[redacted],	BEFORE DEBORAH S. RICHARDSON,
STUDENT	AN ADMINISTRATIVE LAW JUDGE
v.	OF THE MARYLAND OFFICE
MONTGOMERY COUNTY	OF ADMINISTRATIVE HEARINGS
PUBLIC SCHOOLS	OAH NO.: MSDE-MONT-OT-22-31222

RULING ON MOTION FOR SUMMARY DECISION

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STATEMENT OF THE CASE

On December 20, 2022, [redacted] and [redacted] (the Parents), through counsel, filed a Due Process Complaint on behalf of [redacted] (the Student) with the Office of Administrative Hearings (OAH), challenging the refusal of Montgomery County Public Schools (MCPS) to provide transportation for the Student to and from the [redacted] - [redacted] for the 2022-2023 school year under the Individuals with Disabilities Education Act (IDEA).[1] On January 17, 2023, the parties informed the OAH in writing that they held a resolution meeting on January 10, 2023, but were unable to resolve their dispute.[2]

On January 11, 2023, MCPS filed a Motion to Dismiss (Motion). Code of Maryland Regulations (COMAR) 28.02.01.12B(1). On January 18, 2023, the Student filed an Opposition.

[1] 20 U.S.C.A. §§ 1400-1419 (2017). Unless otherwise indicated, all subsequent citations to the United States Code Annotated (U.S.C.A.) are to the 2017 version.
[2] *See* 34 C.F.R. §§ 300.506, 300.510(a)(3)(ii) (2021). Unless otherwise noted, all subsequent citations herein to the Code of Federal Regulations (C.F.R.) are to the 2021 bound volume.; *see also* 20 U.S.C.A. § 1415(e), (f)(1)(B)(i)(IV).

COMAR 28.02.01.12B(3). On January 30, 2022, at a pre-hearing conference, both counsel stipulated to the authenticity of the documents attached to the Motion and the Opposition. COMAR 28.02.01.17; COMAR 28.02.01.21H. Accordingly, as discussed below, this Motion will be treated as a Motion for Summary Decision. COMAR 28.02.01.12D.

ISSUE

Should MCPS' Motion be granted?

EXHIBITS

MCPS submitted the following documents in support of the Motion:

Exhibit A - Request for Due Process, December 20, 2022

Exhibit B - Request for Due Process, August 2, 2022

Exhibit C - Settlement Agreement, October 20, 2022

Exhibit D - Student's Individualized Education Program (IEP), May 26, 2022

Exhibit E - Letter of Withdrawal, October 26, 2022

The Student submitted the following document in support of her Opposition:

Exhibit A - Student's IEP, May 26, 2022

UNDISPUTED MATERIAL FACTS

I find the following facts are undisputed:

1. The Student is eleven years old.

2. On May 26, 2022, the Student's IEP team proposed an IEP that included placement of the Student at the [redacted] at [redacted] Middle School for the 2022-2023 school year. (Motion, Ex. D).

3. The Student's IEP provides that "Related Service Transportation is needed for [the Student] to access special education services." (Opposition, Ex. A).

4. On August 2, 2022, the Parents, through counsel, filed a due process complaint alleging that MCPS had failed to develop an appropriate 2022-2023 IEP and, to appropriately evaluate and propose an appropriate placement for the Student. As relief, the Parents requested an independent psychological evaluation at public expense, an appropriate IEP, and funding and placement at [redacted] - [redacted], a full-time special education day school. (Motion, Ex. B).

5. On or about October 25, 2022, the parties entered into a settlement agreement (Settlement Agreement). The Parents signed the Settlement Agreement on October 20, 2022, and an MCPS Representative signed on October 25, 2022. (Motion, Ex. C).

6. The Settlement Agreement stated that MCPS had developed an IEP with a placement recommendation at [redacted] Middle School [redacted] and the Parents were not in agreement. The Settlement Agreement provided that the parties "are in disagreement and believe that pursuing litigation is not in their best interest and wish to settle their differences." (Motion, Ex. C).

7. Pursuant to the Settlement Agreement, MCPS agreed to "submit payment for the cost of tuition at [[redacted] – [redacted]] for the Student's education for the time period of enrollment through the remainde[r] of the 2022-2023 school year, up to $76,204.00." (Motion, Ex. C).

