The University of the State of New York

The State Education Department
State Review Officer
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No. 17-099

Application of a STUDENT WITH A DISABILITY, by his parent, for review of a determination of a hearing officer relating to the provision of educational services by the Board of Education of the Clarkstown Central School District

Appearances:
Park, Jensen, Bennett, LLP, attorneys for petitioner, by Tai H. Park, Esq. and Kathleen Gardner, Esq.

Jaspan Schlesinger, LLP, attorneys for respondent, by Carol A. Melnick, Esq.

DECISION

I. Introduction

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the parent) previously appealed from the decision of an impartial hearing officer (IHO) which denied her request to be reimbursed for her son's tuition costs at the Hawk Meadow Montessori School (Hawk Meadow) for the 2012-13 and 2013-14 school years. The appeal must be sustained in part.

II. Overview—Administrative Procedures

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[*l*]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the

identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). The IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

III. Facts and Procedural History

The student has been the subject of a prior administrative appeal (Application of a Student with a Disability, Appeal No. 14-161). Accordingly, the parties' familiarity with the facts and procedural history through the prior administrative appeal is presumed and will not be repeated in detail. Briefly, however, pursuant to an order of remand issued by the United States District for the Southern District of New York, the IHO was directed to consider the issue of whether equitable considerations favored reimbursing the parents for costs associated with the student's unilateral placement at Hawk Meadow for the 2012-13 and 2013-14 school years (see A v. Clarkstown Central School District, 2017 WL 3037402, at *28 [S.D.N.Y. July 17, 2017]).

A. Impartial Hearing Officer Decision

After receiving the order of remand, the IHO issued a decision dated September 28, 2017 and denied the parent's request for an award of reimbursement of the costs associated with the student's tuition at Hawk Meadow for the 2012-13 and 2013-14 school years (IHO Decision at p.

12). More specifically, with respect to the 2012-13 school year, the IHO found that in failing to sign the consent forms that would permit the release of information between the district of location, Hawk Meadow and the district, and despite repeated requests throughout the school year, "the parent did not cooperate with" the district (id. at p. 8). She further found that the parent withheld a May 2012 private psychoeducational evaluation from the district, which could have assisted the CSE in developing educational recommendations for the 2012-13 school year (id.). Under the circumstances, the IHO found that "the [p]arent's failure to cooperate obstructed the [d]istrict's efforts to meet its obligations under the IDEA" for the 2012-13 school year, and therefore, she concluded that equitable considerations weighed against the parent's request for relief (id.).

With respect to the 2013-14 school year, the IHO determined that the evidence in the hearing record showed that the parent failed to cooperate with the CSE in its attempts to recommend an appropriate program for the student (IHO Decision at p. 11). While the IHO noted that the parent provided written consent for the district to conduct an updated psychoeducational evaluation of the student, she further found that the parent failed to complete and submit her responses to the BASC and the social history, which the district required in order to complete the evaluation (id.).[1] Moreover, the IHO determined that the parent refused to attend several CSE meetings scheduled by the district for the purpose of reviewing a recommendation for a change in placement and to review the updated psychoeducational evaluation (id. at pp. 11-12). In view of the foregoing, the IHO concluded that the parent's "failure to cooperate with the CSE obstructed the CSE's efforts to develop an appropriate IEP" for the 2013-14 school year, and that equitable considerations did not support her request for relief (id. at p. 12).

IV. Appeal for State-Level Review

The parent appeals and requests that the IHO's September 2017 decision be reversed. More specifically, the parent asserts that the IHO erred in reapplying "her own factual findings that exonerate the [d]istrict and blamed the parent for any deficiencies in the [d]istrict's behavior." The parent further asserts that the IHO "simply relied" on the district's evidence, and in doing so, the IHO "misapplied the law, ignored numerous facts favorable to [the parent], cherry-picked other facts and cast them all with unfounded negative inferences."

As relief, the parent requests an order directing the district to reimburse her for the costs of the student's tuition at Hawk Meadow for the 2012-13 and 2013-14 school years.

