

XXXX XXXX,

STUDENT

v.

ANNE ARUNDEL COUNTY

PUBLIC SCHOOLS

* BEFORE MARY R. CRAIG,

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH NO.: MSDE-AARU-OT-08-00835

* * * * *

RULING ON MOTIONS FOR SUMMARY DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
UNDISPUTED FACTS
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

On January 7, 2008, XXXX XXXX (Mother) and XXXX XXXX (Father) (collectively Parents), on behalf of their child, [Student] (Student), filed a Due Process Complaint with the Office of Administrative Hearings (OAH), requesting a hearing to review the identification, evaluation or placement of the Student by the Anne Arundel County Public Schools (ACPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (Supp. 2007).

The Parents are represented by Michael J. Eig, Esquire; ACPS is represented by Eric C. Brousaides, Esquire.

On February 26, 2008, I issued a Pre-hearing Conference Report and Order. Pursuant to the scheduled established in that Order, ACPS filed a Motion for Summary Decision on March 10, 2008, and the Parents filed a response and a cross Motion for Summary Decision on March

21, 2008. On March 28, 2008, ACPS filed a combined Reply and Opposition Memorandum. On April 8, 2008, the Parents filed a Reply to ACPS's Motion and a document entitled "Surreply to AACPS Reply."¹

The legal authority for this proceeding is as follows: IDEA, 20 U.S.C.A. § 1415(f) (Supp. 2007); 34 C.F.R. § 300.511 (2007); Md. Code Ann., Educ. § 8-413(e)(1) (2006); Code of Maryland Regulations (COMAR) 13A.05.01.15C; and Maryland State Department of Education Guidelines for Maryland Special Education Mediation/Due Process Hearings.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2004 & Supp. 2007); COMAR 28.02.01.

ISSUES

1. Did the Parents fail to timely notify ACPS: (a) of their dissatisfaction with the Student's IEP; (b) of their intent to place the Student in a private education placement; and (c) their intent to seek reimbursement from ACPS for the Student's private school tuition?
2. Are the Parents precluded from tuition reimbursement for the private school the Student attended during the 2007/2008 school year?
3. Did ACPS fail to offer the Student a free appropriate public education (FAPE)?

SUMMARY OF THE EVIDENCE

ACPS submitted the following documents in support of its Motion for Summary Decision:

- | | |
|--------|--|
| ACPS 1 | August 9, 2006 letter from the Father to Principal XXXX XXXX (Principal), Principal of [School 1] ([School 1]) |
| ACPS 2 | December 19, 2006 Individualized Education Service Program/Service Plan (Initial IEP) |

¹ During a telephone conference call on April 3, 2008, Mr. Eig requested an extension of time from April 4, 2008 until April 8, 2008 to file the Parents' Reply, due to a death in his family. I granted the requested extension.

- ACPS 3 May 29, 2007 letter from Mr. Eig to the Principal
- ACPS 4 Student's [School 1] Progress Report for the 2006/07 school year
- ACPS 5 June 13, 2007 IEP Team Meeting Report
- ACPS 6 June 15, 2007 Enrollment Contract between [School 2] ([School 2]) and the Parents
- ACPS 7 Tuition checks from the Parents to [School 2]
- ACPS 8 July 27, 2007 email from the Father to Ms. XXXX XXXX, special educator
- ACPS 9 ACPS Contact Log
- ACPS 10 August 10, 2007 letter from the Principal to the Parents
- ACPS 11 August 15, 2007 letter from Mr. Eig to the Principal
- ACPS 12 March 5, 2008 affidavit of the Principal
- ACPS 13 August 30, 2007 letter from Mr. Eig to the Principal
- ACPS 14 September 12, 2007 IEP Team Meeting Report
- ACPS 15 September 24, 2007 letter from Mr. Eig to XXXX XXXX, [School 1] Assistant Principal
- ACPS 16 September 25, 2007 IEP Team Meeting Report
- ACPS 17 October 1, 2007 IEP Team Meeting Report
- ACPS 18 October 23, 2007 IEP Team Meeting Report
- ACPS 19 December 14, 2007 IEP Team Meeting Report
- ACPS 20 December 14, 2007 IEP
- ACPS 21 *Watts, et al. v. Smith, et al.*, No. WDQ-05-501, slip op.(D. Md. January 5, 2006)
- ACPS 22 *Gelber, et al. v. Board of Education of Montgomery County, et al.*, No. AW-05-3094, slip op. (D. Md. October 27, 2006)
- ACPS 23 *Pollowitz, et al. v. Weast, et al.*, No. S-99-3118, slip op.(D. Md. April 26, 2006)

