

██████████,

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE DANIEL ANDREWS,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-22-21157

**RULING ON MOTION TO DISMISS OR FOR SUMMARY DECISION<sup>1</sup>**

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

**STATEMENT OF THE CASE**

On May 10, 2022, on behalf of ██████████ (Student), ██████████ (Parent) filed a due process complaint (May complaint) with Prince George's County Public Schools (PGCPS or School).<sup>2</sup> The Parent requested a due process hearing to review the identification, evaluation, and placement of the Student, or the provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). *See* 34 C.F.R. § 300.507 (a).<sup>3</sup> On August 25, 2022, the Parent withdrew the May complaint, which was scheduled for a merits hearing on August 30, 2022. On August 31, 2022, on behalf of the Student, the Parent filed this due process complaint (Complaint) with PGCPS.<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> The due process complaint was docketed as OAH Case Number MSDE-PGEO-OT-22-10884.

<sup>3</sup> "C.F.R." is an abbreviation for the Code of Federal Regulations. Unless otherwise noted, all citations herein to the C.F.R. are to the 2021 bound volume.

<sup>4</sup> The Complaint was docketed as OAH Case Number MSDE-PGEO-OT-22-21157.

On November 9, 2022, PGCPs filed a Motion to Dismiss or for Summary Decision (Motion), with several attached exhibits. The Motion sought to dismiss the Complaint or a summary decision in PGCPs's favor because the Parent withdrew the May complaint just before a scheduled merits hearing, in bad faith, then filed this Complaint. Alternatively, PGCPs argued that the Student graduated from high school, with a full diploma and, any requirement to provide a FAPE to the Student had been met or is no longer required under the IDEA.<sup>5</sup>

On December 7, 2022, the Parent filed a Motion for Leave to Amend Due Process Complaint (Motion to Amend), with an attached Amended Complaint (Amended Complaint) to be received for filing if granted permission.<sup>6</sup> Also on December 7, 2022, the Parent filed an Opposition to the Motion, with an attached exhibit (Opposition). A Ruling granting the Parent's Motion to Amend, was issued on January 13, 2023.

On December 22, 2022, PGCPs filed a Limited Reply to the Opposition (Reply), with no attached exhibits.

On January 27 and 30, 2023, I convened a hearing on the Motion.<sup>7</sup> PGCPs was represented by Jeffery A. Krew, Esquire. The Parent, a licensed attorney in Maryland, represented the Student and herself.<sup>8</sup>

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<sup>5</sup> PGCPs also argued that it was entitled to have the Complaint dismissed or a summary decision issued in its favor because the Student was eighteen years old and any parental educational rights under the IDEA transferred to the Student. It asserted that the Parent did not have standing to file the Complaint. In other rulings, I found that in Maryland, parental educational rights do not automatically transfer upon a student becoming the age of majority. *See* Md. Code Ann., Educ., § 8-412.1 (2022). Alternatively, I found that, even if the educational rights did transfer to the Student, the Parent entered her appearance as an attorney to represent the Student and is exercising those educational rights on behalf of the Student.

<sup>6</sup> On October 18, 2022, the Parent filed an amended complaint, which was later superseded by this Amended Complaint.

<sup>7</sup> On November 9, 2022, a motion hearing was scheduled for January 10, 2023 but later postponed and rescheduled for February 21, 2023. On January 6, 2023, the motion hearing was rescheduled to January 27, 2023.

<sup>8</sup> On December 21, 2022, the Parent filed an entry of appearance to represent the Student and herself as an attorney. For ease of reference, I shall use the reference "Parent" throughout this Ruling. However, I fully recognize the Parent as the attorney acting on behalf of the Student and herself.

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) Is PGCPS entitled to a summary decision because the Parent acted in bad faith when she withdrew the May complaint on August 25, 2022, when the merits hearing was scheduled on August 30, 2022 and filed the Complaint on August 31, 2022?
- 2) Is PGCPS entitled to a summary decision because the Student graduated from high school with a regular high school diploma<sup>9</sup> before the Complaint was filed on August 31, 2022, thereby rendering any denial of FAPE claim moot?