8. The Settlement Agreement contains the following waiver language:

> The parties agree that this settlement agreement resolves all possible claims that the Parents or the Student may assert pertaining to the provision of a *Free Appropriate Public Education* for the Student through the date they sign this Agreement. Nothing in this agreement, however, bars the Parents from filing a complaint or cause of action (a) regarding the implementation of this agreement or (b) any action by MCPS that occurs after the date on which they sign this agreement. Nor does anything in this agreement bar either party from relying upon or citing information developed prior to the date the Parents sign it at a future IEP or

> CIEP[3] meeting, nor from offering or objecting to such information as evidence in any future litigation.

(Motion, Ex. C) (emphasis in original).

9. Pursuant to the Settlement Agreement, the Parents agreed to withdraw their request for a due process hearing with the OAH. (Motion, Ex. C).

10. On October 26, 2022, counsel for the Parents withdrew their request for a due process hearing. (Motion, Ex. E).

11. On December 20, 2022, the Parents filed the present Due Process Complaint "seeking an order to provide transportation for [the Student] to [█████ – █████] and back beginning in January of 2023." (Motion, Ex. A).

DISCUSSION

Standard of Review

On January 11, 2023, MCPS filed its Motion, captioned as a Motion to Dismiss. On January 18, 2023, the Student filed an Opposition. Both the Motion and the Opposition referenced matters outside the initial pleading and also attached exhibits. COMAR 28.02.01.12D(2). Therefore, the Motion is properly treated as one for summary decision instead of as a motion to dismiss. *See Davis v. DiPino*, 337 Md. 642, 648-649 (1995) (noting distinctions between a motion to dismiss and a motion for summary judgment including that under the Maryland Rules a motion to dismiss is converted into a motion for summary judgment "when a trial court considers matters outside the pleadings in reaching its decision"). However, the parties did not include an affidavit pursuant to COMAR 28.02.01.12D(2)(a) or request to provide testimony under oath pursuant to COMAR 28.02.01.12D(2)(b). By letter dated January 23, 2023, I advised the parties to be prepared to address the Motion and the Opposition at the pre-hearing

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[3] "CIEP" refers to a Central IEP team meeting.

conference scheduled for January 30, 2022, particularly the authenticity of the documents attached to the Motion and the Opposition. COMAR 28.02.01.17C(2), (5), (8).

At the pre-hearing conference, both counsel stipulated to the authenticity of the documents attached to the Motion and the Opposition. I have determined this stipulation is sufficient to meet the requirements of COMAR 28.02.01.12D(2). Accordingly, this Motion will be treated as a Motion for Summary Decision.

The OAH's Rules of Procedure provide for consideration of a motion for summary decision. COMAR 28.02.01.12D(1). In considering a motion for summary decision, the administrative law judge may consider self-authenticating documents, documents authenticated by an affidavit, affidavits, and sworn testimony. COMAR 28.02.01.12D(2). The administrative law judge "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(5); *see also Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980). This summary decision standard is the same as the standard for summary judgment under Maryland Rule 2-501 and cases discussing the summary judgment standard under the Maryland Rules are instructive. *See Assateague Coastkeeper v. Md. Dep't of the Env't*, 200 Md. App. 665, 698-99 (2011).

On a motion for summary decision, the moving party 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.*, 288 Md. at 28. 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 *Lynx, Inc. v. Ordnance Products, Inc.,* 273 Md. 1, 8 (1974)).

To prevail on a motion for summary decision, the moving party must identify the relevant legal cause of action or legal defense and then set forth sufficient, undisputed facts to satisfy the elements of the claim or defense or detail the absence of evidence in the record to support an opponent's claim. *See Bond v. NIBCO, Inc.*, 96 Md. App. 127, 134-36 (1993). If the moving party meets this initial burden, the opposing party must come forward with admissible evidence that establishes a genuine dispute of material fact, after all reasonable inferences are drawn in the opposing party's favor. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737-39 (1993); *see also Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (stating that a judge must "draw all justifiable inferences in favor of the nonmoving party").

