

[REDACTED]

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

\* BEFORE TRACEY JOHNS DELP,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* CASE No.: MSDE-BCNY-OT-18-35062

\* \* \* \* \*

**RULING ON MOTION**

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**STATEMENT OF THE CASE**

On November 9, 2018, [REDACTED] the Parent, on the Student’s behalf, filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH). Although the Parent requested a mediation session, Baltimore County Public Schools (BCPS) declined to participate. The parties attended the required resolution session and notified the OAH on November 28, 2018, that they did not resolve their dispute.

In the Complaint, the Parent alleged that BCPS has violated the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1415(f)(1)(A) (2017),<sup>1</sup> by denying the Student a free appropriate public education (FAPE), by placing the Student at a school other than his boundary school, [REDACTED] Elementary School. The Parent’s requested remedy is for the Student to attend [REDACTED] Elementary School.

<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated.

On December 6, 2018, I conducted a telephone pre-hearing. The Parent represented herself. J. Stephen Cowles, Deputy General Counsel, represented BCPS. By agreement of the parties, the hearing was scheduled for Thursday, January 3, 2019, and Friday, January 4, 2019.

I advised the parties of the time requirements for issuing a decision. The applicable regulations state the following, in part:

- (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under § 300.510(b), or the adjusted time periods described in § 300.510(c) –
  - (1) A final decision is reached in the hearing; and
  - (2) A copy of the decision is mailed to each of the parties.

34 C.F.R. § 300.515 (2017).

...

- (c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in § 300.515(a) starts the day after one of the following events:
  - (1) Both parties agree in writing to waive the resolution meeting;
  - (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
  - (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

34 C.F.R § 300.510 (2017).

Therefore, in accordance with these regulations, the decision shall be issued on or before Friday, January 11, 2019, because January 12, 2019 (which is forty-five days from the November 28, 2018, notice of the parties to OAH that the resolution session did not resolve their dispute) is a Saturday. 34 C.F.R. §§ 300.510(c), 300.515(a) (2017).

I held the hearing on Thursday, January 3, 2019. Again, the Parent represented herself, and Mr. Cowles represented BCPS. The legal authority for the hearing is as follows: Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. § 1415(f) (2017); 34 C.F.R. § 300.511(a) (2017); Md. Code Ann., Educ. § 8-413(e)(1) (2018); and Code of Maryland Regulations (COMAR) 13A.05.01.15C. Procedure in this case is governed by the contested case provisions of the

Administrative Procedure Act; Maryland State Department of Education procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 13A.05.01.15C; COMAR 28.02.01.

The parties moved into evidence eight stipulations which I accepted as Joint Exhibit 1. The Parent and BCPS presented opening statements. The Parent testified and rested her case. Thereafter, BCPS made an oral Motion for a Directed Verdict. The Parent was given the opportunity to respond. The hearing adjourned so that I could issue a written ruling on the motion.

Although argued by BCPS as Motion for a Directed Verdict, the OAH Rules of Procedure do not provide for a Motion for a Directed Verdict. I will, therefore, treat BCPS's motion as a Motion for Judgment pursuant to COMAR 28.02.01.12E.

### **ISSUE**

Should BCPS's Motion for Judgment (Motion) be granted?

### **SUMMARY OF THE EVIDENCE**

I admitted the following as a joint exhibit on behalf of the Parent and BCPS.

Jt. Ex. 1 – Stipulations<sup>2</sup>

### **STIPULATED FACTS**

The Parties stipulated to the following facts:

1. The Student's birthdate is [REDACTED], 2008.
2. The Student enrolled and began attending [REDACTED] Elementary School in October 2017.
3. At the time of his enrollment, the Student was in the third grade.

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<sup>2</sup> The document contains nine numbered sentences. The sentence numbered as seven has an "X" over the number. Mr. Cowles stated on the record that sentence number seven was not accepted by the Parent and is not a stipulation of fact. The Parent agreed with Mr. Cowles's statement. Thus, the document contains eight stipulations of fact.

4. The Student was living with [REDACTED] his grandmother, in the attendance area of [REDACTED] Elementary School.

5. On December 21, 2017, an initial [individualized education program (IEP)] team meeting was convened to discuss the need for evaluation under IDEA.

6. In February 2018, the Student was determined eligible as a student with an emotional disability under IDEA.

7. An IEP team meeting was held on October 30, 2018. The team recommended placement in the social emotional learning support program at [REDACTED] Elementary School.

8. The Parent disagreed and initiated the current proceedings. The Student has remained at [REDACTED] pending the outcome of the due process hearing.

### DISCUSSION

The OAH Rules of Procedure regarding a Motion for Judgment state as follows:

#### E. Motion for Judgment.

(1) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party. The moving party shall state all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of any opposing party's case.

(2) When a party moves for judgment at the close of the evidence offered by an opposing party, the judge may:

- (a) Proceed to determine the facts and to render judgment against an opposing party; or
- (b) Decline to render judgment until the close of all evidence.