The Parents submitted the following documents in support of their response to ACPS's Motion for Summary Decision and in support of their Motion for Summary Decision:

Unnumbered Declaration of Father

Unnumbered Declaration of XXXX XXXX, M. Ed.

- P1 August 9, 2006 letter from the Father to the Principal
- P2 December 19, 2006 IEP
- P3 April 19, 2007 email from the Parents to the Principal
- P4 April 26, 2007 letter from XXXX XXXX, M. Ed., to the Principal
- P5 May 29, 2007 letter from Mr. Eig to the Principal
- P6 June 13, 2007 IEP Team Meeting Report, with June 12, 2007 referral
- P7 June 13, 2007 handwritten notes of unidentified person
- P8 June 15, 2007 enrollment contract between [School 2] and the Parents
- P9 June 19, 2007 letter from Mrs. XXXX to the Parents
- P10 August 10, 2007 letter from the Principal to the Parents
- P11 August 15, 2007 letter from Mr. Eig to the Principal
- P12 August 30, 2007 letter from Mr. Eig to the Principal
- P13 September 12, 2007 IEP Team Meeting Report
- P14 September 24, 2007 letter from Mr. Eig to Ms. XXXX
- P15 September 25, 2007 IEP Team Meeting Report
- P16 Page 1 of 3, October 1, 2007 IEP Team Meeting Report
- P17 Records release authorization
- P18 October 23, 2007 IEP Team Meeting Report
- P19 December 14, 2007 IEP Team Meeting Report

P20 Statement of Parents for December 14, 2007 IEP meeting

P21 December 14, 2007 IEP

Unnumbered *Board of Education of Montgomery County, et al. v. Brie R., et al.*, No. AW-98-3161, slip op. (D. Md. June 30, 1999)

ACPS submitted the following documents in support of its Reply and Opposition

Memorandum:

- Affidavit of XXXX XXXX
- Affidavit of XXXX XXXX
- Affidavit of XXXX XXXX
- Affidavit of XXXX XXXX
- Affidavit of XXXX XXXX
- Affidavit of XXXX XXXX
- Second Affidavit of XXXX XXXX

The Parents submitted the following documents in support of their April 8, 2008 Reply

Memorandum:

- Second Declaration of XXXX XXXX, M. Ed.
- Declaration of XXXX XXXX

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. The Student's date of birth is XXXX, 2000.
2. The Student attended kindergarten at [School 1] for the 2006/07 school year. His classroom general educator was XXXX XXXX.
3. On August 9, 2006, the Parents requested an IEP meeting for the Student.

4. An IEP meeting was held on December 12, 2006 at [School 1], attended by the following: Mother; Principal; Ms. XXXX; Ms. XXXX; XXXX XXXX, school psychologist; XXXX XXXX, speech/language pathologist; XXXX XXXX, occupational therapist; and XXXX XXXX, reading specialist.

5. An IEP was developed for the Student and approved by the Parents on December 19, 2006 (Initial IEP). The Initial IEP was valid from December 19, 2006 through December 18, 2007.

6. As of December 19, 2006, the Child was eligible for special education services as a learning disabled student.

7. On May 29, 2007, the Parents requested an IEP meeting for the Student.

8. An IEP meeting was held on June 13, 2007 at [School 1], attended by the following: the Father; Mr. Eig; the Principal; XXXX XXXX, ACPS Compliance Specialist; XXXX XXXX, School Based Resource Teacher; Ms. XXXX; Ms. XXXX; Ms. XXXX; Ms. XXXX and Ms. XXXX. The Parents requested the following assessments, which ACPS agreed to perform during the summer of 2007: academic achievement (Woodcock Johnson III); and a comprehensive assessment of the Student's expressive and receptive language.

9. On June 15, 2007, the Parents signed an enrollment contract with [School 2] (Contract), a private school, reserving a place at [School 2] for the Student for the 2007/08 school year. The Contract provides in relevant part that the Parents are responsible for the "entire tuition for the full academic year ... notwithstanding the subsequent absence, dismissal or withdrawal of the student for any reason."

10. The Parents paid [School 2] tuition for the Student's 2007/08 school year as follows: a non-refundable \$1,500.00 deposit on June 15, 2007; \$2,983.34 on July 30, 2007;

\$2,983.34 on August 1, 2007; \$2,000.00 on November 26, 2007; \$3,966.67 on December 1, 2007; and \$3,966.67 on February 15, 2008.

11. The evaluations requested by the Parents at the June 13, 2007 IEP meeting were completed during the summer of 2007.

12. An IEP meeting was scheduled for August 9, 2007 to review the results of the recent assessments of the Student.

13. On July 27, 2007, the Father notified [School 1] by email that he was unable to attend the scheduled IEP meeting due to a scheduling conflict.

14. On August 6, 2007, Mr. Eig called [School 1] and offered August 15 and 16, 2007 as dates for the IEP meeting.

15. On August 9, 2007, [School 1] called Mr. Eig and offered August 22, 2007, a date to which Mr. Eig tentatively agreed.

16. On August 9, 2007, Mr. Eig's secretary called [School 1] and said that the Parents were unavailable during the week of August 20, 2007.

17. On August 15, 2007, the Parents and [School 1] agreed to reschedule the IEP meeting for September 12, 2007.

18. August 27, 2007 was the first day of school at [School 1] for the 2007/08 school year. The Student was not in attendance at [School 1] on that date or on any other date for the 2007/2008 school year.

19. On either August 28 or 29, 2007, the Principal telephoned the Mother and asked when the Student would be coming to school. The Mother said that the Child would not be attending [School 1] and that the Principal should direct any further questions to Mr. Eig. During that conversation, the Mother made no comment about the ability of [School 1] to

provide an appropriate public education to the Student or about seeking private school tuition reimbursement.

20. On August 30, 2007, the Principal received a letter from Mr. Eig requesting that ACPS continue the IEP process for the Student. Mr. Eig did not mention the Parents' intention to seek tuition reimbursement for their unilateral placement of the Student at [School 2] for the 2007/08 school year.

21. IEP meetings were held on September 12, 2007, September 25, 2007, October 1, 2007, October 23, 2007 and December 14, 2007 at [School 1].

22. The September 12, 2007 meeting was attended by the following: the Father; Mr. Eig; Ms. XXXX; Ms. XXXX; Ms. XXXX; XXXX XXXX, Speech/Language Pathologist; and XXXX XXXX, School Based Resource Teacher. Ms. XXXX reviewed the results of the Woodcock Johnson-III assessment in reading, math and written language. The Student's scores according to age norms are within the low to very low range.

23. Mr. Eig requested the assessor to be present for the results of the communication assessment report. The Father agreed to adjourn the meeting. The next IEP team meeting was scheduled for September 25, 2007.

24. On September 24, 2007, Mr. Eig wrote to Ms. XXXX, informing her that, due to a scheduling conflict, he could not attend the IEP meeting set for September 25, 2007. Mr. Eig offered other dates in October and asked Ms. XXXX to contact him to reschedule the meeting.

