

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-7048

September Term, 2019

FILED ON: MAY 15, 2020

SYLVIA SANCHEZ AND Z.B., A MINOR, BY AND THROUGH HIS MOTHER SYLVIA SANCHEZ,
APPELLANTS

v.

DISTRICT OF COLUMBIA AND D.C. PUBLIC SCHOOLS,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:18-cv-00087)

Before: MILLETT, WILKINS, and KATSAS, *Circuit Judges*.

JUDGMENT

The Court has considered this appeal on the record from the United States District Court for the District of Columbia and on the parties' briefs. The Court has accorded the issues full consideration and has determined they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is

ORDERED that the judgment of the district court be **AFFIRMED**.

This case involves a dispute about which private school Z.B., a child with autism, should have attended for seventh grade. In 2017, the D.C. Public Schools (DCPS) sought to transfer Z.B. from Kingsbury Day School to Kennedy Krieger. Sylvia Sanchez, Z.B.'s mother, contends that the transfer would have violated her son's right to a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). Sanchez blocked the transfer, began paying Z.B.'s tuition at Kingsbury, and now seeks reimbursement for that expense.

The IDEA requires school districts to offer the parents of a disabled child an opportunity to participate in meetings about the child's "educational placement," 20 U.S.C. § 1415(b)(1), and to be involved in decisions about it, *id.* § 1414(e). But a violation of these procedural provisions results in the denial of a FAPE "only if the procedural inadequacies—(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public

education to the parents' child; or (III) caused a deprivation of educational benefits." *Id.* § 1415(f)(3)(E)(ii). Sanchez argues—under prong II—that DCPS “significantly impeded the parents’ opportunity to participate” in decisions about Z.B.’s transfer.

We assume *arguendo* that the proposed transfer would have changed Z.B.’s educational placement and thus triggered the IDEA’s parental-participation requirements. Nonetheless, Sanchez failed to show that any procedural missteps significantly impeded the opportunity for parental participation.

As both the hearing officer and the district court explained, DCPS actively worked to involve Sanchez in its decisionmaking process. For over a year, DCPS encouraged Sanchez to visit, allow Z.B. to visit, and provide input regarding possible schools for Z.B. Sanchez declined to participate in these efforts, despite DCPS’s concern that Kingsbury was not serving Z.B.’s needs. In the spring of 2017, DCPS repeatedly tried to meet with Sanchez to discuss a possible transfer. Yet Sanchez offered only an unreasonably small window of availability and rejected many proposed meeting times, including some that fell within her preferred timeframe. Although DCPS officials thus were unable to meet with Z.B.’s mother, they did meet with his father, who became actively involved in the decisionmaking process. He visited Kennedy Krieger, was impressed with the school, and facilitated his son’s referral to it. On this record, Sanchez has failed to establish that DCPS “significantly impeded the parents’ opportunity to participate in the decisionmaking process.” 20 U.S.C. § 1415(f)(3)(E)(ii)(II).

Sanchez further contends that DCPS improperly predetermined Z.B.’s 2017 Individualized Education Program (IEP) by assigning him to Kennedy Krieger without appropriate parental participation. But in the administrative hearing, Sanchez neither argued predetermination nor raised any other challenge to the IEP. Because Sanchez failed to exhaust her challenge to the IEP, the district court properly declined to consider it. *See Cox v. Jenkins*, 878 F.2d 414, 422 (D.C. Cir. 1989).

For these reasons, the district court’s judgment is affirmed. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk