

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

ALICE KIRKSEY-HARRINGTON,

Defendant.

Civil Action No. 14-180 (BAH) (AK)

Judge Beryl A. Howell

MEMORANDUM AND ORDER

The plaintiff, District of Columbia, brought this appeal seeking to overturn a November 14, 2013 Hearing Officer Determination (“HOD”) finding that the plaintiff improperly denied the defendant, Alice Kirksey-Harrington, parent of “D.K.,” due process rights under the Individuals with Disabilities Act and the Individuals with Disabilities in Education Improvement Act (collectively, “IDEA”) and D.C. Law. Specifically, the hearing officer found that “[t]he [Plaintiff] unilaterally determined the Student [D.K.] would be moved from the Non-Public School to Attending School when it refused to place [D.K.] in the only specific program the IEP team discussed when it determined to change his educational placement.” *See* Report and Recommendation (“R&R”) at 5, ECF No. 18 (quoting Admin. Record, at 14). The plaintiff appealed the decision on the grounds that it was “contrary to the IDEA, the case law in this District that allows DCPS the discretion to select the school a student will attend, and the municipal regulations which give local schools priority over private schools for implementing students’ IEPs.” *Id.*

The case was referred to Magistrate Judge Kay, due to his current assignment to a related case between the parties, *Kirksey-Harrington v. District of Columbia*, Case No. 13-2029, for full

case management. *See* Referral to Magistrate Judge, ECF No. 5.¹ Thereafter, the parties cross-moved for summary judgment. *See* Pl.’s Mot. Summ J., ECF No. 10; Def.’s Cross-Mot. Summ J., ECF No. 12.

On January 14, 2015, the Magistrate Judge issued an R&R, which recommended that the plaintiff’s Motion for Summary Judgment be denied and the defendant’s Cross-motion for Summary Judgment be granted. *See* R&R at 24. The R&R found that the hearing officer did not err in concluding: (1) “that Defendant was unable to effectively evaluate whether Dunbar High School was capable of implementing D.K.’s IEP,” *id.* at 19, and (2) that Kennedy at Dunbar and Dunbar High School’s implementation of the IEP were not equivalent, *id.* at 24 (“Plaintiff has not demonstrated by a preponderance of the evidence that the Hearing Officer erred in finding that there were differences in educational programming that favor the selection of Kennedy at Dunbar over Dunbar High School.”). Consequently, the R&R recommended that the HOD decision to place D.K. at Kennedy at Dunbar for School year 2013-2014 be upheld. *See* R&R at 24. In addition, the R&R recommended that the defendant be considered as a prevailing party for the purposes of recovering attorney’s fees in connection with the due process hearing. *Id.*

The R&R cautioned the parties that failing to file a timely objection within 14 days of the party’s receipt of the R&R, could result in their waiving the right to appeal an order of the District Court adopting the recommendations. *See id.* at 25. No objection to the R&R has been timely filed, and the time to file such an objection has lapsed, *see* Local Civil Rule 72.3(b), and thus all objections are deemed waived. *See, e.g., Thomas v. Arn*, 474 U.S. 140, 149–55 (1985).

The Court, upon independent consideration of the pending motions and the entire record herein, fully concurs with the recommendations made in the R&R. Accordingly it is hereby

¹ The related matter, *Kirksey-Harrington v. District of Columbia*, Case No. 13-2029, was consolidated with the instant matter, *District of Columbia v. Kirksey-Harrington*, Case No. 14-180. *See* Case No. 13-2029, Minute Order, dated July 30, 2014.

ORDERED that the Report and Recommendation, ECF No. 18, is ADOPTED in full;
and it is further

ORDERED that, for the reasons stated in the Report and Recommendation, the
Plaintiff's Motion for Summary Judgment, ECF No. 10, is DENIED; and it is further

ORDERED that, for the reasons stated in the Report and Recommendation, the
Defendant's Cross-Motion for Summary Judgment, ECF No. 12, is GRANTED; and it is further

ORDERED that, for the reasons stated in the Report and Recommendation, the
Defendant is considered the prevailing party for purposes of recovering attorney's fees incurred
in connection with the Due Process Hearing; and it is further

ORDERED that the parties shall file a joint status report, by February 11, 2015,
proposing a schedule to govern any further proceedings in this matter.

SO ORDERED.

Date: February 4, 2015



Digitally signed by Hon. Beryl A. Howell
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o=U.S. District Court for the
District of Columbia, ou=United
States District Court Judge,
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Date: 2015.02.04 18:43:58 -05'00'

BERYL A. HOWELL
United States District Judge