In an answer, the district generally denies the parent's allegations and requests an order dismissing the parent's appeal. The district alleges that the evidence in the hearing record supports the IHO's finding that equitable considerations weigh in its favor for the 2012-13 and 2013-14 school years.

V. Applicable Standards

The final criterion for a reimbursement award is that the parents' claim must be supported by equitable considerations. Equitable considerations are relevant to fashioning relief under the IDEA (Burlington, 471 U.S. at 374; R.E., 694 F.3d at 185, 194; M.C. v. Voluntown Bd. of Educ., 226 F.3d 60, 68 [2d Cir. 2000]; see Carter, 510 U.S. at 16 ["Courts fashioning discretionary

[1] BASC is an acronym for Behavior Assessment Scales for Children.

equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable"]; L.K. v. New York City Dep't of Educ., 674 Fed. App'x 100, 101 [2d Cir. Jan. 19, 2017]). With respect to equitable considerations, the IDEA also provides that reimbursement may be reduced or denied when parents fail to raise the appropriateness of an IEP in a timely manner, fail to make their child available for evaluation by the district, or upon a finding of unreasonableness with respect to the actions taken by the parents (20 U.S.C. § 1412[a][10][C][iii]; 34 CFR 300.148[d]; E.M. v. New York City Dep't of Educ., 758 F.3d 442, 461 [2d Cir. 2014] [identifying factors relevant to equitable considerations, including whether the withdrawal of the student from public school was justified, whether the parent provided adequate notice, whether the amount of the private school tuition was reasonable, possible scholarships or other financial aid from the private school, and any fraud or collusion on the part of the parent or private school]; C.L., 744 F.3d at 840 [noting that "[i]mportant to the equitable consideration is whether the parents obstructed or were uncooperative in the school district's efforts to meet its obligations under the IDEA]).

VI. Discussion

A. Equitable Considerations

1. 2012-13 School Year

The IHO determined that the parent did not cooperate with the district during the 2012-13 IEP process by failing to sign consent forms for the release of information from the district of location and Hawk Meadow to the district and by withholding a private evaluation of the student from the district. As a result, she found that equitable considerations weighed against the parent and denied the parent's request for tuition reimbursement for the 2012-13 school year.

On appeal, the parent argues that she cooperated with the May 2012 CSE and that the IHO erroneously relies on acts alleged to have occurred after the parent had rejected the May 2912 IEP and unilaterally placed the student at Hawk Meadow. Specifically, the parent argues that the IHO erred in finding that events that transpired after the creation of the 2012-13 IEP precluded an award of relief. She further maintains that, "in stressing this purported finding, the IHO simply ignore[d] the fact that both the SRO and federal court specifically found that the CSE 'had sufficient information available to develop an IEP.'" The parent argues that the district "blatantly failed to offer a valid IEP before the school year began, notwithstanding the repeated efforts of the parent to cause the [d]istrict to act responsibly." She asserts that she did not engage in obstructionist behavior that would have warranted a denial of reimbursement. Conversely, the district argues that the IHO properly found that the parent's failure to cooperate by withholding a private evaluation until June 2013, impeded its ability to formulate the IEP. Moreover, the district argues that the IHO properly found that the parent's failure to consent to the release of information between the district, Hawk Meadow and the district of location further supported a finding that the parent failed to cooperate, and that the equities weigh against her claim for relief. As explained in further detail below, a review of the evidence and the FAPE determinations previously rendered in this matter lead me to a different conclusion than the IHO regarding equitable considerations and the parent's request for relief for the 2012-13 school year.

On May 11, 2012, a subcommittee of the CSE convened for an annual review of the student's program and to develop his IEP for the 2012-13 school year (Dist. Ex. 24 at p. 1).

