[redacted],	**BEFORE BRIAN PATRICK WEEKS,**
STUDENT	**AN ADMINISTRATIVE LAW JUDGE**
v.	**OF THE MARYLAND OFFICE**
BALTIMORE COUNTY	**OF ADMINISTRATIVE HEARINGS**
PUBLIC SCHOOLS	**OAH No.: MSDE-BCNY-OT-23-01169**

RULING ON MOTION TO DISMISS OR FOR SUMMARY DECISION[1]

STATEMENT OF THE CASE

On January 13, 2023, [redacted] and [redacted] (Parents) filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) on the Student's behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by the Baltimore County Public Schools (BCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. §§ 1400-1419 (2017).[2] The Complaint alleges that BCPS violated the IDEA by denying the Student a free appropriate public education when it failed to develop an Individualized Education Plan (IEP) for the Student for the 2022-2023 school year.

[1] The motion was captioned as a Motion to Dismiss, or in the alternative, for Summary Decision. As discussed later, I am treating the motion as a Motion for Summary Decision.
[2] "U.S.C.A." is an abbreviation for the United States Code Annotated. All subsequent references are to the 2017 version.

The Student has attended [redacted] during the 2021-2022 and 2022-2023 school years, and BCPS partially funded tuition for the 2021-2022 school year pursuant to a prior settlement agreement. The parties agreed to participate in mediation but were unable to resolve the matter.

On February 17, 2023, the BCPS filed a Motion to Dismiss or for Summary Decision (Motion), with several attached exhibits. The Motion sought a dismissal of the Complaint or a summary decision in the BCPS's favor because the Parents refused to participate in the IEP process in good faith, failed to abide by a July 23, 2021 settlement agreement where they consented to educational testing, and failed to provide consent or make the Student available for educational testing to determine eligibility. The BCPS also argued that the Complaint improperly included a request for reimbursement of a 2020 independent educational evaluation (IEE). On February 22, 2023, the Student filed an Opposition to the Motion, with attached exhibits (Opposition).

On March 7, 2023, I convened a hearing on the Motion. Pamela Foresman, Esquire, represented the BCPS. Holly Parker, Esquire, represented the Student.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2022); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021)[3]; Code of Maryland Regulations (COMAR) 13A.05.01.15C; COMAR 28.02.01.

[3] All subsequent references are to the 2021 Replacement Volume.

ISSUE[4]

Whether the BCPS is entitled to summary decision because there is no genuine dispute of material fact and the Parents refused to participate in the IEP process in good faith, failed to abide by an earlier agreement where they consented to educational testing, or failed to provide consent for assessments needed to determine eligibility?

SUMMARY OF THE EVIDENCE

Exhibits

The BCPS attached the following exhibits to the Motion:

BCPS Ex. 1 - Request for Mediation/Due Process Hearing with attachments, January 12, 2023

BCPS Ex. 2 - IEP Team Summary, December 9, 2016

BCPS Ex. 3 - Letter of Agreement, July 23, 2021

BCPS Ex. 4 - IEP Team Summary, March 24, 2022

BCPS Ex. 5 - Request for Mediation/Due Process Hearing with attachments, September 24, 2022

BCPS Ex. 6 - Withdrawal of Due Process Hearing request, November 15, 2022

BCPS Ex. 7 - Affidavit of [redacted], November 11, 2022

The Student attached the following exhibits to the Response:

Student Ex. 1 - Emails between the BCPS and the Parents, various dates

Student Ex. 2 - Email from the Student to the BCPS, April 11, 2022

Student Ex. 3 - Neuropsychological re-evaluation, November 17, 2020

Student Ex. 4 - Emails between the BCPS and the Student, various dates

Student Ex. 5 - Letter from the Student to the BCPS, March 28, 2022

[4] The BCPS also alleged that the Student improperly included claims for reimbursement of a 2020 IEE in its proposed remedies. The Student responded that it was not seeking reimbursement for the 2020 IEE. Therefore, this is not an issue.

Student Ex. 6 - IEP Team Summary, March 24, 2022

Student Ex. 7 - Emails between the BCPS and the Parents, various dates

Student Ex. 8 - Email from the Student to the BCPS, September 28, 2021

Student Ex. 9 - Emails between the Student and the BCPS, September 28, 2021

Student Ex. 10 - Letter of Agreement, July 23, 2021

Student Ex. 11 - Emails between the Student and the BCPS, various dates

Student Ex. 12 - Bill of Service, November 17, 2020

Testimony

Neither party presented any testimony.

