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STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE M. TERESA GARLAND,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-22-28875

**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 November 18, 2022, ██████████ and ██████████, (Parents), by their Attorney, Ashley VanCleaf, Esquire, on behalf of their 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) failed to provide the Student with a free, appropriate public education (FAPE) based on his unique disability needs. The Parents are seeking continued placement at the ██████████ and reimbursement by MCPS of tuition and related expenses. The November 18, 2022 Complaint does not reference the date of the challenged Individualized Education Program (IEP).

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 abbreviation for the United States Code Annotated. Unless otherwise noted, all citations herein to the U.S.C.A. are to the 2017 bound volume.

On December 14, 2022, I conducted a virtual prehearing conference in this matter. Emily Rachlin, Esquire, represented MCPS. Ashley VanCleaf, Esquire, represented the Parents. During the prehearing conference, MCPS noted that it intended to file a dispositive motion as to some or all issues to be decided. A filing deadline was set for Friday, January 13, 2023, with any response filed due Monday, January 30, 2023, fifteen days after the filing of MCPS' dispositive motion.

On January 3, 2023, the MCPS filed a Motion to Dismiss (Motion). On January 23, 2023, the Parents filed a Response in Opposition to the Motion (Response). In the Response, the Parent's assert that MCPS' Motion was untimely filed and should be dismissed.³ On January 25, 2023, both parties requested a hearing on the Motion and Response. On January 26, 2023, MCPS filed a Motion to Strike the Parents' Response (Motion to Strike) as untimely filed.⁴

On January 27, 2023, I conducted a virtual Motions hearing in this matter. Emily Rachlin, Esquire, represented MCPS. Ashley VanCleaf, Esquire, represented the Parents. Stacy Reid Swain, Legal Director, MCPS, was also present but did not participate.

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 Office of Administrative Hearings (OAH). Educ. § 8-413(e)(1); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

1. Should MCPS' Motion and/or Motion to Strike be granted?
2. Should MCPS' Motion be dismissed as untimely filed?

³ Code of Maryland Regulations (COMAR) 13A.05.01.15(C)(6).

⁴ COMAR 28.02.01.13(B)(3)(a).

EXHIBITS

MCPS submitted the following documents in support of the Motion:

- Exhibit A - Due Process Complaint and Addendum, November 18, 2022
- Exhibit B - Settlement Agreement between MCPS and the Parents, December 13, 2021
- Exhibit C - Due Process Complaint and Addendum, September 10, 2021

The Parents attached the following documents to their Response:

- Parent Ex. 1 - Correspondence from Ms. VanCleaf to Ms. Reid Swain, March 5, 2021
- Parent Ex. 2 - MCPS Prior Written Notice, April 15, 2021
- Parent Ex. 3 - Email between Ms. VanCleaf and Ms. Rachlin, September 28, 2021
- Parent Ex. 4 - Email between Ms. VanCleaf and Ms. Rachlin, September 30, 2021
- Parent Ex. 5 - Withdrawal of OAH cases MSDE-MONT-OT-21-21347 and 21349, October 1, 2021
- Parent Ex. 6 - Email between Ms. VanCleaf and MCPS, December 8, 2021
- Parent Ex. 7 - Email between Ms. VanCleaf and MCPS, December 12, 2021
- Parent Ex. 8 - Email between Parents, Ms. VanCleaf and MCPS, February 18, 2022
- Parent Ex. 9 - MCPS Prior Written Notice, July 14, 2022
- Parent Ex. 10 - Correspondence to Ms. VanCleaf from Ms. Rachlin, December 8, 2022

UNDISPUTED MATERIAL FACTS

I find the following facts are undisputed:

1. The Student, who is identified with a Specific Learning Disability, was enrolled at [REDACTED] Elementary School ([REDACTED]) during the 2019-2020 school year.

2. On April 20, 2020, MCPS recommended the Individualized Distance Learning Plan which would be implemented due to the global pandemic and the resulting closure of school buildings related to the COVID-19 pandemic.

3. On April 15, 2021, the IEP team met and proposed to implement the Student's IEP with two hours of special education services outside the general education environment per week for specialized reading instruction; fifteen hours of special education services inside general education per week; and three hours of speech-language therapy outside general education per week. The IEP team determined that [REDACTED] was the least restrictive environment for the Student. (Parent Ex. 2).

4. On April 15, 2021, the Parents were not in agreement with the proposed IEP and gave notice of unilateral placement of the Student at the [REDACTED]. (Parent Ex. 2).

5. On September 10, 2021, the Parents filed a Due Process Complaint in which they sought placement of the Student at the [REDACTED] and reimbursement for all related expenses. (MCPS Ex. C).

