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
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In Re the Matter of :

Parent on behalf of Student,[1]

Petitioner,

v.

The District of Columbia Public Schools
825 North Capitol Street, N.W.
Washington, D.C. 20002
(DCPS" or "District")

Respondent.

Date of Complaint: April 20, 2009
Date of Pre-hearing: May 19, 2009
Date of Hearing: June 9, 2009

Voluntary Withdrawal of Complaint

Student Case Number:

HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

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

Counsel for Respondent: Assistant Attorney General Harsharen Bhuller
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 April 20, 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: (1) conduct evaluations; (2) develop a Behavior Intervention Plan (BIP); (3) develop an appropriate IEP; and (3) convene an IEP meeting to review existing evaluations; 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 is scheduled to convene on June 9, 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

The due process hearing failed to convene, therefore, a reading and/or waiver of parent's due process rights was not determined or entered on the record.

IV. ISSUES

The following issues are identified in the *April 20, 2009* due process complaint:

(1) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to conduct an Occupational Therapy Evaluation, Speech/Language Evaluation, Vision/Hearing Screening, Functional Behavior Assessment, and Behavior Intervention Plan?

(2) Whether The denied the student a free appropriate public education (FAPE); by failing to develop an appropriate Individualized Education Program (IEP)?

(3) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to convene an IEP team meeting to review existing evaluations?

(4) Whether DCPS denied the student a free appropriate public education (FAPE); by failing to develop a Behavior Intervention Plan?

(5) Whether the student is entitled to compensatory education services because of DCPS' failure to conduct reevaluations, develop an appropriate IEP, convene an IEP team meeting to review existing evaluations, and develop a Behavior Intervention Plan?

3. **Relief Requested**

a. The Hearing Officer shall find that DCPS denied the student with a FAPE for failing to conduct evaluations, develop an appropriate IEP, convene an MDT meting an review the independent assessments, develop a behavior intervention plan, provide compensatory education services in speech/language therapy and occupational therapy services.

b. DCPS shall conduct the following reevaluations: occupational therapy, speech/language evaluation, social history, vision/hearing screening, functional behavior assessment and behavior intervention plan. In the event they do not conduct the assessments, DCPS shall fund the assessments independently.

c. DCPS shall convene an IEP meeting, to review all assessments, develop an appropriate IEP and determine the form of compensatory education services.

d. All meetings shall be scheduled through counsel for the Complainant, Christopher L. West, Esq., in writing, via facsimile, at 202-742-2097 or 202-742-2098.

e. DCPS shall incur the cost of compensatory education services.

f. DCPS agrees to pay counsel for the parent's reasonable attorney's fees.

g. DCPS shall provide counsel for the parents copies, pursuant to 4 DCMR 3021.8 of all evaluation reports and educational records on the student no later than sixteen (16) business hours prior to the convening of any meeting. The DCPS shall ensure that this student has available a FAPE including special education, transportation (DCMR 3000.3), and other related services as designed to met the student's unique needs and preparation for employment and independent living.

h. That DCPS, in the event they fail to answer/respond to the issues alleged in the complainant's administrative due process complaint, within ten (10) calendar days, the arguments and facts as averred by the parents will be deemed true and accurate and act as a waiver on the part of DCPS, for their desire to have a Resolution Session Meeting, and the Complainant's administrative due process hearing will be scheduled pursuant to the applicable timeframes contained in the IDEIA.

i. That DCPS' failure to comply with the IDEIA of 2004, and allege any insufficiency of the complainant's administrative due process complaint, will constitute waiver on the part of DCPS to make such argument at any later date and time.

V. DISCLOSURES

On behalf of Petitioner:

Information unavailable.

On behalf of The

Information unavailable.

VI. PROCEDURAL POSTURE

A due process complaint was filed on April 20, 2009. On April 25, 2009, the Hearing Officer issued a Notice of Pre-hearing Conference scheduling the pre-hearing conference for June 3, 2009, however due to DCPS' filing of a waiver of the resolution meeting on April 23, 2009, the pre-hearing conference was held on May 19, 2009, at 3:30 p.m..

The hearing was initially scheduled for May 28, 2009, at 1:00 p.m., however, pursuant to Petitioner's unopposed Motion for Continuance the hearing was continued to June 9, 2009, at 11:00 a.m.. The pre-hearing conference convened on May 19, 2009, at 3:30 p.m., as scheduled. During the pre-hearing conference, Petitioner withdrew Issue 4 of the complaint.

On May 19, 2009, a Pre-hearing Conference Order was issued, scheduling the due process hearing for June 9, 2009, at 11:00 a.m.. On June 2, 2009, Petitioner filed a notice of withdrawal of the due process complaint with the Student Hearing Office.

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."

<u>Motion to Dismiss/Withdraw a Complaint "with prejudice" or "without prejudice"</u>

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 2, 2009, Petitioner's Counsel, on behalf of parent and the student, filed a Notice of Withdrawal of the Due Process Complaint, requesting to withdraw the April 20, 2009 due process complaint. The court has not ruled on the merits of Petitioner's cause of action, precluding dismissal of the due process complaint, "with prejudice".

Based on the aforementioned, it is the Hearing Officer's decision that Petitioner's voluntary request to withdraw the April 20, 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 refiling [the suit] in the same forum."

VIII. ORDER

Based on the aforementioned, it is hereby:

(1) **ORDERED,** that Petitioner's request to withdraw the due process complaint filed on April 20, 2009, "without prejudice"; is hereby **GRANTED**; and it is further

(2) **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 6-5-09

Date Filed: _____

Attorney Ramona M. Justice
Hearing Officer

cc: Attorney Christopher West: Fax: (202) 742-2098
Attorney Harsharen Bhuller