



**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 August 21, 2008, Counsel, on behalf of parent, filed a due process complaint alleging that District of Columbia Public Schools ("DCPS"), denied the student a Free Appropriate Public Education ("FAPE"), by: (1) failing to provide the student an appropriate educational program and placement; and (2) failing to reevaluate the student.

The due process hearing was scheduled to convene on September 25, 2008, 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**

The due process hearing was held; and the Hearing Officer's Decision is issued, 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**

A due process hearing on the merits was not held, therefore, a reading and/or waiver of parent's due process rights, was not entered on the record.

**IV. ISSUE**

**The following issues are identified in the complaint:**

- (1) Whether DCPS denied the student a free appropriate public education ("FAPE"); by failing to provide the student an appropriate educational program and placement?
- (2) Whether DCPS denied the student a free appropriate public education ("FAPE"), by failing to reevaluate the student?
- (3) Whether the student is entitled to compensatory education services because DCPS failed to provide the student an appropriate educational program and placement, and reevaluate the student?

## V. DISCLOSURES

### On behalf of Petitioner (Parent):

None.

### On behalf of Respondent (DCPS):

None.

## VI. PRELIMINARY ISSUES

The pre-hearing conference was scheduled for September 22, 2008, at 10:00 a.m... On August 27, 2008, Petitioner filed with the Student Hearing Office, a letter withdrawing the due process complaint.

## VII. 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, Petitioner's voluntary request to *withdraw* the due process complaint precludes the court from dismissing the complaint, for failure to prosecute.

A voluntary withdrawal of 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 the court is precluded from dismissing the complaint, "with prejudice".

In this matter, a hearing on the merits of Petitioner's due process complaint was not held, precluding dismissal of the complaint, "with prejudice".

Based on the aforementioned, it is the Hearing Officer's decision that the complaint in this matter is dismissed, "without prejudice". Dismissal of the complaint "without prejudice", does not "preclude [the plaintiff] from refileing [the suit] in the same forum." Thus, the dismissal is not a final judgment from which an appeal may be taken."

### VIII. ORDER

Based on the aforementioned, it is hereby:

**ORDERED**, that Petitioner's request to withdraw the due process complaint filed on August 21, 2008, is hereby **GRANTED**; "without" prejudice.

### IX. APPEAL PROCESS

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*

9/11/08

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

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Attorney Ramona M. Justice  
Hearing Officer

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