UNDISPUTED MATERIAL FACTS

The following material facts are undisputed:

1. In January 2022, Ms. [redacted] called the Parents several times and left messages to schedule an IEP team meeting. (BCPS Ex. 7).

2. On January 28, 2022, Ms. [redacted] emailed Mr. [redacted] to schedule a meeting. (*Id.*) Mr. [redacted] responded via email on February 14, 2022, and requested that the BCPS propose meeting dates. (*Id.*) On February 16, 2022, Ms. [redacted] proposed multiple dates via email. (*Id.*)

3. After Mr. [redacted] and Ms. Parker confirmed availability for the dates of March 8, 9, and 10, 2022, Ms. [redacted] scheduled the IEP meeting for March 9, 2022, and notified the Parents and Ms. Parker on March 2, 2022. (*Id.*)

4. On March 2, 2022, Mr. [redacted] advised that he was no longer available on March 9. (*Id.*)

5. On March 11, 2022, after having confirmed the availability of Ms. Parker and Mr. [redacted], Ms. [redacted] scheduled the IEP team meeting for March 24, 2022. (*Id.*)

6. On March 12, 2022, Ms. [redacted] sent an email to Mr. [redacted] and Ms. Parker requesting an opportunity to observe the Student at his school, the [redacted]. (*Id.*) Ms. [redacted] did not receive a response. (*Id.*)

7. On March 24, 2022, an IEP team meeting was held. (*Id.*)

8. The Parents attended and participated in the IEP team meeting. (*Id.*)

9. At the meeting, the Parents did not provide any assessments, progress reports, or report cards from the [redacted] or the [redacted], which the Student had attended prior to the [redacted]. (*Id.*)

10. The IEP team discussed the Student's programming and his performance at [redacted]. (*Id.*)

11. After discussion at the IEP team meeting, the IEP team requested written consent from the Parents to conduct an educational assessment, psychological assessment, and a classroom observation at the [redacted]. (*Id.*)

12. Ms. Parker notified the IEP team of a 2019 psychological assessment[5] and requested that the team review that assessment before the BCPS made a determination regarding an updated psychological assessment. (*Id.*)

13. Ms. [redacted] explained that a new psychological assessment would be required by the BCPS because the prior one was from 2019. (*Id.*)

14. Ms. Parker stated that the Parents would not consent to a new psychological assessment and suggested the IEP team reconvene once the BCPS had reviewed the 2019 psychological assessment. (*Id.*)

[5] The Student notes in the response to the Motion that the assessment was conducted in 2020. For ease of reference and because the affiant used the 2019 date, I will refer to this assessment throughout as the 2019 assessment.

15. On March 28, 2022, Ms. [redacted] sent an email to Mr. [redacted] and Ms. Parker that included the summary of the March 24 IEP team meeting. (*Id.*) Ms. [redacted] requested consent for school-based assessments as well as a copy of the 2019 psychological assessment. (*Id.*)

16. On March 30, 2022, Ms. [redacted] emailed Mr. [redacted] and Ms. Parker to reiterate that the IEP team had determined that updated assessments were necessary to determine the Student's eligibility for services under the IDEA. (*Id.*)

17. On April 7, 2022, Ms. [redacted] emailed Mr. [redacted] and Ms. Parker to request a copy of the 2019 assessment. (*Id.*)

18. On April 11, 2022, Ms. Parker provided the 2019 assessment to Ms. [redacted]. (*Id.*)

DISCUSSION

Standards for Motion Dismiss and for Summary Decision

A contested case hearing may be disposed of by a motion to dismiss or a motion for summary decision. State Gov't § 10-210(6), (7). The applicable regulation for a motion to dismiss provides that "[u]pon motion, the [Administrative Law Judge] may issue a proposed or final decision dismissing an initial pleading that fails to state a claim for which relief may be granted." COMAR 28.02.01.12C; *see also* State Gov't § 10-210(7).