25. An IEP meeting was held on September 25, 2007 at [School 1], attended by the following: Ms. XXXX; Ms. XXXX; Ms. XXXX; and Ms. XXXX. XXXX XXXX, Speech Language Pathologist, shared the results of the communication assessment over the telephone. She found no significant discrepancy between the Student's receptive or expressive skills. The

results were consistent with the previous results dated November 2006. Ms. XXXX planned to contact Mr. Eig and the Parents to schedule the next meeting.

26. An IEP meeting was held on October 1, 2007 attended by the following: Father; Mr. Eig; Ms. XXXX; Ms. XXXX; Ms. XXXX; Ms. XXXX; Ms. XXXX; Ms. XXXX; and Ms. XXXX. Ms. XXXX presented the results from the communication assessment. The Father stated that he was seeking special education services from ACPS for the Student.

27. An IEP meeting was held on October 23, 2007 at [School 1], attended by the following: the Father; Mr. Eig; Ms. XXXX; Ms. XXXX; a Special Educator Teacher who name is undecipherable; XXXX XXXX, Learning Specialist, [School 2]; Ms. XXXX; XXXX XXXX, Speech Language Pathologist; XXXX XXXX, Speech Language Pathologist; Ms. XXXX; the Principal; and Mrs. XXXX.

28. An IEP meeting was held on December 14, 2007 at [School 1], attended by the following: Ms. XXXX; Ms. XXXX; Ms. XXXX; XXXX XXXX, Special Education Teacher; Mr. Eig; the Father; Ms. XXXX, Ms. XXXX; XXXX XXXX, Speech/Language Pathologist; and Ms. XXXX. An IEP was prepared for the Student, recommending placement at [School 1]. The Parents rejected the proposed placement and requested that the Student be placed at [School 2] at the expense of ACPS. ACPS rejected that request.

29. Prior to December 14, 2007, the Parents did not inform the IEP team that they were rejecting the placement proposed by ACPS to provide a free appropriate public education to the Student, nor did they state their concerns, or express their intent to enroll the Student in [School 2] at public expense.

DISCUSSION

ACPS argues that the Parents failed to comply with the federal notice requirements applicable when parents unilaterally remove a child from public school and seek reimbursement for private school costs from a public school system. ACPS asserts that the ten-day advance notice requirement is a condition precedent to the Parents' right to seek tuition reimbursement. ACPS urges that the issue of provision of a free appropriate public education (FAPE) is irrelevant in this matter, as the Parents' failure to provide timely notice bars them from the only remedy they seek, financial reimbursement for tuition at [School 2].

The Parents reply that they were not obligated to provide the ten-day notice because the ACPS was "reconsidering" the initial IEP and because the IEP for the Student was "not-yet-completed" prior to the 2007/2008 school year. In the alternative, the Parents contend that if they were required to give the ten-day notice, their failure to do so did not adversely impact the ACPS. Assuming that ACPS is not entitled to summary decision against the Parents, they move for summary decision in their favor on the basis that ACPS did not offer the Child a FAPE for the 2007/2008 school year. ACPS contends that there is a dispute of material facts precluding summary decision on that issue. For the reasons explained below, I am granting summary decision for ACPS on the notice issue and I am denying the Parents' Motion for Summary Decision. Even if ACPS failed to provide the Child with a FAPE, the Parents are not entitled to the relief they seek. In any event, there is a dispute of material fact on the issue of whether ACPS offered the Child a FAPE.

Pertinent Law

The IDEA provides federal assistance to state and local agencies for the education of children with disabilities. 20 U.S.C. A. § 1400-87 (2000 & Supp. 2007). To receive this federal assistance, a state must provide special education services that are designed to meet the unique

and individual needs of a particular child. A state is also required to provide related services, as needed to allow a child to obtain an educational benefit from the special education services. *See* 20 U.S.C.A. §§ 1412-14 (Supp. 2007), 34 C.F.R. § 300.2. *See also, Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). Maryland's General Assembly and the Maryland State Board of Education have enacted laws and regulations implementing the IDEA for Maryland's students. Md. Code Ann., Educ. §§ 8-401 through 17 (2006 and Supp. 2007); COMAR 13A.05.01. Both the IDEA and Maryland's Education Article provide for the private placement of special education students at public expense, where necessary, to ensure receipt of a FAPE.

