



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

In the matter of

STATE OF SOUTH CAROLINA

IDEA Determination

ORDER

This matter comes before me by way of a letter dated October 15, 2015, from the South Carolina Department of Education (SCDE). In it, SCDE requests that I designate a hearing official from the Office of Hearings and Appeals (OHA) to review a September 17, 2015, decision of the Office of Special Education and Rehabilitative Services (OSERS) holding that SCDE is not eligible for an Individuals with Disabilities Education Act (IDEA) Part B grant. OSERS joins SCDE in its request that I designate a hearing officer.

SCDE asserts that its request is a precautionary measure to preserve its right to a hearing. As a preliminary matter, SCDE asserts that the hearing is not necessary because OSERS is barred by law from issuing its September 17, 2015, proposed determination, because substantially the same matter was previously dismissed with prejudice in an October 1, 2015, order by a hearing officer.¹ That order is currently subject to comments and recommendations filed by OSERS that request a modification of the decision that would give the September 17, 2015, proposed determination legal effect.² While that separate matter remains pending, I find it appropriate to grant SCDE's request to preserve its right to a hearing.³

Accordingly, I grant the parties' request. This matter shall be heard by a hearing officer within the Office of Hearings and Appeals, as designated by the Director of that office. I will also stay that hearing pending resolution of the related matter that SCDE argues renders moot the September 17, 2015, proposed determination.

SCDE specifically requests that the hearing officer operate under the authority of the Education Department General Administrative Regulations (EDGAR), Part 81. OSERS urges that I specify that the hearing will take place under the IDEA procedures at 34 C.F.R. §§ 300.179–184. As I previously held in an order dated July 24, 2013, in a matter arising from substantially the same circumstances, the proper authority for the hearing procedures is within the IDEA regulations. Therefore, the hearing officer shall use the procedures at 34 C.F.R. §§ 300.179–184, not those in EDGAR.

¹ *In the Matter of South Carolina*, Dkt. No. 13-43-O, U.S. Dep't of Educ. (Oct. 1, 2015).

² See 34 C.F.R. § 300.182(d).

³ *Id.* § 300.181(b) (providing that the Secretary will address a request for a hearing within 15 days of receipt).

ACCORDINGLY, this matter is designated to OHA for assignment and disposition as described herein, and that proceeding is STAYED pending resolution of the comments and recommendations in the related matter.

So ordered this 30th day of October 2015.

A handwritten signature in black ink, appearing to read "Arne Duncan", written over a horizontal line.

Arne Duncan

Washington, D.C.

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