The OAH Rules of Procedure provide for consideration of a motion for summary decision under COMAR 28.02.01.12D. The regulation provides as follows:

> D. Motion for Summary Decision.
> (1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.
> (2) A motion for summary decision shall be supported by one or more of the following:
> (a) An affidavit;
> (b) Testimony given under oath;
> (c) A self-authenticating document; or
> (d) A document authenticated by affidavit.

(3) A response to a motion for summary decision:
(a) Shall identify the material facts that are disputed; and
(b) May be supported by an affidavit.
(4) An affidavit supporting or opposing a motion for summary decision shall:
(a) Conform to Regulation .02 of this chapter;
(b) Set forth facts that would be admissible in evidence; and
(c) Show affirmatively that the affiant is competent to testify to the matters stated.
(5) The ALJ may issue a proposed or final decision in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

COMAR 28.02.01.12D; *see also* State Gov't § 10-210(6).

Because the BCPS included an affidavit as an attachment to the Motion, I will consider it as a Motion for Summary Decision. *See* COMAR 28.02.01.02B(9), COMAR 28.02.01.12C-D; Md. Rule 2-322(c). On a motion for summary decision, the moving party, here, the BCPS, bears the initial burden. COMAR 28.02.01.21K(3). I may grant a motion for summary decision and dismiss the hearing request in this case only if I find that there is "no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." COMAR 28.02.01.12D(5); *see also Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980).

Only a genuine dispute as to a material fact is relevant in opposition to a motion for summary decision. *Seaboard Sur. Co. v. Kline, Inc.*, 91 Md. App. 236, 242 (1992). A material fact is defined as one that will "somehow affect the outcome of the case." *King v. Bankerd*, 303 Md. 98, 111 (1985) (quoting *Wash. Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 717 (1978)). When evaluating a motion for summary judgment, the court must "'construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party.'" *Appiah v. Hall*, 416 Md. 533, 546 (2010) (quoting *O'Connor v. Baltimore Cnty.*, 382 Md. 102, 111 (2004)).

Arguments of the Parties

The BCPS argued that the Student is barred from relief because the Parents refused to provide consent or make the Student available for assessments needed to determine eligibility. The BCPS argued also that the Student is barred from relief for two additional reasons: (1) the Student failed to abide by a July 23, 2021 settlement agreement; and (2) the Student failed to act in good faith in the IEP team process. The Student argued that it agreed to educational testing and worked in good faith with the BCPS regarding the psychological evaluation.

Because there is no dispute of material fact and the Parents refused to consent to a reevaluation of the Student, the BCPS is entitled to judgment as a matter of law and I will grant the Motion.[6]

Analysis

The local educational agency must "ensure that ... the child is assessed in all areas of suspected disability[.]" 20 U.S.C.A. § 1414(b)(3)(B). The IDEA requires the local educational agency, in conducting the evaluation of the child, to "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining (i) whether the child is a child with a disability; and (ii) the content of the child's individualized education program[.]" 20 U.S.C.A. § 1414(b)(2)(A). A reevaluation must be conducted "(i) if the local educational agency determines that the educational or related service needs ... of the child warrant a reevaluation; or (ii) if the child's parents or teacher requests a reevaluation." 20 U.S.C.A. § 1414(a)(2)(A). A reevaluation must be conducted "at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary[,]" but "not more frequently than

[6] In the interest of judicial economy, I will not address BCPS's other two arguments.

once a year, unless the parent and the local educational agency agree otherwise[.]" 20 U.S.C.A. § 1414(a)(2)(B).

The IDEA regulations establish certain requirements related to parental consent to conduct reevaluations, as follows:

> (c) Parental consent for reevaluations.
>
> > (1) Subject to paragraph (c)(2) of this section, each public agency—
> >
> > > (i) Must obtain informed parental consent, in accordance with § 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.
> >
> > > (ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.
> >
> > > (iii) The public agency does not violate its obligation under § 300.111 and §§ 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

34 C.F.R. § 300.300(c)(1) (2021); *see also* 20 U.S.C.A. § 1414(c)(3); COMAR 13A.05.01.13.

There is no dispute about the fact that the Parents never gave permission for the BCPS to conduct a psychological evaluation of the Student. Ms. [redacted], the affiant from the BCPS, has first-hand knowledge of the BCPS' request to reevaluate the Student. Accordingly, she is competent to testify as to the matters in the affidavit. COMAR 28.02.01.12D.

In her affidavit, Ms. [redacted] set forth the following relevant facts that would be admissible in evidence:

- "[t]he team ordered a psychological assessment, and [sic] educational assessment and a classroom observation to determine current educational performance levels and eligibility for special education services."

- "Mr. [redacted] and Mr. [redacted]'s attorney, Ms. Parker, expressly refused to provide consent for the assessments."
- "On March 28, I sent an e-mail to Mr. [redacted] and Ms. Parker that included the team summary of the March 24 IEP team meeting. I again requested consent for school-based assessments as well as a copy of the 2019 assessment referred to in the team meeting."
- "On March 30, I sent an e-mail to Mr. [redacted] and Ms. Parker and reiterated the team decision to order assessments to determine eligibility."

(Ex. 7). In the Opposition, the Student stated that "[o]n March 29, 2022, the parent wrote to [the] BCPS memorializing that there was a private psychological evaluation that needed to be considered before further psychological testing was conducted but advised that the parents were in agreement with [the] BCPS conducting further educational testing."

The Student did not state that any of the other above facts set forth in Ms. [redacted]'s affidavit were in dispute. Accordingly, I conclude that there is no dispute over the fact that the Parents refused to consent to psychological testing of the Student. As explained in further detail below, the BCPS is entitled to judgment as a matter of law based on the Parents' refusal to provide consent for reevaluation.

In *Andress v. Cleveland Independent School District*, 64 F.3d 176, 177 (5th Cir. 1995), the Court held that "there is no exception to the rule that a school district has the right to reevaluate a student using its own personnel." In *Andress*, the student's parents had refused to allow the school district to test the student because of a doctor's advice that the student would be traumatized by additional testing. *Id*. at 177-178. The Fifth Circuit reversed the District Court's conclusion that there was an exception to the rule that a school district has the right to use its

own personnel to reevaluate students in situations where further testing would be harmful medically and psychologically. *Id*. at 178-179. The Court stated:

> If a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation. *Gregory K. v. Longview School Dist.,* 811 F.2d 1307, 1315 (9th Cir.1987) ("If the parents want [the student] to receive special education under the Act, they are obliged to permit such testing."); *Dubois v. Conn. State Bd. of Ed.,* 727 F.2d 44, 48 (2d Cir.1984) ("[T]he school system may insist on evaluation by qualified professionals who are satisfactory to the school officials."); *Vander Malle v. Ambach,* 673 F.2d 49, 53 (2d Cir.1983) (School officials are "entitled to have [the student] examined by a qualified psychiatrist of their choosing."). A parent who disagrees with the school's evaluation has the right to have the child evaluated by an independent evaluator, possibly at public expense, and the evaluation must be considered by the school district. 34 C.F.R. § 300.503.
>
> It would be incongruous under the statute to recognize that the parents have a reciprocal right to an independent evaluation, but the school does not.

Id. at 178.

Even more on point than *Andress* is the case of *P.S. v. Brookfield Board of Education*, 353 F. Supp. 2d 306 (D. Conn. 2005), where the Court held that the parents forfeited any right they had to reimbursement for the cost of student's unilateral private placement when they unjustifiably failed to make the student available for a psychological evaluation. During the student's sophomore year of high school, he began to have difficulty functioning and received a private instructor from the school system. *Id.* at 311. He then experienced a psychotic break and after discharge from the hospital he entered a daytime treatment program with the school continuing to provide homebound tutoring. *Id.* Subsequently, the school system notified the parents of a meeting to discuss his IDEA eligibility. *Id.* At the IEP team meeting, the parent signed a consent form to allow the student to be evaluated by a psychologist. *Id.* Then, the next

day, the parents revoked their consent for the student to be evaluated and requested a due process hearing. *Id.*

The school system filed a motion asking the hearing officer to order the student's parents to allow the student to be psychologically evaluated, and the hearing officer granted the motion. *Id*. at 311-312. The parents did not comply with the order. *Id.* at 312. The hearing officer proceeded to the merits of the parent's case, but granted an oral motion to dismiss by the school system. *Id.* The Court rejected the parents' contention that they were justified in withholding consent because the school system had no right to conduct a psychological evaluation prior to identifying the student as eligible for services under the IDEA. *Id.* at 314. In so ruling, the Court dismissed the parents' assertion that the school system was required to find the student eligible under the IDEA based solely on his discharge form from the hospital. *Id.* Instead, the Court determined that the psychological evaluation was relevant to help determine the student's eligibility under the IDEA as part of a holistic determination regarding eligibility. *Id.* The Court also found that the parents had not made a sufficient showing that justified withholding their consent for evaluation of the student – specifically rejecting the parents' contention that they were concerned about the partiality of the school system's psychologist. *Id.* at 315.