### **SUMMARY OF THE EVIDENCE**

#### Exhibits

A full list of exhibits is attached to this decision as an appendix.

#### Testimony

PGCPS presented the testimony of [REDACTED], a Professional School Counselor at [REDACTED] High School ([REDACTED]).

The Parent testified on behalf of herself and the Student.

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<sup>9</sup> A “regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards. 34 C.F.R. § 300.102(a)(3)(iv). A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. *Id.*

**UNDISPUTED MATERIAL FACTS**

After considering the School’s Motion and Hearing Exhibits,<sup>10</sup> as well as the Parent’s Opposition and Hearing Exhibits, as well as the parties’ motions hearing testimony, I find the following material facts are undisputed:

*Bad Faith*

1. On May 10, 2022, the Parent filed the May complaint.<sup>11</sup> S.M. Ex. A; P.H. Ex. 32.
2. Among other factual allegations, the Parent alleged that:

During the December 21, 2021, and January 28, 2022, IEP<sup>12</sup> team meetings to discuss [the Student’s] lack of progress, below-grade levels, need for additional in person academic and independent living skills training, [the Parent] reiterated her deep concerns that [the Student] was lacking certain functional living skills that required direct speech and [occupational therapy] and critical skills training services, and a more intensive placement. [The Parent] requested [the Student] receive at least one more year of school services. PGCPS dismissed [the Parent’s] concerns and unilaterally determined that [the Student] was on track to graduate, should attend college for [REDACTED] and [REDACTED] studies the following year and did not require the additional services.

S.M. Ex. A; P.H. Ex. 32.

3. The Parent identified these issues in the May complaint:

Did PGCPS fail to provide the Student with a FAPE and fail to provide compensatory services?

Did PGCPS fail to provide the Student with a FAPE during the COVID-19 pandemic closures and subsequently fail to offer sufficient recovery services?

S.M. Ex. A; P.H. Ex. 32.

4. At the time, the Parent and Student were represented by Ashley VanCleaf, Esq.

S.M. Ex. A; P.H. Ex. 32.

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<sup>10</sup> In this Ruling, the School’s Motion Exhibits and Hearing Exhibits are referred to as S.M. Ex. And S.H. Ex., respectively. The Parent’s Opposition and Hearing Exhibits are referred to as P.O. Ex. and P.H. Ex., respectively.

<sup>11</sup> This due process complaint was docketed as OAH Case Number MSDE-PGEO-OT-22-10884.

<sup>12</sup> IEP is an acronym for Individualized Educational Plan

5. On June 23, 2022, Administrative Law Judge (ALJ) John Henderson conducted a prehearing conference and issued a prehearing conference report (PCR) on June 28, 2022. S.M.

Ex. B.

6. The PCR established the following relevant scheduling order:

The parties shall exchange exhibits and a list of witnesses expected to be offered at the hearing by August 23, 2022. A party may prohibit the introduction of evidence that is not timely exchanged by the opposing party.<sup>13</sup>

A hearing to begin on August 30, 2022, which would continue for nine days.

*Id.*

7. On August 15, 2022, the Parent filed a Motion for Continuance.<sup>14</sup> S.M. Ex. M. The Parent alleged that the Student and her brother had contracted the COVID-19 virus and were under the Parent's care. *Id.* The Parent requested that "all litigation deadlines be tolled during this time." *Id.*

8. On August 16, 2022, PGCPs filed an Opposition to the Motion. S.M. Ex. Q.

9. On August 16, 2022, Ms. VanCleaf withdrew her appearance as the attorney for the Parent and the Student. S.M. Ex. S.

10. On August 21, 2022, the Parent filed a Supplemental Motion for Continuance. S.M. Ex. U. The Parent alleged that she was a full-time attorney in the public sector and only had evenings and weekends to prepare for the matter, as well as handling all other responsibilities she has for caring for her two children. *Id.* The Parent also continued to allege that a child in the home was sick and alleged that the Parent suffers from her own health issues.

