UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PATRICIA WRIGHT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 05-0990 (RWR)**
	)	
DISTRICT OF COLUMBIA,	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

Plaintiff Patricia Wright filed this action against the District of Columbia ("the District") under the Individuals with Disabilities Education Act ("IDEA" or "the Act"), 20 U.S.C. §§ 1400 et seq., challenging a hearing officer's determination that she was not a prevailing party in an administrative hearing below and that her counsel waived attorney's fees for that hearing. Both parties moved for summary judgment. Because Wright has not shown that she was a prevailing party and that her counsel did not waive attorney's fees, her motion for summary judgment will be denied and the District's motion for summary judgment will be granted.

BACKGROUND

Wright's child D.W. is a student enrolled in the District of Columbia Public Schools ("DCPS"). Wright requested a hearing with a DCPS hearing officer alleging that DCPS denied her child a

free and appropriate public education ("FAPE"), violating regulations under IDEA requiring that school districts identify, locate, and evaluate all children with disabilities for special education services. (Pl.'s Mot. Sum. J., Pl.'s Stmt. of Mat. Facts ("Pl.'s Stmt.") at ¶ 3.) At the hearing, the District moved to dismiss because of a conflict of interest, given that Wright's counsel, Roy Howell, was a substitute teacher at the DCPS school that Wright's child attended. (Id. at ¶ 8.) The hearing officer was unwilling to decide the merits of the case with the possible conflict present. (Pl.'s Mot. for Summ. J., Ex. 5 at 31.) Concerned that a delay in addressing the merits would affect the student's best interests, the hearing officer suggested that Howell forego attorney's fees to resolve the conflict of interest.[1] He allowed Howell to choose between (1) foregoing attorney's fees and continuing a discussion on the merits, or (2) briefing the conflict at issue and turning to the merits only after the conflict issue was decided.[2] Howell agreed

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[1] HEARING OFFICER ST. CLAIR: I'll tell you what we can do, Mr. Howell. We can go forward on the merits if you waive your claim to attorney's fees. We can go right forward and if you waive your claim to attorney's fees, we can go right forward on the merits. Otherwise, I will give you a chance to resolve this conflict [of] interest, and then we'll go on the merits, because the conflict, as I see it, is only for attorney's fees.
(Pl.'s Mot. for Summ. J., Ex. 5 at 33.)

[2] HEARING OFFICER ST. CLAIR: That if you waive attorney's fees, I mean, the conflict is no good, but if you want to insist on attorney's fees, then I [am] going to have to

to forfeit his attorney's fees.[3] Despite accepting Howell's waiver, the hearing officer remained wary about the implications of Howell's continued representation[4] and required briefs on the conflict of interest issue.[5]

At some time before a recess in the hearing ended, the parties agreed that DCPS would convene a multi-disciplinary team and student evaluation plan ("MDT/SEP") meeting for Wright's child. (Pl.'s Mot. for Summ. J., Ex. 5 at 48-49; Ex. 2 at 2.) The hearing officer issued an order stating that the matter of

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decide this conflict thing, and I want that brief. (Id. at 35.)

[3] MR. HOWELL: Well, Judge, insofar as I want the best for this little boy, and my client is indigent and I think that the little boy deserves to have a break. So, consequently, I will forfeit my attorney's fees. I am here for the benefit of the child. (Id. at 38.)

[4] He feared, for example, that if the parties held a meeting that produced results unsatisfactory to Wright, Howell would return seeking a further hearing for which he would seek fees. See id. at 40-41, 45. The record does not reflect that any further hearing occurred.

[5] HEARING OFFICER ST. CLAIR: I'll tell you what. Here is what you can do. For this matter, for this matter here, you are waiving your attorney's fees.
MR. HOWELL: If the little boy gets -- if the case is over. That's all I want.
. . .
HEARING OFFICER ST. CLAIR: The conflict is still there. . . . If you do not step aside in your representation on this, that is, if you foresee the possibility of coming back here representing Ms. Wright, then I think I'm going to have to make a decision on this conflict of interest. (Id. at 40-41.)

the FAPE challenge was "SETTLED without a prevailing party." (Pl.'s Mot. for Summ. J., Ex. 2 at 3.)

