

District of Columbia
Office of the State Superintendent of Education
Office of Review and Compliance
Student Hearing Office
Frances Raskin, Due Process Hearing Officer
1150 - 5th Street, S.E.; Room 3
Washington, D.C. 20003
(202) 698-3819
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STUDENT HEARING OFFICE
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Confidential

STUDENT, through the legal guardian ¹)	
)	
Petitioner,)	
)	Complaint Filed: June 22, 2009
v.)	
)	
THE DISTRICT OF COLUMBIA)	Hearing Date: none held
PUBLIC SCHOOLS)	
)	
Respondent.)	
)	

HEARING OFFICER DETERMINATION

Counsel for Petitioner: John Straus, Attorney at Law
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: Daniel Kim, Attorney at Law
Office of the Attorney General
825 North Capitol Street, N.E.; 9th Floor
Washington, D.C. 20002
(202) 562-4000; Fax: (202) 562-4097

¹ Personal identification information is provided in Attachment 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 the parent of a -year-old student (“Student”) who attends a District of Columbia Public Charter School. On June 22, 2009, Petitioner filed a Due Process Complaint Notice (“Complaint”) alleging that Petitioner requested on March 24, 2009, that the Student be evaluated for special education services. The Complaint further alleged that the District of Columbia Public Schools (“DCPS”) had failed to timely evaluate the Student, determine his eligibility for special education, develop an individualized educational program (“IEP”), and provide the Student an educational placement where the IEP would be implemented.

On July 8, 2009, counsel for DCPS filed a Response to Parent’s Administrative Due Process Complaint Notice (“Response”). The Response asserted that DCPS never received Petitioner’s request that the Student be evaluated. The Response further asserted that Petitioner’s claim is not ripe because, even if Petitioner had requested on March 24, 2009, that the Student be evaluated, DCPS has 120 days to conduct initial evaluations and the Complaint was filed before the expiration of the 120 days. The Response further asserted that, on June 30, 2009, DCPS provided authorization to Petitioner to obtain an independent comprehensive psychological evaluation, including educational, cognitive, and clinical components, as well as a social history at DCPS expense. Finally, the Response asserted that DCPS had not denied the Student a free, appropriate, public education.

On August 13, 2009, Petitioner’s counsel filed a letter with the DCPS Student Hearing Office withdrawing the Complaint. The Student Hearing Office failed to upload this letter of withdrawal into the electronic docketing system, but counsel for Petitioner sent a copy to this Hearing Officer by email. The due process hearing scheduled for August 4, 2009, did not convene.

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 and this proceeding will be dismissed without prejudice.

ORDER

Upon consideration of Petitioner's request for a due process hearing, the response thereto, and Petitioner's counsel's withdrawal letter of August 13, 2009, this 14th 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.

/s/
Frances Raskin
Hearing Officer

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).

Copies to:

John Straus, counsel for Petitioner
Daniel Kim, counsel for DCPS
Student Hearing Office