According to the parent, she had advised the district during the May 2012 CSE meeting that she had arranged a private evaluation of the student (Tr. pp. 3448-49, 3451). On May 18, 2012, the student underwent a privately-obtained neuropsychological evaluation (Dist. Ex. 45 at p. 1). The evaluator provided the parent with a copy of her report in August 2012 but the parent did not furnish the district with the report until the end of the 2012-13 school year (Tr. pp. 1300, 2180-81, 3452; see Tr. p. 3184). The evidence in the hearing record demonstrates that the private evaluator eventually forwarded a copy of the May 2012 report to the district in June 2013 and again in September 2013 (see Tr. pp. 2181-82, 3452-53; Parent Ex. NN; see Dist. Ex. 45A).[2]

In a letter received by the district on June 4, 2012, the parent rejected the IEP and "reserve[d] the right to place [the student] in a private school at district expense" (Dist Exs. 25; 26). In a letter dated August 20, 2012, the parent provided her ten-day notice and formally rejected the May 2012 IEP, and she advised the district that she intended to place the student at Hawk Meadow for the 2012-13 school year (see Dist. Ex. 29).

Upon judicial review of this matter, the District Court reversed the administrative hearing officers and, among other things, made its own determinations regarding whether the May 2012 IEP was appropriate and offered the student a FAPE for the 2012-13 school year (fifth grade) (Clarkstown Cent. Sch. Dist., 2017 WL 3037402). Although finding that the District denied the student a FAPE for the 2012-13 school year, the Court concluded that even in the absence of the dyslexia diagnosis that was later crafted into the private neuropsychological evaluation, the CSE nevertheless had sufficient information in its possession when it developed the student's May 2012 IEP (id. at *17). Thus, parents correctly contend, that the withholding of the private evaluation report that was conducted the week following the CSE meeting in May 2012 until June 2013 should not weigh heavily as an equitable factor, at least with respect to the 2012-13 school year and the District Court's determination that the district denied the student a FAPE. Accordingly, the IHO's reliance on events that post-date the May 11, 2012 CSE meeting and resulting IEP in reaching her conclusion that equitable considerations bar the parent's relief is misplaced. There is no evidence in the hearing record to support a finding that the parent actually impeded the May 2012 CSE's IEP development process or failed to cooperate with the CSE prior to or during the May 11, 2012 CSE meeting, and the IHO does not determine that the alleged lack of cooperation took place at any time prior to September 2012. It is also undisputed that the parent's claims with respect to the 2012-13 school year were limited to the May 2012 IEP (IHO Ex. 3) and that she rejected the IEP in both June and August 2012 (Dist. Exs. 25; 26; 29). In a letter dated September 7, 2012, the district scheduled a CSE meeting to revise the student's IEP to take place on September 14, 2012; however, in an email to the district dated September 12, 2012, the parent requested to adjourn the meeting (Dist. Exs. 31 at p. 1; 32). On September 13, 2012, the parent agreed to provide the district with consent to release information from Hawk Meadow regarding the student and defining the nature of its program, and consent for the district to inform the district of location that the student had been placed at Hawk Meadow (Tr. p. 813; see Dist. Ex. 34 at pp. 1-2). On September 28, 2012, the CSE convened to revise the IEP to reflect the student's parentally placed status at Hawk Meadow and the September 2012 IEP reflects that this was the sole stated purpose for the meeting (see Tr. p. 836; Dist. Ex. 35 at pp. 1-2; see also Dist. Ex. 33). Although the parent did not provide the private evaluation to the district at the September 2012 CSE meeting, it is undisputed that the evaluation was not available at the time of the May 2012 CSE meeting during which the May 2012

[2] On June 19, 2013, the parent provided her consent for the private evaluator to release information to the district (Parent Ex. XX; see also Tr. pp. 1431-32).