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<sup>13</sup> See 34 C.F.R. § 300.512(a)(3) (commonly known as the five-day discovery rule).

<sup>14</sup> The Parent captioned the motion as Motion for Continuance and a Motion to Restore Student's Accounts. The Motion to Restore Student's Account is not directly relevant for this Ruling.

*Id.* For these reasons, among other reasons alleged in the motion, the Parent again requested that “all litigation deadlines be tolled during this time.” *Id.*

11. On August 23, 2022, pursuant to ALJ Henderson’s PCR scheduling order, PGCPs filed the required discovery of proposed exhibits and list of witnesses, which included two three-ring binders containing sixty exhibits and identified twenty witnesses. S.M. Ex. V.

12. On August 23, 2022, the Parent filed a Motion to Clarify and to Amend PCR. S.M. Ex. X. The Parent alleged that she filed a due process complaint on May 10, 2022 and as a remedy “requested an Order for Stay Put regarding the Student’s upcoming graduation from PGCPs.” *Id.* The Parent further alleged that she “has repeatedly maintained that the Student did not receive the education nor have the skills commensurate with the diploma conferred to the Student by PGCPs.” *Id.*

13. On August 23, 2022, the Parent filed a Motion for Ruling on Subpoena Use by PGCPs and for Extension of the Five-Day Discovery Deadline. S.M. Ex. Y. The Parent alleged that she began to represent the Student and herself *pro se* on August 16, 2022, that PGCPs has requested subpoenas for the Parent’s potential witnesses, which was an abusive practice, requested a ruling on the subpoena use by PGCPs, and an extension of the five-day discovery deadline. *Id.*

14. On August 24, 2022, ALJ Henderson conducted a second prehearing conference to address the filings by the parties. S.M. Ex. DD. The Parent continued to allege the health issues for the family and other issues. *Id.* PGCPs opposed the motion and noted that the Parent had yet to file the “five-day discovery.” *Id.* ALJ Henderson denied the Parent’s request to postpone or continue the hearing and ordered that the hearing would proceed as scheduled on August 30, 2022. *Id.*

15. On August 25, 2022, the Parent delivered an email to the OAH indicating that, due to serious health issues impacting her family, she was withdrawing the matter, without prejudice. S.M. Ex. EE.

16. On August 31, 2022, the Parent filed the Complaint.<sup>15</sup> S.M. Ex. FF.

17. In the Complaint, the Parent framed the following legal issues to be resolved at a due process hearing:

PGCPS failed to offer FAPE to the Student during the school years from August 2015 through June 23, 2022.

PGCPS failed to offer the Student FAPE by not providing special education services during the school years from August 2015 through June 23, 2022.

PGCPS failed to offer the Student FAPE by failing to provide a sufficient and appropriate individualized education program (IEP) to assist the Student in making appropriate learning progress during the school years from August 2015 through June 23, 2022.

PGCPS failed to offer the Student FAPE by not providing the related services required, such as speech therapy, occupational therapy, assistive technology, adaptive physical education, and counseling as a result of its failing to provide a sufficient and appropriate IEP to assist the Student in making appropriate learning progress during the school years from August 2015 through June 23, 2022.

PGCPS failed to offer the Student appropriate transition-related services during the school years from August 2015 through June 23, 2022.

PGCPS failed to provide the Student FAPE by mistreating the Student and [the Parent] including acting with malice, interfering with other aspects of their lives, and creating and perpetuating a hostile school environment during the school years from August 2015 through June 23, 2022.

PGCPS failed to provide the Student a FAPE by not providing sufficient compensatory and recovery services due to the COVID-19 pandemic school closures and other school disruptions during the school years between March 2020 through June 23, 2022.

