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) 698-3825

OSSE
STUDENT HEARING OFFICE
2009 APR 17 PM 2: 24

In Re the Matter of :	
Parent on behalf of Student,[1]	
Petitioner,	
v.	**HEARING DATE:** April 15, 2009
	Voluntary Withdrawal of Complaint (Settlement Agreement)
The District of Columbia Public Schools **825 North Capitol Street, N.W.** **Washington, D.C. 20002** **(DCPS" or "District")**	**Student Case Number:**
Respondent.	

HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

Counsel for Petitioner: Attorney Donovan Anderson
2041 Martin Luther King Jr., Ave., S.E.
Suite 131
Washington, D.C. 20020

Counsel for Respondent: Assistant Attorney General Daniel Kim
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 for 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 March 5, 2009, Petitioner filed a due process complaint, alleging that D.C. Public Schools, hereinafter referred to as DCPS, denied the student a Free and Appropriate Public Education ("FAPE"), by failing to comply with the December 21, 2008 Hearing Officers' Decision, 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 convened on April 15, 2009, at 11:00 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

A due process hearing convened, and Petitioner's Counsel waived a formal reading of parent's due process rights.

IV. ISSUE(S)

The following issue is identified in the ***March 5, 2009*** due process complaint:

(1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to provide the student an appropriate individualized education program (IEP).

(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 complete requested evaluations?

Relief Requested:

(1) DCPS to place and fund the student to attend an appropriate program agreed to and identified by the parent.
(2) DCPS to complete a comprehensive psychological evaluation specifically addressing Asperger's Syndrome and a Speech and Language Evaluation.
(3) DCPS to reconvene a MDT within 20 days upon complete of the evaluation to revisit the student's disability and placement.
(4) DCPS to provide the student compensatory education for the period the student has been without appropriate services.
(5) DCPS to reimburse the parent's attorney fees for bringing this matter.

IIX. DISCLOSURES

The Hearing Officer inquired of the parties whether all disclosures were submitted by the parties and whether there were any objections to the disclosures. Receiving no objections to the disclosures submitted, the disclosures identified herein, were admitted into the record as evidence.

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF PETITIONER

- Petitioner's Exhibits 01 through Petitioner's Exhibit 5; and a witness list dated April 8, 2009.

DISCLOSURES ADMITTED INTO EVIDENCE ON BEHALF OF RESPONDENT

- Respondent's Exhibits 01 through Respondent's Exhibit 04; and a witness list dated April 8, 2009.

VI. PRELIMINARY ISSUES

As a preliminary matter, the parties advised the court that a Settlement Agreement (SA), was reached, resolving all issues in the complaint, and requested that the terms of the SA be incorporated into a Hearing Officers' Decision (HOD).

VII. DISCUSSION AND CONCLUSIONS OF LAW

Standard Operating Procedures (SOP), Section 1002.1 provides in pertinent part:

"It is the policy of the D.C. Public Schools to encourage resolution of disputes in special education through negotiation and other alternative dispute devices. The Hearing Officer has authority to dismiss a hearing when informed by the parties that the case has been settled (other than those that have been formally mediated), and may, if requested, incorporate the terms of an agreement into an Order with consent of both parties." At the due process hearing, the parties requested incorporation of the terms of the Settlement Agreement (SA), into an Order.

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, because the parties reached a settlement agreement, precludes the court from dismissing the complaint, for failure to prosecute.

A voluntary request to withdraw 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 is precluded from dismissing the complaint, "with prejudice". The court has not ruled on the merits of Petitioner's cause of action in this matter, precluding dismissal of the March 5, 2009 due process complaint, "with prejudice".

As represented herein, under circumstances where the parties have reached a Settlement Agreement, a hearing on the merits of Petitioner's due process complaint, has not been held, otherwise precluding dismissal of the complaint, "with prejudice". Dismissal of the complaint "without prejudice", does not preclude [the plaintiff] from refiling [the suit] in the same forum." Dismissal of the March 5, 2009 due process complaint, is a not a final judgment from which an appeal may be taken."

VIII. ORDER

Based on the aforementioned, it is on this 15th day of April, 2009, hereby:

(1) **ORDERED**, that that pursuant to request of the parties, the terms of the Settlement Agreement are hereby incorporated herein; and it is further

(2) ORDERED, that on or before June 12, 2009, DCPS shall convene a Multidisciplinary Development Team (MDT)/Individualized Education Program (IEP) team meeting, to review current evaluations; review the April 7, 2009 independent Psychological Evaluation; review and revise the student's IEP, as appropriate; and discuss placement; and it is further

(3) **ORDERED**, that in the event of DCPS' failure to comply with the terms of this Order, Petitioner's Counsel will contact the Special Education Coordinator at of D.C.-Middle Academy, and the DCPS Office of Mediation & Compliance to attempt to obtain compliance prior to filing a complaint, alleging DCPS' failure to comply with this decision and order; and it is further

(4) **ORDERED**, that any delay in meeting any of the deadlines in this Order because of Petitioner's absence or failure to respond promptly to scheduling requests, or that of Petitioner's representatives, will extend the deadlines by the number of days attributable to Petitioner or Petitioner's representatives. DCPS shall document with affidavits and proofs of service for any delays caused by Petitioner or Petitioner's representatives; and it is further

(5) **ORDERED,** that DCPS shall send all notices and schedule all meetings through parent's counsel in writing, via facsimile, with copies to the parent in writing by first class mail; and it is further

(6) **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

Attorney Ramona M. Justice
Hearing Officer

Date Filed: *4-15-09*

cc: Assistant Attorney General Daniel Kim
Attorney Donovan Anderson (202) 610-1881

Student's Name: Malik Boddie
Student's Date of Birth: 10/9/93
School: High Road School DC-Middle Academy (LD Program)
Student's Case No. 0392-2009

INDEX

The following index includes the names and identities of the parties and witnesses participating, in the above-captioned due process hearing. This index may be detached, prior to release of the Hearing Officer's Decision, as a public record.

INDEX OF PARTIES/WITNESSES FOR PARENT (PETITIONER)

Attorney Donovan Anderson	Parent's Attorney

INDEX OF PARTIES/WITNESSES FOR DCPS (RESPONDENT)

Attorney Daniel Kim	DCPS' Attorney

* Party/Witness participated by telephone.

Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

Student Hearing Office (OSSE)

From: admin@dcsho.i-sight.com [admin@dcsho.i-sight.com] **Sent:** Wed 4/15/2009 6:55 PM
To: Kim, Daniel (DCPS-OGC); Donovan.Anderson@donovananderson.com
Cc: dueprocess@dc.gov; Student Hearing Office (OSSE)
Subject: DCSHO: Re: Case # 2009-0392 MALIK BODDIE HOD From <ramona.justice@dc.gov>
Attachments: BODDIE, MALIK (HOD).docx(31KB)

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STUDENT HEARING OFFICE
2009 APR 17 PM 2: 24

** NOTE: Please do not modify subject line when replying **
** This email was sent by Ramona Justice <mailto: ramona.justice@dc.gov> **

Counsel,
Please refer to the attached HOD issued in this matter. thank you