IEP was created. Likewise, although there is some evidence in the record to support a finding that the parent failed to provide the September CSE with a consent form for Hawk Meadow to release information concerning the student to the district and another consent form allowing the district to inform the district of location that the student was attending Hawk Meadow (see Tr. Pp. 832-33, 836; 1379), the consent forms at issue were irrelevant to the May 2012 CSE process and rendering of the May 2012 IEP because the student was not attending Hawk Meadow at that time.[3] As a result, I find that the hearing record does not lead to the conclusion that parent failed to sufficiently cooperate with the district during the 2012-13 IEP process and, as a result, her denial of the parent's request for tuition reimbursement for the 2012-13 school year must be reversed.[4]

2. 2013-14 School Year

Turning to the 2013-14 school year, the IHO determined that the parent did not cooperate with the CSE due to her failure to complete a social history of the student and submit a BASC completed by the student to the district psychologist and her refusal to attend CSE meetings scheduled by the district in September and October 2013. The parent argues that the conduct upon

[3] In terms of equitable considerations for the 2012-13 school year, the only potential relevance of the parent's failure to provide the private neuropsychological evaluation to the district in 2012 is that the district appears to have been faulted with information that later came to light in the report and while perhaps the IHO had that in mind, it is not explicit in her decision. In the District Court's determination that the district failed to develop an appropriate IEP for the student's fifth grade year, the Court found critical the opinion testimony of the student's second grade teacher that the multisensory approach required a small class and that it was bolstered by the private evaluators opinion regarding the need for 1:1 assistance noted in the post May 2012 CSE private neuropsychological evaluation if his current placement could not attend to those needs. If this information is critical in assessing the adequacy of the district's program, then there is greater logic on the IHO's part in asking why the parent did not provide the private evaluation to the district far sooner than June 2013. However, my conclusion in favor of the parent as far as equitable considerations is concerned for the 2012-13 school year stems from the fact that the CSE followed the evaluative and deliberative process called for by the IDEA and that the district had sufficient evaluative information in May 2012—a finding that has since been adopted by the District Court. With regard to the District Court's determination that the private neuropsychological evaluation bolstered the opinion testimony of the student's Wilson certified second grade regular teacher that a 15:1 special class called for in the May 2012 IEP was inadequate to address the student's needs, I do not find it relevant to equitable considerations because just as the private evaluation was not available to the CSE, the second grade teacher similarly did not participate in the CSE meeting to plan for the student's fifth grade IEP (or any CSE meeting after second grade for that matter) (Tr. p.1922; Dist. Ex. 14 at p. 4) whereas the student's Wilson certified special education teacher was part of the CSE process May 2012 CSE meeting and she had noted factors that she believed were affecting the student's rate of progress in fourth grade (Tr. pp. 693, 697-98, 748, 1944; Dist. Ex. 24 at p. 1) and there is no evidence that the second grade teacher reviewed the student's progress and materials before the May 2012 CSE and voiced an opinion that the recommended program was not appropriate. Thus, I did not find the second grade teacher's after-the-fact opinion testimony offered at the time of the impartial hearing to be particularly compelling in light of the prospective analysis required by the Second Circuit in R.E., and by the same token do not find her views or any corroborating views of the private neuropsychological evaluation that was not before the CSE on these matters to be weighty with regard to equitable factors for the 2012-13 school year claim.

[4] Although unclear, the IHO may have had concern because the parent took the position during the impartial hearing that the private evaluator had communicated with the district prior to the parent's 10- day notice regarding the student's forthcoming unilateral placement at Hawk Meadow. But the evidence does not bear out the parent's view of those events. Contrary to the parent's testimony that the private evaluator spoke with district in May or June 2012, the private evaluator testified that she had not been contacted by district personnel during the period following the evaluation, but prior to submitting her report (Tr. pp. 2282, 3454).

which the IHO relied in rejecting her request for relief did not demonstrate that she interfered with the district's obligations under the IDEA or that she acted with the requisite level of unreasonableness barring an award of reimbursement. The district argues that the IHO properly evaluated the evidence and found that the parent's lack of cooperation impeded its ability to formulate the IEP. As set forth in greater detail below, the evidence in the hearing record supports the IHO's conclusion that equitable considerations weigh against the parent's request for reimbursement relief with respect to the 2013-14 school year.