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<sup>15</sup> The Complaint was docketed as OAH Case Number MSDE-PGEO-OT-22-21157.

PGCPS failed to follow mandatory Stay Put requirements as of May 10, 2022, including proceeding with an exit interview for graduation, without the Parent or Student present, without consent, issuing the Student a high school diploma, and not providing the Student continuing access to her PGCPS Student Accounts for email and Google Classroom, etc.

PGCPS made specific misrepresentations and withheld statutorily mandated disclosures under 20 U.S.C § 1415(f)(3)(D) during the years at issue, if not earlier.

*Id.*

### *High School Graduation*

18. The Student entered PGCPS high school as a ninth grader during the 2018-2019 school year.

19. At all relevant times, the Student attended [REDACTED] High School ([REDACTED]) and was on a diploma-bound track.

20. At all relevant times, the Student has been eligible to receive special education and related services under an IEP as a student with a primary disability coding of Autism. P.H.

Ex. 10. The Student has related disabilities which include intellectual impairment, mixed receptive language disorder, anxiety disorder, executive function disorder, and specific impairment with respect to reading comprehension. Parent Testimony.

21. Areas affected by the Student's disabilities include Communication, Reading Comprehension, Written Language Content, Self-Management, and Social Interaction Skills.

P.H. Ex. 10.

22. On March 25, 2022, the Student met with [REDACTED], a school counselor, to review and determine the requirements she needed to complete to graduate with a regular high school diploma.



23. To graduate with a regular high school diploma, for the subject area of English, the Student was required to earn a total of four credits. S.H. Ex. 1.

24. As of March 25, 2022, the Student had earned three English credits, including English 9, 10, and 11. S.H. Ex. 2 and 4. At the time, the remaining credit for English 12 was in progress. S.H. Ex 2. By May 19, 2022, the Student earned the fourth English credit receiving a passing grade for English 12. S.H. Ex. 3 and 4.

25. To graduate with a regular high school diploma, for the subject area of Math, the Student was required to earn three credits, including Algebra 1, Geometry, one additional math credit, and be enrolled in a math class each year of high school. S.H. Ex. 1.

26. As of March 25, 2022, the Student had earned all three Math credits for Algebra 1, Geometry, and another math class. S.H. Ex. 2. By May 19, 2022, the Student completed the Math credit requirement by receiving a passing grade in her fourth math class, Algebra 2. S.H. Ex. 3 and 4.

27. To graduate with a regular high school diploma, for the subject area of Science, the Student was required to earn three lab science credits, including a Life Science, a Physical Science, and an Earth and Space Science. S.H. Ex. 1.

28. As of March 25, 2022, the Student had earned all three required Science credits, by completing Biology, Biogeochemical Systems, and Environmental Science. S.H. Ex. 2 and 4.

29. To graduate with a regular high school diploma, for the subject area of Social Studies, the Student was required to earn three social studies credits, including U.S. History, Local, State, and National Government, and World History. S.H. Ex. 1.

30. As of March 25, 2022, the Student had earned all three required Social Studies credits. S. H. Ex. 2.

31. To graduate with a regular high school diploma, the Student was required to earn the following credits: Fine Arts (1 credit), Physical Education (.5 credit), Health Education (.5 credit), and Technology Education (1 credit). S.H. Ex. 1.

32. As of March 25, 2022, the Student had earned the required credits in Fine Arts, Health Education, and Technology Education. S.H. Ex. 2. At the time, the Physical Education credit was in progress as the Student was taking a Personal Fitness course. S.H. Ex. 2. By May 19, 2022, the Student completed the Physical Education requirement. S.H. Ex. 3 and 4.

33. To graduate with a regular high school diploma, the Student was required to satisfy a “Completer” requirement of two credits in the area of World Language and Electives. S.H. Ex. 1.

