



**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 18, 2009, Petitioner filed a due process complaint, alleging that D.C. Public Schools, hereinafter referred to as "DCPS" or "Respondent", denied the student a free and appropriate public education ("FAPE"), by failing to: (1) develop an appropriate individualized education program ("IEP") for the student; (2) provide the student an appropriate placement; and (3) conduct triennial evaluations; 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 August 21, 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 July 16, 2009, Petitioner's Counsel filed a "Letter of Withdrawal", requesting to withdraw the due process complaint, filed on June 18, 2009.

**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 18, 2009* due process complaint:

- 1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to develop an appropriate individualized education program ("IEP") for the student?

- 2) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate placement?
- 3) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to conduct triennial evaluations?

**Summary of Relief Requested:**

- (1) The DCPS shall fund an appropriate full time school program agreed to by the parent.
- (2) DCPS must complete the necessary reevaluation of the student.
- (3) DCPS must also reconvene the MDT within 20 days upon completion of the evaluation to update the IEP and issue a prior notice.
- (4) DCPS must develop an appropriate IEP for the student.
- (5) DCPS must reimburse parent attorney fees for initiating this complaint.

**V. PROCEDURAL POSTURE**

A due process complaint was filed on June 18, 2009; and the Student Hearing Office scheduled the hearing for August 21, 2009, at 9:00 a.m.. On June 23, 2009, the Hearing Officer issued a Pre-hearing Conference Notice, scheduling the pre-hearing conference for July 20, 2009, at 3:00 p.m.. On July 16, 2009, Petitioner's Counsel filed a "Letter of Withdrawal", requesting to withdraw the due process complaint filed on June 18, 2009.

**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 16, 2009, Petitioner's Counsel, on behalf of parent and the student, voluntarily withdrew the June 18, 2009 due process complaint, by filing a "Letter of Withdrawal", requesting to withdraw the complaint. The court has not ruled on the merits of the issues identified in the June 18, 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 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."

## VII. ORDER

Based on the aforementioned, it is hereby:

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

7-19-09

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

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Attorney Ramona M. Justice  
Hearing Officer

cc: Attorney Donovan Anderson: Fax: (202) 610-1881  
Attorney Harsharen Bhuller