Closer to home, the United States District Court for the Eastern District of Virginia dealt with a similar question in *Torda ex rel. Torda v. Fairfax County School Board*, 2012 WL 2370631 (E.D. Va. 2012). In *Torda*, the student's parent had not given consent for a new IEP for the 2007-2008 school year, so the school system implemented the last agreed-upon IEP. *Id.* at 2. The parent then raised concerns about the student's eligibility classification as intellectually disabled, and the school system advised her that the student would need to be reevaluated before

any changes could be made to his classification. *Id.* The parent refused to consent to new evaluations. *Id.*

The parent ultimately filed a due process complaint alleging that the school system violated the IDEA in failing to evaluate the student for Auditory Processing Disorder and thereby overlooking an area of his disability. *Id.* at 1. The Court concluded that the school system was not liable for failing to evaluate the student during the 2007-2008 school year because the parent denied consent for reevaluation of the student during that school year. *Id.* The Court found that the denial of consent for reevaluation meant that any IDEA violation was "directly attributable to the actions of the parent." *Id.* at 9 (citation omitted). The Court rejected the parent's argument that the school system never offered to conduct an auditory processing evaluation and therefore she never refused such an offer, concluding that she did not specifically request such a test and refused consent for testing that may have encompassed or led to testing for auditory processing issues. *Id.*

Other federal circuit courts that have addressed the issue of failure to consent to evaluation have agreed with the holding in *Andress*. In *Patricia P. v. Board of Education of Oak Park*, 203 F.3d 462 (7th Circ. 2000), the court held that "parents who, because of their failure to cooperate, do not allow a school district a reasonable opportunity to evaluate their disabled child, forfeit their claim for reimbursement for a unilateral private placement." *Id.* at 469. The parent had unilaterally placed the student at a private school for freshman year of high school after disagreeing with the school system's proposed IEP. *Id.* at 465. After the student was told he could not return to the private school, he returned to public school in Illinois for a matter of weeks before the parent made a second unilateral private placement for the student's sophomore year at a residential placement in Maine. *Id.* The parent did not send the student back to the

school district for evaluation, instead offering to allow school district staff to travel to Maine to evaluate the student at the residential placement. *Id.* at 469.

At the end of the student's sophomore year, the parent requested a due process hearing to obtain a determination that the private school was an appropriate educational placement for the student. *Id.* The hearing officer granted a motion to dismiss from the school district and ruled that the parent had "effectuate[d] a unilateral transfer of [the student] which thus deprived the School District of an opportunity to conduct its own case study evaluation." *Id.* The court upheld this determination and stated:

> [t]he IDEA's preference for a cooperative placement process also serves a practical purpose. Without some minimal cooperation, a school district cannot conduct an evaluation of a disabled child as is contemplated under the IDEA. . . . Practically speaking, a school board needs the cooperation of the parent(s) to properly evaluate a child and convene a case conference to thereby determine what level of services would address the child's disability.

Id. at 468.

In *M.T.V. v. DeKalb County School District*, 446 F.3d 1153 (11th Circ. 2006), the Court was tasked with resolving a slightly different procedural question than the question addressed in *Andress*, *P.S.*, *Torda*, and *Patricia P.* If a parent refuses to consent to reevaluation, then a school district has the option, but is not required, to file a due process complaint to compel reevaluation. 34 C.F.R. § 300.300(c)(1).[7] In *M.T.V.*, the parent appealed the decision by an administrative law