Both federal and state law place conditions on the right of a parent to unilaterally place a special education student in private school at public expense. For example, Section 1412(a)(10)(C) of Title 20 of the United States Code Annotated states in pertinent part as follows:

Payment for education of children enrolled in private schools without consent of or referral by the public agency

(i) In general. Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

(iii) Limitation on reimbursement. The cost of reimbursement described in clause (ii) may be reduced or denied—

(I) if--

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);...

20 U.S.C.A. § 1412(a)(10)(C) (Supp. 2007). The federal regulations mirror the requirements of the statute. 34 CFR § 300.148. Maryland follows the federal law, as it must. Md. Code Ann., Educ. § 8-413(k) (2006); COMAR 13A.05.01.16C; *Sarah M. v. Weast*, 111 F. Supp. 2d 695 (D. Md. 2000).

ACPS's Motion for Summary Decision

Both the school system and the Parents rely on allegations and information outside of the initial pleading to support their motions. Thus, I conclude that it is appropriate for me to treat the motions under the law governing summary disposition. Md. Code Ann., State Gov't § 10-210 (2004) and COMAR 28.02.01.16D.

Under COMAR 28.02.01.16D, a party may move for summary decision on any substantive issue in a case. The motion can be granted when it is determined that "(a) [t]here is no genuine issue of any material fact; and (b) [a] party is entitled to prevail as a matter of law." COMAR 28.02.01.16D. Essentially, Regulation .16D mirrors Rule 2-501 of the Maryland Rules, which governs motions for summary judgment in Maryland's circuit courts. Thus, some discussion of Md. Rule 2-501 is appropriate.

To successfully invoke Md. Rule 2-501, the moving party must satisfy several burdens. First, a movant must identify the legal cause of action or legal defense that the movant relies upon. Second, a movant must set forth sufficient, undisputed factual grounds to satisfy all elements of the movant's claim or defense. *See, Bond v. NIBCO, Inc.*, 96 Md. App. 127, 136 (1993). Finally, a movant must explain to the court the legal authority for the court to grant the motion and the movant's reasoning for contending that the movant is entitled to judgment as a matter of law.

When a moving party has demonstrated grounds for a summary judgment, the opposing party can defeat the motion by producing facts which are admissible in evidence and which establish a dispute of a material fact. *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993). In opposing a motion for summary decision, the non-moving 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 of material fact. *Honaker v. W. C. & A. N. Miller Development Co.*, 285 Md. 216, 231 (1979).

Analysis of the Evidence and Arguments of the Parties

1. ACPS' Motion for Summary Decision

ACPS argues that the Parents' request for private school tuition reimbursement should be denied because they failed to provide to the school system the required notice. The ten-day notice requirement runs from the date that the Parents removed the Child from ACPS. In *Sarah M.*, the Court held that the notice period does not necessarily begin to run on the date when a parent signs a contract to enroll a child in private school. 111 F. Supp. 2d at 701. Section 1412(a)(10)(C) of Title 20 of the United States Code uses the term "removal," which "refers to the actual physical removal of the child from public school." 111 F. Supp. 2d at 701. Where, as

in this case, “the decision to enroll in private school occurs during a summer recess, the ten business days mark from the beginning of the public school year (or sooner if the child is physically placed in private school).” *Id.*

The facts material to this issue are undisputed. The first day of the ACPS 2007/2008 school year was August 27, 2007. Ten business days prior to the first day of school was August 13, 2007. The Parents did not give ACPS notice that they were rejecting the placement proposed by ACPS for the Child at [School 1], including a statement of their concerns and their intent to enroll their child in a private school at public expense, until December 14, 2007.² Thus, ACPS argues that their request for reimbursement should be denied.