6. On December 10, 2021,⁵ the parties entered into a settlement agreement in which MCPS agreed to remit a lump sum payment to the Parents for tuition and related services the Parents paid to the [REDACTED] for the 2020-2021 school year. The settlement agreement also provided that an IEP meeting would be scheduled and convened prior to the end of the 2021-2022 school year. (MCPS Ex. B, ¶¶ 1, 3).

7. The settlement agreement was a full and final settlement of any and all claims through the September 10, 2021 Due Process Complaint filing. (MCPS Ex. B, ¶¶ 6, 8).

⁵ The final signature on the settlement agreement is dated December 13, 2021. The document itself is dated December 10, 2021.

8. On April 6, 2022, the IEP team met for an Annual Review. The Parents were present and participated along with a representative from the [REDACTED]. The IEP meeting was continued to July 13, 2022 due to time constraints.

9. On July 13, 2022, an IEP was developed which proposed ten hours of special education inside of general education per week, and six hours and thirty minutes of special education instruction outside of general education per week. The IEP team determined that [REDACTED] continued to be the least restrictive environment for the Student in which he would be able to receive educational benefit.

10. The Parent disagreed with this recommendation and requested that MCPS fund their unilateral placement at the [REDACTED]. (MCPS Ex. A).

11. On November 18, 2022, the Parents filed a Due Process Complaint which seeks the Student's continued placement at the [REDACTED] and reimbursement by MCPS for tuition and related expenses. (MCPS Ex. A).

10. The November 18, 2022 Due Process Complaint does not reference which IEP and/or school year is being challenged. (*Id.*).

11. On December 14, 2022, Parents' counsel asserted, at a prehearing conference, that the April 20, 2020 IEP was being challenged.

12. The Parents' Response asserts that the IEP being challenged is the April 13, 2021 IEP. (Response at p. 5).

DISCUSSION

PRELIMINARY MATTERS

MCPS seeks to strike the Parents' Response to its Motion as untimely filed pursuant to COMAR 28.02.01.12(B)(3) which provides: "[a]n answer to a written motion shall be filed on

the earlier of 15 days after the date the motion was filed or the date of the hearing.” The Prehearing Conference Report and Order, issued on December 21, 2022, instructed the parties that any dispositive motions must be filed by Friday, January 13, 2023 and any responses must be filed by Monday, January 30, 2023. MCPS filed its Motion on January 3, 2023 and the Parents filed a Response on January 23, 2023, twenty days after the Motion was filed. Although the fifteen-day timeframe was discussed during the prehearing conference, it was not memorialized in the Prehearing Conference Report and Order. Ms. VanCleaf explained that she was abiding by the dates specified in the Prehearing Conference Report and Order and added those dates to her calendar. Therefore, the Parents’ Response was filed seven days early.

While I am confident the Ms. VanCleaf, as an experienced attorney, is familiar with the provisions of COMAR 28.02.01.12(B)(3), this citation was not included in the Prehearing Conference Report and Order nor was there an instruction that any response was due fifteen days after the filing of any dispositive motion or January 30, 2023, which ever occurred first. Accordingly, I shall deny MCPS’ Motion to Strike.

The Parents’ Response seeks dismissal of MCPS’ Motion on the basis that it was not timely filed pursuant to COMAR 13A.05.01.15 which provides:

The due process complaint described in §C(3) of this regulation shall be considered sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the content of the due process complaint does not meet the requirements specified in 34 CFR §300.508.

The issue of the sufficiency of the November 18, 2022 Due Process Complaint arose during the prehearing conference on December 14, 2022. I questioned Parents’ counsel as to which IEP the Due Process Complaint was challenging since no specific school year or IEP was referenced in the Due Process Complaint. The response was that it challenged the April 20, 2020

IEP. Until that disclosure, it was perfectly reasonable for MCPS to infer that the challenged IEP was the most recent, July 2022. The April 20, 2020 IEP is outside the applicable statute of limitations. 20 U.S.C.A § 1415(f)(3)(C). The April 15, 2021 IEP resulted in a settlement agreement.

The MCPS filed its Motion on January 3, 2023 requesting the Parents' November 18, 2022 Due Process Complaint be dismissed for, *inter alia*, insufficiency. The Parents' January 23, 2023 Response now asserts the challenged IEP is the April 15, 2021 IEP, which resulted in a settlement agreement. The Parents have generated this confusion and, regardless of the timeframes provided by COMAR 13A.05.01.15, it would be manifestly unfair to prevent MCPS from responding. Therefore, I decline to dismiss MCPS' Motion.

STANDARDS OF DECISION

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.⁶ 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."⁷ 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.⁸ Furthermore, when considering a motion to dismiss, an ALJ must examine 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.⁹

⁶ See COMAR 28.02.02.12C.