34. As of March 25, 2022, the Student earned the required “Completer” credit requirement. S.H. Ex. 2. The Student passed a foreign language course in [REDACTED]. S.H. Ex. 4. The Student also passed a foreign language course in [REDACTED] 1 and 2. *Id.*

35. The Student also completed elective classes including: [REDACTED], [REDACTED] 1 and 2, [REDACTED], English Lab 10, [REDACTED], [REDACTED], [REDACTED] 1, Craft 1, and Food and Nutrition 1.

36. To graduate with a regular high school diploma, the Student was required to complete twenty-four hours of community service. S.H. Ex. 2; Testimony of [REDACTED]. As of March 25, 2022, the Student had only completed 1.5 hours of community service. S.H. Ex. 2. By May 19, 2022, the Student had completed the required twenty-four community service hours. S.H. Ex. 3.

37. To graduate with a regular high school diploma, the Student was required to meet a Maryland Comprehensive Assessments (MCA) requirement in the areas of Algebra, Science, English, or Government, after completing required courses.

38. On May 19, 2022, [REDACTED], Ed.D., Principal of [REDACTED] High School, reported on the Student's performance record card, Student Record Card 3 (SR3), that the student had met all MCA requirements. S.H. Ex. 3.

39. As required by Maryland and PGCPs, to graduate from high school with a full diploma, a student must earn a minimum of twenty-one credit hours, to include the credits in the specified subject areas and the courses described above. S.H. Ex. 1. A student must also satisfy the required community service hours and have met the MCA requirement. Testimony of [REDACTED]

40. As of May 19, 2022, the Student earned the required minimum of twenty-one credit hours, which included the specified credit hours in each subject area. S.H. Ex. 3. In total, the Student had accumulated a total of thirty-six and one-half credits. *Id.* The Student also met the required the community service hours and met the MCA requirement. *Id.*

41. Except for two letter grades of B on the Student's transcript, the Student received a letter grade of "A" in all her classes, each year of high school, as well an A for two middle school classes that carried over as high school credits. S.H. Ex. 4; Testimony of [REDACTED]

42. As of December 14, 2022, based on the Student's high school transcript, her cumulative grade point average was 3.959. S.H. Ex. 4.

43. On May 19, 2022, Principal [REDACTED] certified that the Student had met all high school graduation requirements to receive a regular high school diploma. S.H. Ex. 3; Testimony

of [REDACTED]. The date of completion for meeting high school graduation requirements was May 27, 2022. S.H. Ex. 3.

44. On June 2, 2022, the Student participated in a high school graduation ceremony and received a regular high school diploma. S.H. Ex. 5 and Testimony of [REDACTED]

45. On August 31, 2022, the Parent filed the Complaint. S.M. Ex. FF.

## DISCUSSION

### *Preliminary matters*

PGCPS's Motion is characterized as a motion to dismiss or for summary decision. A motion to dismiss requests dismissal of an initial pleading that fails to state a claim for which relief may be granted. COMAR 28.02.02.12C. In a motion to dismiss, an 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." COMAR 28.02.01.02B(7). Here, the initial pleading is the Complaint.

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

PGCPS submitted the Motion with several attached exhibits, none of which was an affidavit. However, those exhibits represent filings in a previous matter pending before the OAH. As such, those exhibits are self-authenticating and can thereby properly support a motion for summary decision. A hearing was also held on the Motion, during which testimony was

received under oath to authenticate and explain the relevance of several exhibits. Those hearing exhibits were also admitted into evidence. As PGCPS has offered into evidence several exhibits which go beyond the initial pleading, I shall consider the Motion as a motion for summary decision. COMAR 28.02.01.12D.

### *Summary Decision Standard*

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.*” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). 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.” *Id.* Material facts in dispute are those facts satisfying elements of the claim or defense or otherwise affecting the outcome of the case. *King v. Bankerd*, 303 Md. 98, 111 (1985). A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion. *Anderson*, 477 U.S. at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *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. *See Eng’g Mgt. Servs., Inc. v. State Highway Admin.*, 375 Md. 211, 226 (2003). 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.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). 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).

