

**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 May 29, 2009, Petitioner filed a due process complaint, alleging that

School, hereinafter referred to as "Respondent", denied the student a free and appropriate public education ("FAPE"), by failing to: (1) appropriately develop and implement the student's educational program; (2) evaluate the student; and (3) provide an appropriate placement; 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 July 29, 2009, at 9:00 a.m., at Van Ness Elementary School, located at 1150 5th Street, S.E., Washington, D.C. 20003. On June 24, 2009, Petitioner's Counsel filed a "Letter of Withdrawal", notifying the court that the issues associated with the above-captioned complaint, were withdrawn.

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 *May 29, 2009* due process complaint:

- 1) Whether School denied the student a free appropriate public education (FAPE); by failing to develop and implement the student's educational program?
- 2) Whether School denied the student a free appropriate public education (FAPE); by failing to evaluate the student?

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

Summary of Relief Requested:

- (1) The Local Education Agency must place and fund the student at a full-time special education program.
- (2) The Local Education Agency must fund an independent clinical evaluation and an independent functional behavior assessment.
- (3) The Local Education Agency must convene a meeting after it has received the last of the aforementioned evaluations to review the evaluations, determine whether additional evaluations are needed, update the student's IEP, develop a behavior intervention plan, discuss and determine an appropriate placement and the need for compensatory educational services,
- (4) The Local Education Agency should develop and fund a compensatory education plan as warranted per Reid.

V. PROCEDURAL POSTURE

A due process complaint was filed on May 29, 2009; and the Student Hearing Office scheduled the hearing for July 31, 2009, at 9:00 a.m.; however the Hearing Officer rescheduled the hearing for July 29, 2009 at 9:00 a.m., based upon availability.

On June 5, 2009, the Hearing Officer issued a Pre-hearing Conference Notice, scheduling the pre-hearing conference for June 30, 2009, at 4:00 p.m... On June 9, 2009, Respondent filed an "Answer to Due Process Complaint". On June 24, 2009, Petitioner's Counsel filed a "Letter of Withdrawal", notifying the court that the issues associated with the above-captioned complaint, were withdrawn. The due process hearing scheduled for July 29, 2009 at 9:00 a.m., failed to proceed as scheduled, because the Petitioner withdrew the due process complaint filed on May 29, 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 June 24, 2009, Petitioner's Counsel, on behalf of parent and the student, voluntarily withdrew the May 29, 2009 due process complaint, by filing a "Letter of Withdrawal", notifying the court that the issues associated with the above-captioned complaint were withdrawn. The court has not ruled on the merits of the issues identified in the May 29, 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 May 29, 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 May 29, 2009, "without prejudice"; is hereby **GRANTED**; and it is further
- (2) **ORDERED**, that this decision and order are effective immediately.

IIX. 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

6-29-09

Attorney Ramona M. Justice
Hearing Officer

Date Filed: _____

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