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) 442-5556

In Re the Matter of :	
Parent on behalf of Student,[1]	
Petitioner,	
v.	**Date of Complaint:** April 29, 2009 **Date of Hearing:** June 2, 2009 **Students' Case Number:**
The District of Columbia Public Schools **825 North Capitol Street, N.W.** **Washington, D.C. 20002** **("DCPS" or "District")** **Respondent.**	**Petitioner's Failure to Appear**

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STUDENT HEARING OFFICE
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HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

Counsel for Parent: Attorney Roberta Gambale
The Law Offices of James E. Brown and Associates
1220 L Street N.W., Suite 700
Washington, D.C. 20005

Counsel for DCPS: Attorney Daniel Kim
Assistant Attorney General
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 prior to 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 29, 2009, Counsel, on behalf of Petitioner, filed a due process complaint alleging that District of Columbia Public Schools ("DCPS"), denied the student a Free Appropriate Public Education ("FAPE"), by failing to: (1) implement the student's Individualized Education Program (IEP); (2) comprehensively evaluate the student; and (3) provide the student an appropriate placement; in violation of "The Individuals with Disabilities Education Act ("IDEA")", Public Law 101-476, reauthorized as "The Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA")".

The due process hearing convened on June 2, 2009, at 9:00 a.m.; at Van Ness Elementary School, located at 1150 5th 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 convened, however, Petitioner failed to appear. Therefore, a reading or waiver of parent's due process rights was not entered on the record.

IV. ISSUES

The following issues are identified in the complaint:

(1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to implement the student's Individualized Education Program (IEP)?

(2) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to comprehensively evaluate the student?

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

V. DISCLOSURES

On behalf of Petitioner:

Petitioner submitted disclosures identified as Petitioner's Exhibits 01 through Petitioner's Exhibits 25, and a witness list dated May 22, 2009, however, the hearing failed to proceed, therefore, the exhibits were not entered into the record.

On behalf of DCPS:

Respondent submitted disclosures identified as Respondent's Exhibits 01 through Respondent's Exhibits 11, and a witness list dated April 30, 2009, however, the hearing failed to proceed, therefore, the exhibits were not entered into the record.

VI. PRELIMINARY ISSUES

A due process complaint was filed in this matter on April 29, 2009. On April 30, 2009, DCPS filed a "DCPS Resolution Session Waiver" notice. On May 12, 2009, the Hearing Officer issued a Pre-hearing Conference Notice scheduling the pre-hearing conference for May 27, 2009, at 3:30 p.m.. On May 12, 2009, DCPS filed "District of Columbia Public Schools' Response to Parent's Administrative Due Process Complaint Notice". On May 22, 2009, Petitioner filed its five day disclosure, with a witness list.

On May 26, 2009, DCPS filed its "Disclosure Statement", and a witness list. The pre-hearing conference was held on May 27, 2009, at 3:30 p.m., as scheduled. A Pre-hearing Conference Order was issued on May 27, 2009, scheduling the due process hearing for June 2, 2009, at 9:00 a.m..

The due process hearing failed to convene as scheduled, to provide Petitioner additional opportunity to appear for the hearing. The Hearing Officer contacted Petitioner's Attorney's office at approximately 9:10 a.m., to inquire regarding her appearance for the hearing; and was advised that Petitioner's Attorney was in route to the hearing. The Hearing Officer also inquired of the parties in the Attorneys' waiting room whether any of the parties were appearing for the hearing, to no avail.

Petitioner's Attorney failed to appear for the hearing, and at approximately 9:25 a.m., the due process hearing convened without parent or parent's Attorney. DCPS appeared on behalf of As a preliminary matter, DCPS entered on the record a Motion to Dismiss the due process complaint "without" prejudice, due to Petitioner's failure to appear for the hearing. Receiving no objections, the Hearing Officer granted DCPS' motion, dismissing the due process complaint "without" prejudice.

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.

Dismissal of Complaint "with" 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".

Standard Operating Procedures (SOP), Section 700.3 provides, in pertinent part:

"If the party who requested the hearing (complainant) does not appear at the hearing, the hearing ***may*** be dismissed by the Hearing Officer..."

In this matter, Petitioner failed to appear for the hearing, and in accordance with SOP, Section 700.3, the complaint may be dismissed by the Hearing Officer "with" or "without" prejudice. Petitioner's failure to appear for the due process hearing, is not a common occurrence before this court, therefore, the court finds that dismissal of the complaint "without" prejudice, is warranted.

Based on the aforementioned, it is the Hearing Officer's decision that the due process complaint filed on complaint April 29, 2009, is dismissed, "without" prejudice. Dismissal of the complaint "without" prejudice, does not preclude [the plaintiff] from refiling [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 due process complaint filed on April 29, 2009, is dismissed, ***"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 — Date Filed: *6-3-09*

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Daniel Kim
Attorney Roberta Gambale: Fax: (202) 742-2098
[redacted]