The Parents agree that failure to provide notice may, in some situations, result in denial of tuition reimbursement, but they argue this is not one of those cases. The Parents assert that the IEP was not completed in August 2007, so there was nothing for them to reject. They rely on a series of cases to support their argument, none of which convinces me of the soundness of their position.

The Parents cite *Board of Education of Montgomery County, et al. v. Brie R., et al.*, No. AW-98-3161, slip op. (D. Md. June 30, 1999), a 1999 unreported decision from the United States District Court for the District of Maryland, *Sandler v. Hickey*, No. 00-1156 slip op. (D. Md. March 8, 2001), and *Kitchelt v. Weast*, 341 F. Supp. 2d 553 (D. Md. 2004), for the proposition that they had no obligation to give ACPS notice prior to removing the Child from public school.³ The Parents’ reliance on these cases is misplaced. In *Brie*, the school system had not proposed an IEP for the student for the 1997/1998 school year until after the start of the school year. Under

² Although the Parents appeared to argue in their pleadings that they gave oral notice prior to December 17, 2007, Mr. Eig abandoned that argument in his letter of April 2, 2008 and during the conference call of April 3, 2008.

³ The *Brie* decision is attached to the Parents’ Opposition, but no copy of the *Sandler* decision was provided, so I have not considered the *Sandler* decision.

those circumstances, the Court found that the “parents had no substantive proposal to which to respond on or before the beginning of the 1997-1998 school year.” *Id* at p. 12. In *Kitchelt*, the student was enrolled at the Ivymount School before the school system had proposed a placement for the student for the 2002/2003 school year. In the case before me, however, there was a valid and operative IEP in effect prior to the beginning of the 2007/2008 school year. The Parents were required to give ACPS notice of their rejection of the Initial IEP and their demand for reimbursement by August 13, 2007. It is undisputed that they failed to do so.

The Parents argue in the alternative that, if they failed to give the required notice, they should still be entitled to claim tuition reimbursement, unless ACPS can show that it was prejudiced by the lack of notice. This argument was rejected in *Pollowitz v. Weast*, No. 00-1690, slip op. (4th Cir. April 17, 2001). In *Pollowitz*, the parents expressed “reservations” about the placement proposed by the school system, but they did not reject the proposed placement at the relevant IEP meeting. Further, they did not provide adequate written notice of their concerns or intentions. They argued, however, that because the school system was not prejudiced by their failure to provide timely and adequate notice, their right to tuition reimbursement was preserved. Granting the school system’s motion for summary judgment, the district court in *Pollowitz* stated as follows:

The Court also rejects the argument that the Board was not prejudiced by a failure of proper notice. That argument is plainly devoid of merit, as the Board was effectively blind-sided by the parents’ actions and their attempts to straddle the fence until after Andrew’s enrollment, only later to file suit seeking reimbursement. This is sufficient prejudice to sustain the ALJ’s dismissal of their claim.

Pollowitz, at pp. 3-4.⁴

On appeal, the Fourth Circuit Court of Appeals stated:

⁴ A copy of the district court’s unreported decision is attached to the Parents’ Reply Memorandum as Exhibit 23.

The Parents ... maintain that the district court erred in concluding that MCPS was prejudiced by any failure on their part to give notice of their rejection of the proposed IEP. They also argue that absent prejudice, failure to provide timely notice of the rejection of the proposed IEP cannot bar a reimbursement claim. Assuming *arguendo* that the district court erred in determining that MCPS was prejudiced, we hold that MCPS was not required to demonstrate prejudice in order to bar the Parents' claim.

Pollowitz, at p. 443. *See also*, Md. Code Ann., Educ. § 8-413(k).

I conclude that ACPS is not required to establish that it was prejudiced by the Parents' failure to provide proper and timely notice. The consequences of the Parents' failure to comply with the notice requirement are set forth at 20 U.S.C.A. § 1412(a)(10)(C)(iii), which provides me with discretion to deny tuition reimbursement absent the provision of required notice.