(3) A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence if the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the party withdraws the motion.

COMAR 28.02.01.12E.

When considering a Motion for Judgment during a non-jury trial, the judge, as the trier of fact, may determine the facts and render judgment against the non-moving party. *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 353 (1986).<sup>3</sup> The judge may evaluate the evidence, including making inferences, determining credibility and drawing conclusions. *Id.*

The powers and duties of an Administrative Law Judge are outlined in COMAR 28.02.01.11, and state, in relevant part, as follows:

**.11 Powers and Duties of Judges.**

A. A judge shall:

...

(2) Take action to avoid unnecessary delay in the disposition of the Proceedings. . . .

B. A judge has the power to regulate the course of the hearing and the conduct of the parties and authorized representatives, including the power to:

...

(4) Consider and rule upon motions in accordance with this chapter;

...

(11) Issue orders as are necessary to secure procedural simplicity and administrative fairness and to eliminate unjustifiable expense and delay[.]

....

In the instant case, the Parent, on the Student's behalf, filed the Complaint with the OAH; therefore, the Parent/Student bears the burden of proof by a preponderance of the evidence.

*Schaffer v. Weast*, 546 U.S. 49 (2005). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so" when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Civil Pattern Jury Instructions* 1:7 (3d ed. 2000)); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

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<sup>3</sup> This language of the Motion for Judgment provision in the OAH rules of procedure is akin to the Maryland Rules regarding Motions for Judgment in the circuit and district courts. *See* Maryland Rules 2-519 and 3-519. Thus, I find that case law interpreting the circuit and district court provisions is persuasive and informative regarding the proper interpretation of the OAH provision.

At the close of the Parent's case, BCPS argued that the Parent failed to establish a *prima facie* case. The Parent had no response to the BCPS Motion, other than to shake her head in the negative and state that she was tired.

The Parent's testimony was the entirety of her case. She offered no exhibits into evidence and briefly testified to her belief that while the Student attended [REDACTED] the plan had always been for him to return to [REDACTED] Elementary School. The Parent testified that the plan is now for the Student to attend [REDACTED] Elementary School in order for him to have supportive services in place.<sup>4</sup> The Parent testified that the Student "knows what he is doing" because at home he is "a different person." (Test. Parent.) The Parent stated her belief that the proposed support services are an unnecessary "crutch." (Test. Parent.) She added that the Student has satisfied the goals<sup>5</sup> of [REDACTED] so she believes he should return to [REDACTED] Elementary School.

During cross-examination, the Parent acknowledged that she participated in the Student's October 30, 2018 IEP meeting and heard IEP team members articulate their concerns that the Student requires greater support than [REDACTED] Elementary School can offer him, including reduced classroom sizes and a higher teacher to student ratio. The Parent testified that she disagrees with their assessment, and that she voiced her disagreement during the IEP meeting. The Parent said she believes the Student uses the additional services because they are in place, not because he requires them.

I conclude that the evidence offered by the Parent did not support her due process hearing request. The Parent presented her own testimony but offered no specific information sustaining the allegations in her due process hearing request. Her testimony did not proceed beyond the level of a bare allegation. She did not provide me with any documentation or expert witnesses,

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<sup>4</sup> The Parent did not testify with any specificity regarding these services.

<sup>5</sup> The Parent did not testify with any specificity regarding these goals.

or other witnesses to sustain or corroborate her allegations. The Parent established that she disagrees with BCPS regarding the Student's IEP and that she voiced her concerns during the October 30, 2018 IEP meeting, but offered nothing more. Accordingly, the Parent's unsubstantiated allegations do not amount to errors sufficient to sustain the Parent's position that the Student was denied FAPE.

The Parent's testimony reflected the frustrations of a concerned parent who believes that BCPS is failing to provide appropriate services to the Student. However, the Parent's opinion and obvious dissatisfaction with BCPS is not sufficient alone to sustain her burden. The record does not present evidence legally sufficient to demonstrate that BCPS ever failed to offer the Student a FAPE.

Accordingly, since the Parent has failed to prove the Student was denied FAPE, I need not look at the question of the remedy. The Motion for Judgment will be granted.

#### CONCLUSION OF LAW

Based upon the foregoing Stipulated Facts and Discussion, I conclude, as a matter of law that the Motion for Judgment should be granted in favor of BCPS at the conclusion of the Student's case. COMAR 28.02.01.11 and .12E; *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342, 353 (1986).

#### ORDER

Baltimore County Public School's Motion for Judgment is **GRANTED** and the Student's Due Process Complaint is hereby **DENIED**.

January 4, 2019  
Date Ruling Mailed

Signature Appears on Original

Tracey Johns Delp  
Administrative Law Judge

TJD/dim  
#177579

**REVIEW RIGHTS**

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

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.

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]