The OAH procedural regulations do not require a party to support an answer to a motion for summary decision with an affidavit, but they do require a response to identify the material facts that are disputed. COMAR 28.02.02.12D(3). A general denial is not sufficient to establish a genuine dispute of material fact to defeat a motion for summary decision. *Alamo Trailer Sales, Inc. v. Howard Cnty. Metro. Comm'n*, 243 Md. 666, 671 (1966) (citations omitted). 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. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970) (citations omitted).

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. *See Eng'g Mgt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 226 (2003). Additionally, 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. *See Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, *Inc.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). As the Supreme Court observed, with respect to genuine disputes of *material* fact, "this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment . . . ." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original).

The Appellate Court of Maryland[4] has discussed what constitutes a "material fact," the method of proving such facts, and the weight a judge ruling upon such a motion should give the information presented:

> "A material fact is a fact the resolution of which will somehow affect the outcome of the case." "A dispute as to a fact 'relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment.'" We have further opined that in order for there to be disputed facts sufficient to render summary judgment inappropriate "there must be evidence on which the jury could reasonably find for the plaintiff."
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> . . . The trial court, in accordance with Maryland Rule 2-501(e), shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. Thus, once the moving party has provided the court with sufficient grounds for summary judgment, "[i]t is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact. He does this *by producing factual assertions, under oath*, based on the personal knowledge of the one swearing out an affidavit . . . . Bald, unsupported statements or conclusions of law are insufficient."

[4] Effective December 14, 2022, the Maryland Court of Special Appeals was renamed the Appellate Court of Maryland.

Tri-Towns Shopping Ctr., Inc. v. First Fed. Sav. Bank of W. Md., 114 Md. App. 63, 65-66 (1997) (citations omitted) (emphasis in original). For the reasons articulated below, I grant the Motion.

Positions of the Parties

MCPS first argued that the Student's December 20, 2022, Due Process Complaint fails to state a claim because it does relate to a free appropriate public education (FAPE), which is guaranteed to the Student through the IDEA. MCPS argued that the Student's placement at [redacted] - [redacted] was not made through the IEP process, but was instead made pursuant to a confidential settlement agreement between the parties which provided for MCPS to fund tuition in exchange for settlement of the then pending due process complaint. MCPS also argued that because the present Due Process Complaint does not challenge an IEP, the case is not within the OAH's subject matter jurisdiction. Finally, MCPS argued that the Parents waived all claims relating to the Student's FAPE, which included all issues raised in the December 20, 2022 due process complaint, which includes transportation relating to the 2022-2023 school year at [redacted] - [redacted].

The Parents argued that MCPS agreed at the Student's last IEP meeting that she requires transportation as a related service, and the Parents never waived their right to transportation. Specifically, the Parents argued that the Settlement Agreement does not mention transportation in any way, nor was there a discussion or waiver of transportation. Moreover, the Parents argue that transportation was never part of the prior due process complaint, and therefore was not subject to the waiver provisions of the Settlement Agreement.

Analysis

Settlement agreements are expressly contemplated by the IDEA. Specifically,

> In the case that a resolution is reached to resolve the complaint at a [resolution session preliminary meeting], the parties shall execute a legally binding agreement that is—(I) signed by both the parent and a representative of the agency who has the authority to bind

> such agency; and (II) enforceable in any State court of competent jurisdiction or in a district court of the United States.").

20 U.S.C. § 1415(f)(1)(B)(iii); *see also* 34 C.F.R. §300.510(d) and 13A.05.01.15C(11)(g). Moreover, public policy encourages settlements "because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by courts." *D.R. v. East Brunswick Bd. of Educ.*, 109 F.3d 896, 901 (3rd Cir. 1997). The *D.R.* Court noted the following:

> Once a school board and the parents of a disabled child finalize a settlement agreement and the board agrees to pay a certain portion of the school fees, the parents should not be allowed to void the agreement merely because the total cost of the program subsequently increases. A party enters a settlement agreement, at least in part, to avoid unpredictable costs of litigation in favor of agreeing to known costs. Government entities have additional interests in settling disputes in order to increase the predictability of costs for budgetary purposes.