⁷ COMAR 28.02.01.02B(7).

⁸ See *Lubore v. RPM Assocs., Inc.*, 109 Md. App. 312 (1996).

⁹ *Rossaki v. NUS Corp.*, 116 Md. App. 11 (1997).

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.¹⁰ Pursuant to 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.”

MCPS submitted the Motion with three attached exhibits; none of these were affidavits, and MCPS did not support the Motion with sworn testimony. However, these documents are self-authenticating and can thereby properly support a motion for summary decision. As MCPS has submitted self-authenticating documents to support its Motion, I shall consider the Motion as a motion for summary decision.¹¹

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.*”¹² 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.”¹³ Material facts in dispute are those facts satisfying elements of the claim or defense or otherwise affecting the outcome of the case.¹⁴ A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion.¹⁵ A judge must draw all justifiable inferences in favor of the non-moving party.¹⁶

¹⁰ See *Davis v. DiPino*, 337 Md. 642, 648-49 (1995) (comparison of motions to dismiss and for summary judgment).

¹¹ COMAR 28.02.01.12D.

¹² *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original).

¹³ *Id.*

¹⁴ *King v. Bankerd*, 303 Md. 98, 111 (1985).

¹⁵ *Anderson*, 477 U.S. at 251.

¹⁶ *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

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.¹⁷ 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.¹⁸ 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.¹⁹

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.²⁰ 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.²¹ For the reasons that follow, I find that 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).²² “Congress enacted IDEA in 1970 to ensure that all children with disabilities are provided a FAPE which emphasizes

¹⁷ See *Eng’g Mgt. Servs., Inc. v. State Highway Admin.*, 375 Md. 211, 226 (2003).

¹⁸ 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).

¹⁹ *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

²⁰ *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993).

²¹ *Honaker v. W.C. & A.N. Miller Dev. Co.*, 285 Md. 216, 231 (1979).

²² 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.”²³

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.²⁴

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;

²³*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 2021 volume.

²⁴ 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.²⁵

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.²⁶ 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)"²⁷ 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.²⁸ 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.²⁹

²⁵ 20 U.S.C.A. § 1414(d)(3)(A).

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

²⁷ 34 C.F.R. § 300.320(a)(1)(i).

²⁸ 34 C.F.R. § 300.324(a)(2)(i).

²⁹ 34 C.F.R. § 300.324(b)(1).

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 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.³⁰ 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.³¹

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.³² Within fifteen days of the parent's complaint, the parties must meet to try to resolve the parent's claims.³³ If the parties cannot reach an agreement, the matter proceeds to an administrative hearing before a special education hearing officer.³⁴

³⁰ 20 U.S.C.A. § 1415.

³¹ *Id.*

³² *Id.* § 1415(b)(6).

³³ *Id.* § 1415(f)(1)(B).

³⁴ *Id.* § 1415(f)(1)(A).

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, or educational placement of the child or the provision of a free, appropriate education to such child" ³⁵ Under Maryland law, the scope of due process hearings is the same. ³⁶ 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. ³⁷

THE POSITION OF THE PARTIES

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 December 10, 2021. That Settlement Agreement provided that MCPS would remit a lump sum payment to the Parents in the amount of \$35,000.00 for tuition and related services the Parents paid to the [REDACTED] for the 2020-2021 school year. The Settlement Agreement further provided the Parents agree that, in exchange for the settlement funds, they are resolving all issues raised in their September 10, 2021 request for mediation and due process hearing with the OAH. The Settlement Agreement contained a provision that both parties agree to schedule and convene an IEP meeting prior to the end of the 2021-2022 school year to review the Student's progress and determine placement for the 2022-2023 school year.

³⁵ 20 U.S.C.A. § 1415(b)(6).

³⁶ Md. Code Ann., Educ, § 8-413(a)(3) (2018), COMAR 13A.05.01.15(C)(1).

³⁷ 20 U.S.C.A. § 1415(a), (i)(2)(a).

The Parents assert that they withdrew the September 10, 2021 Complaint “without prejudice” with the understanding that another IEP meeting would be promptly scheduled. The Parents cite to a September 30, 2021 email between the parties wherein MCPS writes, “Pending final approvals, my client can agree to \$35K, authorization for observation and exchange of information, come back for IEP meeting and waiver of all claims to date.” (Parent Ex. 4). Because the IEP team did not meet until April 6, 2022 and July 13, 2022 when the IEP was completed, the Parents contend the April 15, 2021 IEP is still active and available to challenge.