Wright now seeks attorney's fees, contending that she is a prevailing party and that Howell did not waive his right to fees. (Pl.'s Stmt. at ¶¶ 11-12, 14.)[6] Instead, Wright asserts that Howell agreed only to submit a brief on the conflict issue to determine whether attorney's fees could be granted. (Id. at ¶ 15.) The District filed a cross-motion for summary judgment asserting that Wright is not entitled to attorney's fees because she is not a prevailing party and Howell waived his right to attorney's fees.

DISCUSSION

Summary judgment may be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56. A court may enter summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Material facts are those "that might affect the outcome of the suit under the governing law."

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[6] Wright also challenges how the hearing officer handled the question of whether her administrative motion had sought mediation or a hearing. (Pl.'s Mot. for Summ. J., Ex. 6 at 2.) That issue has no bearing on the disposition of the pending summary judgment motions.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (stating that there is a genuine issue of material fact if the evidence is such that a reasonable jury could return a verdict for the non-moving party).

IDEA "ensure[s] that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). IDEA allows parents to file administrative complaints and request due process hearings "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(6)(A).

"When reviewing a hearing officer's decision in an IDEA case, a district court shall review the administrative record, hear additional evidence if so requested by the parties, and, based 'on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.'" Skrine v. Dist. of Columbia, Civil Action No. 05-861, 2007 WL 915227, at *2 (D.D.C. Mar. 27, 2007) (quoting 20 U.S.C. § 1415(i)(2)(C)). "[A] party challenging the administrative determination must at least take on the burden of persuading the court that the hearing

officer was wrong[.]" Kerkam v. McKenzie, 862 F.2d 884, 887 (D.C. Cir. 1988).

I. PREVAILING PARTY

IDEA allows a court, in its discretion "to award reasonable attorney's fees as part of the costs to a prevailing party who is the parent of a child with a disability[.]" 20 U.S.C. 1415(i)(3)(i)(1). In order to be deemed a prevailing party, a plaintiff must demonstrate that a "material alteration of the legal relationship of the parties" resulted from an enforceable judgment on the merits or from a consent decree. Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532 U.S. 598, 604 (2001) (interpreting the fee-shifting provision of the Fair Housing Amendments Act of 1988 and the Americans with Disabilities Act of 1990); see also Alegria v. Dist. of Columbia, 391 F.3d 262, 263 (D.C. Cir. 2004) (applying Buckhannon to IDEA). A prevailing party at the administrative level may then seek attorney's fees. Kaseman v. Dist. of Columbia, 444 F.3d 637, 639 (D.C. Cir. 2006). "Under the IDEA, it is only for the federal court -- not the hearing officer -- to determine whether a party has achieved prevailing party status." Skrine, 2007 WL 915227, at *4 (citing 20 U.S.C. § 1415(i)(3)(B)). However, a hearing officer's decision on the merits in an IDEA proceeding "constitute[s] '*administrative imprimatur*'[,]" which while not judicial, does change the legal relationship between the parties.

A.R. v. N.Y. City Dep't of Educ., 407 F.3d 65, 76 (2d Cir. 2005). "In order to give effect to the IDEA's intent to permit awards to winning parties in administrative proceedings even where there has been no judicial involvement, . . . we conclude that the combination of administrative *imprimatur*, the change in the legal relationship of the parties arising from it, and subsequent judicial enforceability, render such a winning party a 'prevailing party' under Buckhannon's principles." Id.

Wright submits that despite the hearing officer's statement that there was no prevailing party, the outcome of the hearing resulted in the hearing officer ordering the District to evaluate her child in preparation for special education assessment. (Pl.'s Mot. for Summ. J., Ex. 5 at 39 ("Mr. Howell: 'The District of Columbia is obligated to evaluate the child.' Hearing Officer: 'We're going to get that done.'"), 45 ("Hearing Officer: 'Here is what I am going to do. Ms. Wright, I am going to make sure that Delonte is evaluated.'").) She maintains that the hearing officer provided relief, which was the evaluation that she says she requested, establishing her as the prevailing party because it changes her legal relationship vis-a-vis the District. (Id. at 39, 45 ("Mr. Howell: '[W]e would like to have a psycho-educational evaluation straightaway . . . . [A]ll I want is for them to meet and to evaluate the child.'").)