Id. The *D.R.* Court held that the settlement agreement that had been voluntarily and willingly entered into by the school district and parents during mediation was enforceable as written. *Id.*

Notwithstanding the general enforceability of agreements settling IDEA claims, the Parents here argued that a settlement of an IDEA claim must be analyzed by applying the standard of a civil rights claim waiver, rather than under general contract principles. *See W.B. v. Matula*, 67 F.3d 484, 498 (3rd Cir.1995) (applying "the more searching standards reserved for waivers of civil rights claims, rather than general contract principles"), *abrogated on other grounds* by *A.W. v. Jersey City Public Schools*, 486 F.3d 791 (3rd Cir. 2007). The *W.B.* Court held that a waiver of IDEA claims must be "knowing and voluntary" as judged by the "totality of the circumstances." *Id*. at 497.

Even applying a heightened level of scrutiny, there are no material facts in dispute in this case. The Parents filed a due process complaint. The parties entered into a Settlement Agreement in which MCPS agreed to fund tuition and the Parents agreed to withdraw their due process

complaint. The only potential issue is whether the Parents waived transportation as part of that Settlement Agreement.

The Parents argued that they could not possibly have waived transportation when it is a related service included in the Student's IEP, and was not mentioned in the Settlement Agreement, nor discussed during the settlement process. "Congress enacted the IDEA 'to ensure that all children with disabilities have available to them a [FAPE] that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.'" *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 815 F.3d 1195, 1202 (9th Cir. 2016) (citation omitted). "The IDEA's FAPE requirement includes both 'special education' and 'related services.'" *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S. Ct. 988, 994 (2017) (quoting 20 U.S.C. § 1401(9)). "Related services" are the support services "required to assist a child ... to benefit from" that instruction. *Endrew F.*, 137 S. Ct. at 994 (quoting 20 U.S.C. § 1401(26)). The IEP is the vehicle by which the Student's special education and related services are delivered.

Transportation is indeed a related service in the Student's IEP. (Opposition, Ex. A.). A related service is included in an IEP as part of a Student's FAPE. Claims to those related services, and in fact claims to the entire IEP, were waived by executing the Settlement Agreement which resolved "all possible claims that the Parents or the Student may assert pertaining to the provision of a *Free Appropriate Public Education* for the Student through the date they sign this Agreement." (Motion, Ex. C). Likewise, speech therapy and occupational therapy, also related services included in the Student's IEP, (Motion, Ex. A, pp. 42, 43), were waived by the Settlement Agreement.

The Parents argued that the "Respondent simply ignores the fact that refusing to provide a related service on an IEP unequivocally triggered a FAPE violation that resulted in harm to [the

Student" (Opposition, p. 3). What the Parents ignore is the fact that they entered into a Settlement Agreement that included an unequivocal waiver. The Parents were represented by eminently experienced attorneys during their original due process complaint and settlement discussions. Those attorneys would have understood and explained to the Parents that the waiver included any and all claims related to FAPE. I simply cannot find anything other than a knowing and voluntary waiver of any potential FAPE claims given the circumstances here.

The Parents are correct that transportation are related services. But for that reason, they are included in the waiver of a FAPE claim, not excluded. To the extent the Parents believe the Settlement Agreement includes the right to compensation for transportation, a due process hearing is not the proper vehicle to enforce such an agreement. *See A.R. v. New York City Dep't of Educ.*, 407 F.3d 65, 78 n. 13 (2d Cir. 2005) (noting that "as is common in administrative procedures, [hearing officers] have no enforcement mechanism of their own). In the present case, there are no material facts in dispute and MCPS is entitled to judgment as a matter of law.

CONCLUSION OF LAW

Upon consideration of the Motion, I conclude as a matter of law, there are no genuine disputes of material fact and that MCPS is entitled to judgment as a matter of law. COMAR 28.02.01.12D.

ORDER

I **ORDER** that Montgomery County Public Schools' Motion to Dismiss, treated as a Motion for Summary Decision, is hereby **GRANTED**.

I further **ORDER** that the merits hearing scheduled in this matter for March 15 and 17, 2023, is **CANCELLED**.

February 27, 2023
Date Ruling Mailed

Deborah S. Richardson
Administrative Law Judge

DSR/at
#203491

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.

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