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 July 15, 2009, Petitioner’s Counsel, on behalf of parent and the student, voluntarily withdrew the June 5, 2009 due process complaint, by filing a “Letter of Withdrawal”, requesting withdrawal of the complaint “without” prejudice. The court has not ruled on the merits of the issues identified in the June 5, 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 June 5, 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."

VII. ORDER

Based on the aforementioned, it is hereby:

- (1) **ORDERED**, that Petitioner’s request to withdraw the due process complaint filed on June 5, 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

7-15-09

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Christopher West: Fax: (202) 742-2097 or (202) 742-2098
Attorney Daniel Kim: