

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE SUSAN H. ANDERSON,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-21-22387

**RULING ON MONTGOMERY COUNTY PUBLIC SCHOOLS' MOTION TO DISMISS
TREATED AS A MOTION FOR SUMMARY DECISION¹**

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STATEMENT OF THE CASE

On September 27, 2021, ██████████ (Parent), on behalf of her son, ██████████ (Student), filed a due process complaint (Complaint), pursuant to 20 U.S.C.A. § 1415 (2017).² The Complaint alleges that the Montgomery County Public Schools' (MCPS) \$1,500.00 payment toward a private summer school course the Student attended during the Summer of 2021, in lieu of providing twenty-eight compensatory/recovery hours, is not sufficient to remediate (i.e. compensate the Student for the MCPS' failure to offer appropriate services in the Student's Individualized Education Program (IEP), or its failure to deliver services that were specified and agreed upon in the Student's IEP) the deficit in learning that resulted from the impact of the COVID-19 pandemic. The Parent is seeking a decision that the MCPS must

¹ The Motion was captioned as a Motion to Dismiss. However, as discussed below, I am treating the Motion as a Motion for Summary Decision.

² U.S.C.A. is an acronym for the United States Code Annotated. All references to 20 U.S.C.A. will be to the version found in the 2017 volume.

reimburse her for a second private summer school course the Student attended during the summer of 2021, and provide an unspecified number of additional compensatory education hours during the 2021-2022 school year.

On October 20, 2021, the MCPS filed a Motion to Dismiss (Motion). On October 21, 2021, I conducted a virtual prehearing conference in the matter. During the prehearing conference, the Parent presented argument against the Motion. As a result, I did not order the Parent to file a written response to the Motion.

ISSUE

Should the MCPS' Motion be granted?

EXHIBITS

The MCPS submitted the following documents in support of the Motion:

Exhibit 1 - MCPS Prior Written Notice, May 24, 2021

Exhibit 2 - Settlement Agreement between MCPS and the Parent, July 15, 2021

The Parent did not submit any documents.

UNDISPUTED MATERIAL FACTS

I find the following facts are undisputed:

1. The Student, who is identified with a Specific Learning Disability, was enrolled at ██████████ Middle School during the 2020-2021 school year.
2. During the COVID-19 pandemic, the Student experienced a negative educational impact and a loss of a free appropriate public education (FAPE) due to the lapse of in-person special education and related services caused by the pandemic. (Mot. Ex. 1, p.1).
3. At a date unclear in the record, the Student's IEP team originally estimated that he should recoup lost skills within ten weeks. (*Id.*).

4. On May 24, 2021, the Student's IEP team met and determined that the Student had not recouped the skills as expected and further determined the Student required compensatory/recovery services. (*Id.*).

5. The IEP team originally recommended that the Student receive sixteen hours of academic compensatory services and four hours of speech/language compensatory services. (*Id.*).

6. The Parent disagreed with this recommendation and requested additional hours. The IEP team and the Parent ultimately agreed that the IEP team would provide a total of twenty-eight hours of compensatory services as follows: ten hours of compensatory services in the area of written language expression; five hours of compensatory services in the area of reading comprehension; five hours of compensatory services in the area of math problem solving; and eight hours of compensatory services in the area of speech and language. (*Id.*).

7. The MSDE provided Prior Written Notice to the Parent following the May 24, 2021 IEP meeting which included a brochure entitled "Parents Rights Maryland Procedural Safeguard Notice" that outlined the Parent's options if she disagreed with the IEP team's proposal. These options included requesting a mediation or filing a due process hearing. (*Id.*, p. 2).

8. At some point after May 24, 2021 and before July 15, 2021, the Parent requested that in lieu of providing the twenty-eight hours of compensatory services, the MCPS instead pay for the Student to attend two summer courses provided by the [REDACTED] [REDACTED] ([REDACTED]). The courses together cost approximately \$2,700.00.

9. After the Parent made this request, the Parent and the MCPS entered into negotiations about the provision of the compensatory/recovery services.

10. On July 15, 2021, the MCPS and the Parent entered into a Settlement Agreement whereby the MCPS agreed to reimburse the Parent up to \$1,500.00 towards one of the summer courses offered by ██████████.³⁴ In return, the Parent agreed that the Settlement Agreement resolved all of the Parent's claims "in connection" with compensatory services as the result of the COVID-19 pandemic, and the MCPS was discharged from any future obligations related to same. (Mot., Ex. 2).

11. The Parent filed the Complaint in this matter on September 27, 2021, requesting that the MCPS be required to reimburse her for the second summer school course and provide the Student with an unspecified number of additional hours of compensatory education.

DISCUSSION

STANDARDS OF DECISION

The MCPS filed a motion it characterized as a Motion to Dismiss. A motion to dismiss requests dismissal of an initial pleading that fails to state a claim for which relief may be granted.⁵ In a motion to dismiss, an administrative law judge (ALJ) may not go beyond the "initial pleading," which is defined as "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person."⁶ Here, the initial pleading is the Complaint. In a motion to dismiss, the moving party must establish by a preponderance of the evidence that she is entitled to relief.⁷ Furthermore, when considering a motion to dismiss, an ALJ must examine

³ Paragraph One of the Settlement Agreement set forth the MCPS' obligation to pay the \$1,500.00: [MCPS] agrees to provide reimbursement up to the amount of \$1,500.00 dollars toward summer course for [Student] provided by ██████████ held at ██████████ during Summer 2021 in exchange for the 28 hours of compensatory/recovery service hours proposed from ██████████ Middle School as a result of the impact from the Covid 19 pandemic.

⁴ At the prehearing conference, the Parent represented that the MCPS had not yet reimbursed her the \$1,500.00 under the Settlement Agreement. Counsel for the MCPS indicated that it had just learned of the issue the day before and was taking steps to rectify the problem. This issue is ancillary to the Parent's Complaint so I will not address it further.

⁵ See COMAR 28.02.02.12C.

⁶ COMAR 28.02.01.02B(7).

⁷ See *Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312 (1996).

the evidence in the light most favorable to the non-moving party. The non-moving party is entitled to all favorable inferences fairly construed from the evidence.⁸

In contrast, when ruling on a motion for summary decision, an ALJ may also consider admissions, exhibits, affidavits, and sworn testimony for the purpose of determining whether a hearing on the merits is necessary.⁹ Pursuant to Code of Maryland Regulations (COMAR) 28.02.01.12D, “A motion for summary decision shall be supported by one of the following: (a) an affidavit; (b) testimony given under oath; (c) a self-authenticating document; or (d) a document authenticated by affidavit.”

The MCPS submitted the Motion with two attached exhibits; neither of these were affidavits, nor did the MCPS support the Motion with sworn testimony. However, these documents are self-authenticating and can thereby properly support a motion for summary decision. As the MCPS has submitted self-authenticating documents to support its Motion, I shall consider the Motion as a motion for summary decision.¹⁰

In reviewing a motion for summary decision, an administrative law judge may be guided by case law that explains the nature of a summary judgment in court proceedings, such as the following: Summary judgment is appropriate if there is no “*genuine issue of material fact*.”¹¹ Facts are material if they would affect the outcome of a case; there is a genuine issue of fact if the evidence would allow a “reasonable [fact-finder] . . . [to] return a verdict for the nonmoving party.”¹² Material facts in dispute are those facts satisfying elements of the claim or defense or otherwise affecting the outcome of the case.¹³ A mere scintilla of evidence in favor of a

⁸ *Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997).

⁹ *See Davis v. DiPino*, 337 Md. 642, 648-49 (1995) (comparison of motions to dismiss and for summary judgment).

¹⁰ COMAR 28.02.01.12D.

¹¹ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original).

¹² *Id.*

¹³ *King v. Bankerd*, 303 Md. 98, 111 (1985).

nonmoving party is insufficient to defeat a summary judgment motion.¹⁴ A judge must draw all justifiable inferences in favor of the non-moving party.¹⁵

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility, but only to determine whether such issues exist.¹⁶ The purpose of the summary decision procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried.¹⁷ Only where the material facts are “conceded, undisputed, or uncontroverted,” and the inferences to be drawn from those facts are “plain, definite and undisputed,” does their legal significance become a matter of law for summary determination.¹⁸

When a party has demonstrated grounds for summary decision, the opposing party may defeat the motion by producing affidavits or admissible documents that establish that material facts are in dispute.¹⁹ In such an effort, an opposing party is aided by the principle that all inferences that can be drawn from the pleadings, affidavits, and admissions must be resolved against the moving party on the question of whether there is a dispute as to material facts.²⁰ For the reasons that follow, I find that the MCPS is entitled to summary decision in its favor.

THE LEGAL FRAMEWORK

The identification, assessment, and placement of students in special education is governed by the Individuals with Disabilities Education Act (IDEA).²¹ “Congress enacted IDEA in 1970 to ensure that all children with disabilities are provided a FAPE which emphasizes

¹⁴ *Anderson*, 477 U.S. at 251.

¹⁵ *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

¹⁶ *See Eng’g Mgt. Servs., Inc. v. State Highway Admin.*, 375 Md. 211, 226 (2003).

¹⁷ *See Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980).

¹⁸ *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

¹⁹ *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993).

²⁰ *Honaker v. W.C. & A.N. Miller Dev. Co.*, 285 Md. 216, 231 (1979).

²¹ 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Educ. §§ 8-401 through 8-419 (2017); COMAR 13A.05.01.

special education and related services designed to meet their unique needs and to assure that the rights of such children and their parents or guardians are protected.”²²

Child with a Disability

To be eligible for special education and related services under the IDEA, a student must meet the definition of a “child with a disability” as set forth in section 1401(3) and the applicable federal regulations. The statute provides as follows:

(A) In General

The term “child with a disability” means a child –

- (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- (ii) who, by reason thereof, needs special education and related services.²³

The Purpose of the IEP

The IEP is the mechanism by which a FAPE is achieved. After a local educational agency has evaluated a child and determined that the child has a disability and is eligible for services under the IDEA, the local educational agency is required to have in place an IEP.

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The IEP must take into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;

²²*Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239 (2009) (internal quotation marks, brackets, and footnote omitted). C.F.R. is an acronym for the Code of Federal Regulations. All references to 34 C.F.R. refer to the version contained in the 2020 volume.

²³ 20 U.S.C.A. § 1401(3)(A); *see also* Educ. § 8-401(a)(2) (2017); 34 C.F.R. § 300.8; and COMAR 13A.05.01.03B(78).

- (iii) the results of the initial evaluation or most recent evaluation of the child; and
- (iv) the academic, developmental, and functional needs of the child.²⁴

Among other things, the IEP depicts a student's current educational performance, explains how the student's disability affects the student's involvement and progress in the general curriculum, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those objectives, describes program modifications and supports for school personnel that will be provided for the student to advance appropriately toward attaining the annual goals, and indicates the extent to which the child will be able to participate in regular educational programs.²⁵ IEP teams must consider the student's evolving needs when developing their educational programs. The student's IEP must include "[a] statement of the child's present levels of academic achievement and functional performance, including . . . [h]ow the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for non-disabled children)"²⁶ If a child's behavior impedes his or her learning or that of others, the IEP team must consider, if appropriate, the use of positive behavioral interventions, strategies, and supports to address that behavior.²⁷ A public agency is responsible for ensuring that the IEP is reviewed at least annually to determine whether the annual goals for the child are being achieved and to consider whether the IEP needs revision.²⁸

Procedural Protections for Parents

Throughout the process of identifying a student as a child with a disability and establishing the appropriate individualized educational content for the student, parents are

²⁴ 20 U.S.C.A. § 1414(d)(3)(A).

²⁵ 20 U.S.C.A. § 1414(d)(1)(A)(i)(I)-(V); COMAR 13A.05.01.09A.

²⁶ 34 C.F.R. § 300.320(a)(1)(i).

²⁷ 34 C.F.R. § 300.324(a)(2)(i).

²⁸ 34 C.F.R. § 300.324(b)(1).

entitled to certain mandatory procedural protections related to the identification of the student as a child with a disability, the establishment of the individualized educational content reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances, and notice of the parents' right to appeal any determination of the IEP team with which they disagree.²⁹ Additionally, every time the student's IEP team meets, the local education agency is required to provide the parents with "prior written notice," which essentially means the local education agency must provide in writing what was discussed during the IEP team meeting and any conclusions made and proposed actions with regard to the student's educational program.³⁰

The procedures established by the IDEA were expressly intended to benefit the parents or guardians of students who allegedly have been denied a FAPE by a local school system. Subsections (a) and (b)(1)-(2) of 20 U.S.C.A. § 1415 outline the rights of parents and guardians. The IDEA sets forth formal procedures that allow a parent to challenge whether his or her child's school is meeting its obligations. First, a parent may file a due process complaint with the local educational agency.³¹ Within fifteen days of the parent's complaint, the parties must meet to try to resolve the parent's claims.³² If the parties cannot reach an agreement, the matter proceeds to an administrative hearing before a special education hearing officer.³³

The Scope of Due Process Hearings

While the rights of parents and guardians are extensive, the scope of due process hearings is limited to, "...complaints with respect to any matter relating to the identification, evaluation,

²⁹ 20 U.S.C.A. § 1415.

³⁰ *Id.*

³¹ *Id.* § 1415(b)(6).

³² *Id.* § 1415(f)(1)(B).

³³ *Id.* § 1415(f)(1)(A).

or educational placement of the child or the provision of a free, appropriate education to such child”³⁴ Under Maryland law, the scope of due process hearings is the same.³⁵

Accordingly, a special education due process hearing is limited to consideration of issues related to the identification, evaluation, educational placement, or the provision of a FAPE to a child with a disability. School districts and state education departments may be held liable for failing to meet these obligations under the IDEA.³⁶

THE POSITION OF THE PARTIES

The MCPS contends that the case should be dismissed for a lack of jurisdiction because the issue raised in the Complaint was previously settled by the execution of a Settlement Agreement dated July 15, 2021. That Settlement Agreement provided that the MCPS would reimburse the Parent up to \$1,500.00 towards a summer course for the Student offered by the ██████ in lieu of providing the twenty-eight compensatory/recovery service hours proposed as a result of the adverse impact of the COVID-19 pandemic on the Student’s receipt of a FAPE. The Settlement Agreement further provided that it resolved all of the Parent’s claims “in connection” with compensatory services as the result of the COVID-19 pandemic, and agreed to discharge the MCPS from any future obligations related to same.

The Parent asserts that she always believed the Student needed more compensatory hours than the IEP team proposed and that she had communicated this to the MCPS numerous times. The Parent contends that she is “appealing” the Settlement Agreement because she believes the \$1,500.00 payment for a summer school course in lieu of the MCPS providing the negotiated twenty-eight hours of compensatory education was insufficient.

³⁴ 20 U.S.C.A. § 1415(b)(6).

³⁵ Md. Code Ann., Educ, § 8-413(a)(3) (2018), COMAR 13A.05.01.15(C)(1).

³⁶ 20 U.S.C.A. § 1415(a), (i)(2)(a).

ANALYSIS

Undisputed Facts

Here, there is no dispute that the parties entered into a Settlement Agreement dated July 15, 2021, which on its face, states that it is made to “compromise disputed claims” concerning the provision of compensatory service hours to the Student to address the loss of FAPE that occurred during the COVID-19 pandemic. (Mot. Ex. 2). In exchange for the MCPS’ payment of \$1,500.00 toward a privately-offered summer course of the Parent’s choice, the Parent agreed to release the MCPS from any future obligation “in connection with the compensatory/recovery services set forth in paragraph one [of the Settlement Agreement].” (*Id.*).

The Settlement Agreement resulted from negotiations following the May 24, 2021 IEP meeting wherein the IEP team originally indicated the Student required twenty hours of compensatory/recovery services. The Prior Written Notice makes clear that the IEP team agreed to provide twenty-eight hours of compensatory/recovery services due to the Parent’s request that additional hours be provided. It also advised the Parent of her right to either request mediation or file a due process complaint if she disagreed with the IEP team’s proposed plan.

Following this meeting, the Parent requested that in lieu of the MCPS providing the agreed-upon compensatory/recovery services, the MCPS instead pay for the Student to attend two summer courses offered by the [REDACTED]. The Settlement Agreement provided that the MCPS would pay up to \$1,500.00 towards one of the courses. The Parent signed this Settlement Agreement on July 13, 2021.³⁷ (*Id.*). Now the Parent is requesting that she be allowed to

³⁷ The Settlement Agreement itself is dated July 15, 2021, but the Parent dated her signature July 13, 2021. No one explained this discrepancy.

“appeal” the Settlement Agreement because she believes the Student needs more compensatory/recovery services than were previously agreed to.