The Parents' failure to give ACPS required notice before removing the Child from [School 1] denied ACPS an important right. As the First Circuit noted in *Greenland School Dist. v. Amy N.*, 358 F.3d 150, 160 (2004), the notice "serves the important purpose of giving the school system an opportunity, before the child is removed, to assemble a team, evaluate the child, devise an appropriate plan, and determine whether a free appropriate public education can be provided in the public schools." (Citations omitted). In this case, the Parents, who were represented by counsel the entire time, signed the Initial IEP, attended subsequent IEP meetings and requested additional evaluations of the Student in the spring of 2007. The Parents signed a contract with [School 2] two days after the June 13, 2007 IEP meeting, but, throughout the summer of 2007, ACPS was completing requested assessments, unaware of the Parents' intent to remove the Student. ACPS was denied not only an opportunity to address the Parents' perceived inadequacies with the services offered to the Student's but also the chance for input into the selection of [School 2]. Thus, if the law required ACPS to demonstrate prejudice, it has done so.

Since the only remedy requested by Parents is reimbursement for the cost of [School 2], ACPS is entitled to summary decision in its favor.

2. *The Parents' Motion for Summary Decision*

The Parents have moved for summary decision in their favor on the basis that ACPS denied the Student a FAPE because they contend that the school system failed to offer him an appropriate program or placement calculated to enable him to receive educational benefit. For the reasons explained previously in this ruling, I conclude that the Parents' claim is barred by their failure to give proper notice. Therefore, even if, as they contend, ACPS denied the Student a FAPE, the Parents are not entitled to summary decision.

Additionally, if I were to address the substance of the Parents' motion, I would still deny it because there is a dispute of material fact precluding me from granting summary disposition. Md. Code Ann., State Gov't § 10-210 (2004) and COMAR 28.02.01.16D. ACPS alleges, and supports its allegations with affidavits and other documents, that it offered the Student a program which exceeded the IDEA's FAPE requirements. The documents evidencing a dispute of material facts include the following: Second Affidavit of XXXX XXXX, the Student's special education teacher at [School 1] during the 2006/2007 school year; the Student's kindergarten report card; Minutes from the June 13, 2007 IEP meeting; and the proposed December 2007 IEP.

As ACPS' filing demonstrates that there are many disputes of material fact, the Parents' Motion for Summary Decision is denied.

CONCLUSIONS OF LAW

The Parents' request for reimbursement of the expenses they incurred to place the Child at [School 2] for the 2007/2008 school year is denied because they failed to give ACPS notice that they were rejecting the placement proposed by ACPS for the Child at [School 1], including

stating their concerns and their intent to enroll their child in a private school at public expense, at least ten business days prior to removing the Child from ACPS. 20 U.S.C.A. § 1412(a)(10)(C) (Supp. 2007); 34 C.F.R. § 300.148; Md. Code Ann., Educ. § 8-413(k) (2006); COMAR 13A.05.01.16C. ACPS Motion for Summary Decision is granted because there is not dispute of material facts and the school system is entitled to judgment in its favor as a matter of law. Md. Code Ann., State Gov't § 10-210 (2004) and COMAR 28.02.01.16D.

The Parents' Motion for Summary Decision is denied because, even if ACPS did not provide the Child a FAPE, the Parents failed to give ACPS the notice required by 20 U.S.C.A. § 1412(a)(10)(C) (Supp. 2007). In the alternative, there is a dispute of material fact on the issue of whether a FAPE was provided. Md. Code Ann., State Gov't § 10-210 (2004) and COMAR 28.02.01.16D.

ORDER

I **ORDER** as follows:

1. Summary decision is granted in favor of the Anne Arundel County Public Schools;
2. Summary decision is denied the Parents; and
3. The Parents' request for hearing is dismissed.

April 9, 2008
Date Decision Mailed

Mary R. Craig
Administrative Law Judge

MRC/rs

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. §8-413(j) (2006).

Should a party file an appeal of the hearing decision, that party 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 court action. The written notification of the filing of the court action must include the Office of Administrative Hearings case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

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