[7] The BCPS has not requested that I order the Student to submit to a psychological evaluation. In *G.J. ex rel. E.J. v. Muscogee County School District*, 704 F.Supp.2d 1299 (M.D. Ga. 2010), the federal district court upheld an ALJ's grant of summary decision to the school district based on the parents' refusal to consent to reevaluation. The parents had sought a litany of restrictions and conditions before the school system could reevaluate the student, and the court concluded that "the purported consent is not consent at all." *Id.* at 1309. The court ultimately ordered the student to consent to a reevaluation, even though the school system did not request such an order. *Id.* at 1310. The Court justified its order by looking to the text of the IDEA which authorizes a reviewing federal district court to "grant such relief as the court determines is appropriate." *Id.* (citation omitted). However, I have limited authority and am only ruling on the Motion and the relief requested therein, which is dismissal of the case. Because my authority is limited to resolving the issues before me, it would not be appropriate for me to fashion an order requiring the Student to submit to a psychological evaluation where the BCPS has not requested such relief.

judge (ALJ) to order the student to submit to reevaluation by the school district. In upholding the ALJ's order requiring the parents to cooperate with the school system's reevaluation, the court stated:

> Every court to consider the IDEA's reevaluation requirements has concluded "[i]f a student's parents want him to receive special education under IDEA, they must allow the school itself to reevaluate the student and they cannot force the school to rely solely on an independent evaluation." *Andress v. Cleveland Indep. Sch. Dist.,* 64 F.3d 176, 178–79 (5th Cir.1995); *see also Johnson by Johnson v. Duneland Sch. Corp.,* 92 F.3d 554, 558 (7th Cir.1996) ("[B]ecause the school is required to provide the child with an education, it ought to have the right to conduct its own evaluation."); *Gregory K. v. Longview Sch. Dist.,* 811 F.2d 1307, 1315 (9th Cir.1987) (holding parents must permit mandatory reassessments under the Education of the Handicapped Act, the IDEA's predecessor, if they want their child to receive special education services); *Dubois v. Conn. State Bd. of Ed.,* 727 F.2d 44, 48 (2d Cir.1984) (same).
>
> We agree with these courts and hold the School District was entitled to reevaluate M.T.V. by an expert of its choice. M.T.V. was initially deemed eligible for OHI services in August 1999, making his triennial evaluation for continued OHI eligibility due in 2002. Conditions also warranted a reevaluation because M.T.V. had made significant progress on his OHI goals. Finally, the School District had a right to condition M.T.V.'s continued OHI services on a reevaluation by an expert of its choice because M.T.V.'s initial OHI-eligibility was based primarily on evaluations provided by his parents. We agree "the school cannot be forced to rely solely on an independent evaluation conducted at the parents' behest." *Johnson,* 92 F.3d at 558. Accordingly, the district court did not err in affirming the ALJ's order requiring M.T.V. to submit to the School District's reevaluation in order to remain eligible for OHI services.

Id. at 1160.

The BCPS is entitled to judgment as a matter of law based on the Parents' failure to consent to a psychological reevaluation of the Student. At the hearing on the Motion, the Student did not identify any legal authority that is contrary to the cases discussed above, nor was I able to locate any.

Because the caselaw is clear, and there is no dispute over the fact that the Parents never gave consent for a psychological evaluation, the BCPS is entitled to summary decision.

CONCLUSIONS OF LAW

I find as a matter of law, based on the undisputed facts, that the BCPS is entitled to summary decision, because the Parents never gave consent for a psychological reevaluation by the BCPS to determine the Student's continued eligibility under the IDEA. COMAR 28.02.01.12D; 34 C.F.R. § 300.300(c)(1) (2021); 20 U.S.C. § 1414 (2017); COMAR 13A.05.01.13.

ORDER

For the reasons set out in the Discussion above, I hereby **ORDER** that:

The BCPS Motion for Summary Decision is **GRANTED**;

The due process complaint filed by the Parents on January 13, 2023 on behalf of the Student is hereby **DISMISSED;**

I further **ORDER** that all other proceedings in this matter are hereby **CANCELLED**.

March 16, 2023
Date Ruling Mailed

Brian Patrick Weeks
Administrative Law Judge

BPW/sh
#203736

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) (2022). 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.

Copies Mailed To:

[redacted]

[redacted],	**BEFORE BRIAN PATRICK WEEKS,**
STUDENT	**AN ADMINISTRATIVE LAW JUDGE**
v.	**OF THE MARYLAND OFFICE**
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