The student attended Hawk Meadow for the 2012-13 school year (see Tr. p. 1303; Dist. Ex. 41 at p. 2). On June 19, 2013, the CSE convened for an annual review of the student's program and to develop his IEP for the 2013-14 school year (Dist. Ex. 41 at p. 1). Comments in the resulting IEP about the CSE meeting reflect that the June 2013 CSE discussed the district's request for the parent's consent for records from the district of location, and that "four attempts to secure consent were unsuccessful" (id. at p. 2). During the June 2013 CSE meeting, the parent agreed to provide her consent, and expressed that she wanted "the district to place [the consent forms] properly within the district" (id.). The hearing record further reflects that during the June 2013 CSE meeting, the district of location faxed release forms to the CSE, authorizing the release of information to the district, and that the district provided the forms to the parent at that time; however, the parent refused to sign them at the CSE meeting (Tr. pp. 834-36, 1040-41, 1303, 3244, 3430-32 ; Dist. Ex. 42).[5] Likewise, the June 2013 CSE contacted Hawk Meadow, which indicated that it was precluded from sending information to the district, because it did not have signed release forms signed by the parent (Tr. p. 1040).[6] The executive director of pupil personnel services (executive director) testified that as of the impartial hearing, he never received any consent forms from the parent, and there is no evidence to refute that claim (Tr. pp. 832-33).

However, the evidence in the hearing record reveals that the parent provided her consent for the district to conduct its own psychoeducational evaluation of the student (Dist. Ex. 46). On June 24, 2013, the district evaluated the student (Dist. Ex. 48; Parent Ex. VV). However, evidence in the hearing record supports a finding that the district was prevented from completing a full psychological evaluation of the student because the parent never provided the requested social history or the student's responses to the BASC (Tr. pp. 996-98; Dist. Exs. 54; 78; see Parent Ex.

[5] Parent Ex. I is a signed consent form signed by the parent for Hawk Meadow to provide information to the district; however, the executive director for pupil services testified that the district never received the consent form (Tr. pp. 1307-08; Parent Ex. I). The parent testified that on June 23, 2014 she dropped off the signed consent form to the district (Tr. pp. 3443-42, see Tr. p. 3520; see also Parent Ex. I). In addition, the hearing record contains another signed consent form, dated June 19, 2013 authorizing the district of location to release the student's records to the district; however, the executive director testified that he had never seen that document (Tr. pp. 1380-81). The hearing record also contains another June 19, 2013 consent form signed by the parent, authorizing the district of location to release information regarding the student to the district, and although it bears a stamp from the district, the executive director noted that the stamp indicated it was delivered to another office in the building (see Tr. pp. 1427-28; see also Parent Ex. YY).

[6] Although Hawk Meadow personnel participated in the June 2013 CSE meeting, Hawk Meadow advised the CSE that it could not provide the student's report cards, because it did not have release forms signed by the parent, and the parent did not authorize Hawk Meadow to provide the CSE with information regarding the student at the time of the June 2013 CSE (Tr. pp. 1042-43).

VV at p. 1).[7, 8] Specifically, in an email dated July 20, 2013, the school psychologist requested that the parent complete the social history form (Dist. Ex. 49 at p. 1). In an email to the district dated July 31, 2013, the parent admitted that she had "dropped the ball," and promised to "do [her] very best to deliver [the] needed pieces for [the school psychologist's] report" (id.). The school psychologist testified that she never received a social history or BASC from the parent and had to complete her report in early September 2013 without the benefit of the updated social history or the BASC (Tr. pp. 993-94; 996-97), and it was not reasonable to prevent the district from completing its own triennial evaluation of the student.