Settlement Agreements in Special Education Cases

The MCPS opposes the Parent’s request to “appeal” the Settlement Agreement and notes that public policy encourages settlements “because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts.”³⁸ It further argues that courts have routinely upheld settlement agreements reached in special education cases.³⁹ If a party to the settlement agreement felt that it was inadequate or did not satisfactorily dispose of the claim, that party should not have agreed to the settlement. A parent’s regret over compromises in the settlement agreement does not affect its enforceability.

The Parent’s September 27, 2021 Due Process Complaint

The Parent’s Complaint does not dispute that the Student is a child with a disability as that term is defined under the IDEA and State law. Further, the Complaint does not claim that the Student has not been properly evaluated, nor is there an allegation that the Student’s educational placement as set forth in his IEP was improper. Instead, the Complaint seeks to repudiate the Settlement Agreement which the Parent signed on July 13, 2021. It does not concern the *identification, evaluation or educational placement* of the Student or the *provision of a FAPE*.

³⁸ *D.R. by M.R. v. East Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3rd Cir. 1997).

³⁹ *See, e.g., South Kingston Sch. Comm. v. Joanna S.*, 773 F.3d 344 (1st Cir. 2014) (court upheld settlement agreement where parent agreed to release claims for further evaluations in exchange for the school district providing four specific evaluations); *Kasenia R. ex rel. M.R. v. Brookline Sch. Dist.*, 588 F.Supp.2d 175, 190–91 (D.N.H.2008) (court found no procedural violation of the IDEA where a school system refused to offer an IEP before performing a reevaluation because settlement agreement expressly permitted the school district to reevaluate the student after an evaluation by the parent’s expert and parents expressly waived their right to bring a claim until the school district had completed the evaluations). *See also D.R. by M.R., supra*, (court found settlement agreement absolved school from paying for related services involved in a student’s residential placement because parents failed to show the student’s circumstances had changed since the parties entered the agreement).

If the Parent felt strongly that the Student needed more compensatory/recovery services than the MCPS was proposing to provide in May 2021, her remedy *at that time* was to either request a mediation or file a due process complaint to challenge that recommendation. She did neither; instead, she entered into the Settlement Agreement, in which she agreed to accept the \$1,500.00 payment towards the [REDACTED] summer school course as a final resolution of the MSPS' obligations with regard to the provision of compensatory/recovery services to remedy the loss of FAPE caused by the COVID-19 pandemic. While it is clear that the Parties strove to resolve the dispute amicably, the Parent was obligated to carefully review and consider the results of this legally binding Settlement Agreement before signing it. The signed Settlement Agreement bars the filing of a later complaint related to the provision of these compensatory/recovery services since in it the Parent released the MCPS from further obligations with regard to this particular loss of FAPE.

In addition, the Settlement Agreement is in essence a contract between the Parent and the MCPS. I have no authority or jurisdiction, delegated or otherwise, to settle contract disputes. The MSDE has expressly delegated authority to the OAH to hear and decide contested cases relating to specific special education issues within the scope of the IDEA and Maryland special education law. Since I have found that the issues the Parent raised in her Complaint are unrelated to the identification, evaluation, placement, or the provision of a FAPE to the Student in this case, I conclude that I am without jurisdiction to hear the case.⁴⁰

Simply put, there are no material facts in dispute in this case and the MCPS is entitled to judgment as a matter of law because the Parent's Complaint seeks to address an issue already

⁴⁰ Redress is available in matters of contract disputes; however, an administrative special education due process hearing is not the appropriate forum in which to resolve such issues.

resolved by the Settlement Agreement between the parties. Accordingly, the MCPS' Motion is granted and the scheduled hearing is cancelled.

CONCLUSION OF LAW

The MCPS' Motion to Dismiss, treated as a Motion for Summary Decision, should be granted. 20 U.S.C.A. § 1415(f)(3)(C) (2017).

ORDER

The Montgomery County Public Schools' Motion to Dismiss, treated as a Motion for Summary Decision, is **GRANTED**.

The hearing scheduled for November 15, 16, and 17, 2021 is hereby **CANCELLED**.

October 29, 2021
Date Ruling Mailed

Susan H. Anderson
Administrative Law Judge

SHA/at
#194955

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2018). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

The Office of Administrative Hearings is not a party to any review process.

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