District of Columbia
Office of the State Superintendent of Education

Office of Review and Compliance

Student Hearing Office
Terry Michael Banks, Due Process Hearing Officer
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STUDENT HEARING OFFICE
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Confidential

STUDENT, through the legal guardian[1]	)	Complaint Filed: June 24, 2009
	)	
Petitioner,	)	Hearing Dates: None Held
	)	
v.	)	Docket No.
	)	
THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS	)	
	)	
Respondent.	)	
	)	
Student Attending:	)	
	)	

HEARING OFFICER'S DECISION

Counsel for Petitioner:
John Straus, Esquire
James E. Brown & Associates
1220 L Street, N.W.; Suite 700
Washington, D.C. 20005
(202) 742-2000; Fax: (202) 742-2098

Counsel for DCPS:
Tonya Chor, Esquire
Office of the General Counsel, DCPS
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002

[1] Personal identification information is provided in Appendix A.

Jurisdiction

This proceeding was invoked in accordance with the rights established under the Individuals With Disabilities Education Improvement Act of 2004 ("IDEIA"), 20 U.S.C. Sections 1400 et seq., Title 34 of the Code of Federal Regulations, Part 300; Title V of the District of Columbia ("District" or "D.C.") Municipal Regulations ("DCMR"); and Title 38 of the D.C. Code, Subtitle VII, Chapter 25.

Background

Petitioner is a year-old student attending . On October 6, 2008, Petitioner filed a Due Process Complaint Notice alleging that the District of Columbia Public Schools ("DCPS") had failed to evaluate Petitioner in all areas of suspected disability. On August 13, 2009, Petitioner's counsel filed a letter withdrawing the *Complaint*.

There is no provision in IDEIA, the D.C. Code, or DCPS regulations governing voluntary dismissals. The DCPS Standard Operating Procedures ("SOP") authorizes withdrawals upon written notice to the DCPS Student Hearing Office and the other parties, but offers no parameters to determine the appropriateness of withdrawals. Superior Court Rule 41(a)(1), which is identical to Federal Rule of Civil Procedure 41(a), provides as follows:

> (1) By plaintiff; by stipulation.
>
> Subject to the provisions of Rule 23(e), of Rule 66, and of any applicable statute, an action may be dismissed by the plaintiff without order of Court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.
>
> (2) By order of Court.
>
> Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can

remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

This Hearing Officer will follow Superior Court Rule 41. Inasmuch as the instant *Complaint* raises at least one issue that was not raised in the October 6, 2008 Complaint, the proceeding will be dismissed without prejudice.

ORDER

Upon consideration of Petitioner's request for a due process hearing and Petitioner's counsel letter of withdrawal dated August 13, 2009, this 15th day of August 2009, it is hereby

ORDERED, that the *Complaint* is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED, that this Order is effective immediately.

Notice of Right to Appeal Hearing Officer's Decision and Order

This is the final administrative decision in this matter. Any party aggrieved by the findings and/or decision may bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within ninety (90) days of the entry of the Hearing Officer's Decision, in accordance with 20 U.S.C. Section 1415(i)(2)(B).

/s/
Terry Michael Banks
Hearing Officer

Date: August 15, 2009