ANALYSIS

Undisputed Facts-Settlement Agreement

Here, there is no dispute that the parties entered into a Settlement Agreement, dated December 10, 2021, which, on its face, states that it is made to “compromise disputed claims” concerning the provision of FAPE and tuition reimbursement to the Parents. (MCPS Ex. B, p. 2). In exchange for MCPS’ payment of \$35,000.00 toward the [REDACTED] for the 2020-2021 school year, the Parents agreed to release MCPS from any future obligation “in connection with the Due Process Complaint dated September 10, 2021.” (*Id.*, p. 3).

Settlement Agreements in Special Education Cases

MCPS opposes the Parents’ attempt to challenge the April 15, 2021 IEP 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

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

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 Settlement Agreement is in essence a contract between the Parents and MCPS. I have no authority or jurisdiction, delegated or otherwise, to settle contract disputes.

Sufficiency of the November 18, 2022 Due Process Complaint

A due process complaint under the IDEA must include:

- (I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- (II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of Title 42), available contact information for the child and the name of the school the child is attending;
- (III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
- (IV) a proposed resolution of the problem to the extent known and available to the party at the time.⁴⁰

A due process complaint is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer⁴¹ and the other party in writing that the receiving party believes the due process complaint has not met the statutory/regulatory requirements.⁴²

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).

⁴⁰ 20 U.S.C.A. § 1415(b)(7)(A)(ii); see also 34 C.F.R. § 300.508(b).

⁴¹ In Maryland, the hearing officer is an Administrative Law Judge.

⁴² 20 U.S.C.A. § 1415(c)(2)(A); 34 C.F.R. § 300.508(d)(1).

In challenging the sufficiency of the Complaint, MCPS asserts that the Complaint does not comply with 20 U.S.C.A. § 1415(b)(7)(A)(ii) (III) or (IV). The Parents' description of the problem, entitled "Issues" is vague. It reads as follows:

MCPS failed to provide ██████ with a free appropriate public education (FAPE) based on his unique disability related needs.

1. MCPS failed to develop an appropriate IEP with sufficient services needed to provide ██████ a FAPE;
2. MCPS based services on administrative convenience rather than what ██████ required;
3. MCPS failed to consider ██████'s need for a highly specialized instructional program in small classes based in ██████'s needs.

The Complaint references an April 20, 2020, IEP, IEPs from January, February and April 2021, and an IEP from April and July 2022. The Complaint does not specify which IEP the Parents are contesting, neither does it specify a school year or timeframe. As a result, MCPS requests that the Parent's due process complaint be dismissed for failure to meet the IDEA's sufficiency requirements.

The pleading standards under the IDEA are "minimal." *Schaffer ex. rel. Schaffer v. Weast*, 546 U.S. 49, 54 (2005).⁴³ The purpose of the pleading requirement is to provide MCPS with enough specificity that it will be able to investigate the claim against it and prepare a defense.

⁴³ "Congress has chosen to legislate the central components of due process hearings. It has imposed minimal pleading standards, requiring parties to file complaints setting forth 'a description of the nature of the problem,' § 1415(b)(7)(B)(ii), and 'a proposed resolution of the problem to the extent known and available . . . at the time,' § 1415(b)(7)(B)(iii)." *Weast*, 546 U.S. at 54.

The Parents argue that the Complaint is not vague and provides enough information in the body of the Complaint to discern the IEP challenged and the school year. After reviewing the Complaint, for the reasons that follow, I find that the Complaint is not legally sufficient.

Within the body of the Complaint, at least three different IEPs were identified, the latest of which was July 2022. At the December 14, 2022 prehearing conference, the Parents identified the April 20, 2020 IEP as that which they were contesting. That IEP is outside the applicable statute of limitations.⁴⁴ The Parents, in their Response, then asserted that they were challenging the April 15, 2021 IEP, which resulted in a settlement agreement. If the drafter of the Complaint cannot articulate with specificity which IEP is being challenged or even a timeframe or school year, and, as here, the IEP being contested changes, MCPS is left playing a game of IEP “whack-a-mole.” Therefore, I find that MCPS has not been put on sufficient notice of the nature of the problem.

There are no material facts in dispute in this case and MCPS is entitled to judgment as a matter of law because the Parents’ Complaint (1) seeks to address an issue already resolved by the December 10, 2021 Settlement Agreement between the parties, and (2) is insufficient. Accordingly, MCPS’ Motion is granted and the scheduled hearing is cancelled.

CONCLUSION OF LAW

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

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

⁴⁴ 20 U.S.C. § 1415(f)(3)(C); *see also* 20 U.S.C. § 1415(f)(3)(D).

The hearing scheduled for February 13, 14, 15, 16, 17, 22 and 23, 2023 is hereby

CANCELLED.

February 2, 2023
Date Ruling Mailed

M. Teresa Garland
Administrative Law Judge

MTG/sh
#203189

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 and/or Emailed To:

[REDACTED]

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