In an August 26, 2013 letter, the parent advised the district that she again planned to place the student in a private school and request that the district pay for the cost of his tuition (Dist. Ex. 50). In a letter dated September 11, 2013, the district scheduled a CSE meeting to take place on September 18, 2013 (Dist. Ex. 52 at p. 1). Subsequent to the September 11, 2013 letter, that same day, the parent met with the executive director and the CSE chairperson to discuss finding a program for the student (Tr. pp. 1306-07, 1453). The executive director reiterated his request to the parent for her consent for the release of information from Hawk Meadow and the district of location, and although the parent claimed that she signed them, when the district contacted them, both Hawk Meadow and the district of location indicated that neither entity was in receipt of the consent forms (Tr. pp. 1306-08, 3673-74; see Tr. pp. 3520-21).[9, 10] The parent refused the district's request to sign the consent forms, and explained that she had already signed the consent forms, and that she "did not have to get them now" (Tr. pp. 1309-10). According to the executive director, during the September 11, 2013 meeting, the parent was looking for a day program; however, the executive director advised her that he could not describe a program for the student at that time, because the CSE did not have sufficient information to describe a program that would address the student's needs (Tr. pp. 1311-12; 1319-20). Additionally, the district provided the parent with a release form authorizing the release of information to a State-approved school; however, the parent declined to sign it, and failed to return a signed copy to the district (Tr. pp. 1311-12; Dist. Ex. 53).

In a letter dated September 12, 2013, the district noted that it had arranged for the parent to visit recommended programs; however, the visits did not take place due to a family emergency (Tr. p. 1312; Dist. Ex. 54).[11] The district again reiterated its request that the parent consent to the release of information from Hawk Meadow and the district of location (Dist. Ex. 54). In an email

[7] The parent testified that she "thought" that she submitted a completed social history to the district (Tr. pp. 3464-66).

[8] According to the parent, she submitted the completed social history upon her return from her vacation; however, there is no evidence in the hearing record to substantiate her testimony (Tr. pp. 3671-72).

[9] The parent testified that the district of location lied to the executive director about not being in receipt of the signed consent form for the release of information to the district (Tr. pp. 3402, 3521; see also Tr. pp. 3539-40).

[10] According to the executive director, regarding the district of location's claim that it did not have the signed consent form from the parent, at the time of the September 2013 meeting, the parent responded that "that's two districts that lost [her] consents." (Tr. p. 1308).

[11] The parent testified that she could not recall whether the district offered her an opportunity to visit the recommended program during the September 11, 2013 meeting (Tr. pp. 3789-90). She further testified that she could not recall cancelling her appointment to visit the recommended program (Tr. p. 3690).

dated September 17, 2013, the parent cancelled the CSE and explained that "a CSE meeting now is a nullity" (Dist. Exs. 55; 56). In a letter dated September 24, 2013, the district rescheduled the CSE to take place on October 9, 2013, although the executive director testified that it was still waiting for the parent to sign the consent forms authorizing the release of information from Hawk Meadow and the district of location (Tr. pp. 1326-27). In a letter dated October 7, 2013, the executive director resent the necessary consent forms and explained why the CSE needed the signed consent forms (Tr. pp. 1327-28; Dist. Ex. 61). In an email dated October 8, 2013, the parent indicated that she did not "have any idea why a CSE meeting would be appropriate at this time" (Dist. Ex. 62).[12] In a letter dated October 10, 2013, the district advised the parent that it had yet to receive information from Hawk Meadow or the district of location, "despite numerous attempts to secure [her] written consent" (Dist. Ex. 64). Consequently, the district would not reschedule the program review until "this data [wa]s made available to the committee" (id.).

Under the circumstances presented herein, the hearing record reveals that the parent's actions and omissions frustrated the CSE process, and that she failed to cooperate with the CSE to develop the student's IEP for the 2013-14 school year, by refusing to provide information to enable the district to complete its evaluation of the student, sign consents to obtain data, and participate in CSE meetings. Accordingly, there is insufficient reason to disturb the IHO's determination which found that equitable considerations weigh against the parent's request for relief for the 2013-14 school year.

VII. Conclusion

Having found that equitable considerations weigh in favor of the parent for the 2012-13 school year and against the parent's request for relief for the 2013-14 school year, the IHO's decision is reversed in part and affirmed in part.

THE APPEAL IS SUSTAINED TO THE EXTENT INDICATED.

Dated: **Albany, New York**
December 13, 2017

JUSTYN P. BATES
STATE REVIEW OFFICER

[12] The parent could not recall if she had cancelled the CSE meetings scheduled for September and October 2013 (Tr. pp. 3690-91).