However, the hearing officer made plain that he would not and could not order a psycho-educational evaluation. (Id. at 52.) Moreover, the hearing officer's order contained no language providing any relief on the FAPE dispute and did not produce a change in the legal relationship between the parties. While the hearing officer stated in the middle of the hearing that an evaluation would be conducted (Pl.'s Mot. for Summ. J., Ex. 5 at 39), the hearing officer ultimately announced after a brief recess his "understand[ing] that the parties have agreed that an MDT meeting, MDT/SEP, student evaluation plan, is going to take place." (Pl.'s Mot. for Summ. J., Ex. 5 at 48-49.) See Buckhannon, 532 U.S. at 605 ("A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial *imprimatur* on the change."); Abraham v. Dist. of Columbia, 338 F. Supp. 2d 113, 120 & n.8 (stating that the mere mention in a hearing officer's decision that the parties reached an agreement is insufficient by itself to convert an IDEA claimant into a prevailing party at the administrative level). He left it to the parties to set the meeting date, did not make any final merits determinations on the record, and issued an order that contained no direction that DCPS take or refrain from any action. See Adams v. Dist. of Columbia, 231 F. Supp. 2d 52, 56 n.4 (D.D.C. 2002) (contrasting "a final determination by a hearing officer

[that] materially alters the relationship between the parties: that is, [where] the hearing officer's order represents judicial relief"); Abraham, 338 F. Supp. 2d at 120 n.8 (stating that "[f]or an IDEA claimant to be a 'prevailing party,' the [hearing officer] must order DCPS to undertake or refrain from some conduct consistent with the statute"). The order did not incorporate the parties' agreement, see id. at 120, or provide for any continuing administrative or judicial oversight of its terms in the way consent decrees do. See Buckhannon, 532 U.S. at 604 n.7. The unambiguous language of the order, declaring the matter settled, leaves no doubt that there was not even any intent to award relief to the plaintiff. See Skrine, 2007 WL 915227, at *4 (noting that "[a] plaintiff is deemed to have prevailed at the administrative level where the hearing officer's *decision* awarded plaintiff 'relief on the merits'") (quoting Abraham, 338 F. Supp. 2d at 120 & n.8 (D.D.C. 2004) (emphasis added)).

Because there was no alteration in the legal status of the parties ordered, Wright has not shown that she is entitled to prevailing party status.

II. FEE WAIVER

Wright's failure to demonstrate prevailing party status is but one hurdle that she has not overcome. She has not shown that her counsel did not waive his right to attorney's fees for the

hearing. Howell clearly announced that he would forfeit his attorney's fees, and the hearing officer affirmed that "[f]or this matter here, you are waiving your attorney's fees." (Pl.'s Mot. for Summ. J., Ex. 5 at 38, 40-41.) After the hearing officer indicated his intent to require briefs in addition, Howell did not protest or retract his waiver. Indeed, the hearing officer continued to make comments throughout the proceeding suggesting that the waiver was still in effect throughout that hearing and might end only if DCPS denied the evaluative relief Wright sought after the MDT/SEP meeting.[7] Howell did not attempt to correct the hearing officer on the waiver issue. "Failure to contest an assertion . . . is considered evidence of acquiescence only if it would have been natural under the circumstances to object to the assertion in question." United States v. Hale, 422 U.S. 171, 176 (1975); see Turkmani v. Rep. of Bolivia, 273 F. Supp. 2d 45, 53 (D.D.C. 2002) ("A party who sits in silence acquiesces at his own peril." (internal quotation omitted)). Given that the hearing officer repeatedly stated that Howell had waived his fees and Howell did

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[7] HEARING OFFICER ST. CLAIR: I am going to call for briefs. . . . And I think I should do this, because Mr. Howell may want to come back. If something happens later on and he wants to come back, *and this time he is probably going to want to get paid*, assuming he can establish a denial.
(Pl.'s Mot. for Summ. J., Ex. 5 at 45) (emphasis added).

not object where it would have been natural to do so had Howell not intended to waive, he has acquiesced in the declared waiver.

No genuine issue of material fact exists as to the absence of an order altering the parties' legal relationship and as to Howell's waiver of attorney's fees, and the District is entitled to summary judgment.

CONCLUSION

Because Wright is not a prevailing party, she does not qualify for attorney's fees under IDEA's fee-shifting provision. Moreover, Wright's counsel waived his attorney's fees and cannot claim fees under IDEA's fee-shifting provision. Accordingly, summary judgment will be entered in favor of the District. A separate Order accompanies this Memorandum Opinion.

SIGNED this 17th day of April, 2007.

/s/
RICHARD W. ROBERTS
United States District Judge