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 FEB 18 AM 7:53

In Re the Matter of :	
Parent on behalf of Student,[1]	
Petitioner,	
	Date of Complaint: 12/23/08
	Date of Hearing: 2/17/09
v.	**Student Case Number:**
	Voluntary Withdrawal of Complaint
Respondent.	

HEARING OFFICERS' DECISION (HOD)

Hearing Officer: Attorney Ramona M. Justice

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

Counsel for Attorney John Hoppe
1401 Mercantile Lane, Suite 105
Largo, Maryland 20774

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 December 23, 2008, 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 conduct timely initial evaluations and/or convene a MDT meeting to review evaluation results and address eligibility, 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 February 17, 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 failed to convene, therefore, a reading and/or waiver of formal reading of parents' due process rights was not entered on the record.

IV. ISSUE(S)

The following issue is identified in the ***December 23, 2008***, due process complaint:

Whether DCPS denied the student a free appropriate public education (FAPE); by failing to conduct timely initial evaluations and/or convene a MDT meeting to review evaluation results and address eligibility?

V. DISCLOSURES

On behalf of Petitioner:

Disclosures were submitted by the parties, however, not admitted into the record.

On behalf of DCPS:

Disclosures were submitted by the parties, however, not admitted into the record.

VI. PRELIMINARY ISSUES

A due process complaint was filed on December 23, 2008. On January 4, 2009, the Hearing Officer issued a Notice of Pre-hearing Conference scheduling the pre-hearing conference for January 8, 2009 at 4:00 p.m.. The pre-hearing conference convened as scheduled, and on January 8, 2009, a Pre-hearing Conference Order was issued.

On January 26, 2009, Petitioner filed with the Student Hearing Office (SHO) a written withdrawal of the due process complaint filed on December 23, 2008, reserving the right to r-file her claim at a later date.

On February 17, 2009, at 8:45 a.m., the Hearing Officer appeared and prepared for the due process hearing. At 9:05 a.m., the Hearing Officer contacted Petitioners' counsel regarding her appearance for the due process hearing, and was advised that the complaint was withdrawn on January 26, 2009.

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 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".

On January 26, 2009, Petitioner's Counsel, on behalf of parent and the student, filed a Notice of Withdrawal of the Due Process Complaint, requesting to voluntarily withdraw the complaint "without prejudice". 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 December 23, 2008 due process complaint, "without prejudice", is granted. 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 December 23, 2008, "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 /s/

Attorney Ramona M. Justice
Hearing Officer

Date Filed: 2/17/09

cc: Attorney Roberta Gambale.: Fax: (202) 742-2098
Attorney John Hoppe