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. *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993). 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. *Honaker v. W.C. & A.N. Miller Dev. Co.*, 285 Md. 216, 231 (1979).

For the reasons that follow, I find that PGCPs is not entitled to summary decision in its favor as to allegations of a bad faith withdrawal of the May complaint on August 25, 2022. As to the Student’s high school graduation and receipt of a regular high school diploma, I find that PGCPs is entitled to a summary decision as a matter of law.

*Bad Faith*<sup>16</sup>

Based upon the School’s Motion exhibits, PGCPs asserts that the Parent filed an original due process complaint on May 10, 2022, then withdrew that complaint days before a merit hearing was to begin on August 30, 2022. On August 15 and 21, 2022, the Parent attempted to obtain a postponement of the scheduled hearing alleging members of her family were ill with the COVID-19 virus as well as other issues alleged by the Parent, which involved her personal work commitments and health.

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<sup>16</sup> “Bad faith” means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons. *Inlet Associates v. Harrison Inn Inlet, Inc.*, 324 Md. 254 (1991).

By August 23, 2022, as required by a PCR issued by ALJ Henderson, the Parent was to provide five-day discovery of exhibits and witnesses, which the Parent failed to do. On August 24, 2022, ALJ Henderson denied the Parent's request for postponement and required the matter to proceed to hearing as scheduled. On August 25, 2022, the Parent withdrew the May complaint. On August 31, 2022, the Parent filed the Complaint.

Based on this procedural history, PGCPs argued that the Parent withdrew the due process complaint in bad faith, knowing that she could not obtain a postponement and that she had not provided the required five-day discovery. PGCPs argued that by "thumbing her nose" at ALJ Henderson's decision to deny the postponement, the Parent exhibited outrageous bad-faith conduct that should not be tolerated by the OAH. PGCPs contended that allowing a party to withdraw and to immediately refile a due process complaint under the circumstances presented in this case raises concerns of administrative efficiency and economy, "judge-shopping," forum shopping, docket control, and needless costs to the opposing party. PGCPs further argued that OAH has not hesitated in the past to dismiss preliminarily a due process hearing which was refiled in bad faith after the Student withdrew a prior request. In support for its position, PGCPs cited three OAH opinions<sup>17</sup> that determined that bad faith manipulation of the hearing process resulted in the dismissal of subsequent complaints.

The Parent opposed the Motion's bad faith allegation filing by first attacking the use of a summary process in the context of a due process hearing.<sup>18</sup> Citing a *Letter to Zirkle*, the Parent argued that PGCPs did not object to the sufficiency of the Complaint and thereby has waived its

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<sup>17</sup> PGCPs cited the following OAH rulings or decisions: [REDACTED] v. *Montgomery County Public Schools*, OAH Case No. MSDE-MONT-OT-06-35572 (September 28, 2006); [REDACTED] v. *Montgomery County Public Schools*, OAH Case No. 97-MSDE-MONT-OT-020878 (January 15, 1997); [REDACTED] v. *Montgomery County Public Schools*, OAH Case No. 96-MSDE-MONT-OT-041612 (January 15, 1997).

<sup>18</sup> United States Department of Education (USDE), Office of Special Education Programs (OSEP), Policy Letter 22-04, April 15, 2022 (*Letter to Zirkle*).

ability to challenge the Complaint through the Motion. The Parent also argued that summary proceedings in a hearing on a due process complaint – other than a sufficiency determination – limit, or conflict with, the right to present evidence, confront, cross-examine, and compel witnesses. Accordingly, as the *Letter to Zirkle* indicated, such summary proceedings can only be used when both parties consent to the use of the summary process.

I have previously addressed this issue, but for purposes of this Ruling, I will address the Parent’s argument.<sup>19</sup> To begin, the *Letter to Zirkle* is not binding legal authority. As the OSEP indicates in the *Letter to Zirkle*, the IDEA prohibits the Secretary of the USDE from issuing policy letters or other statements that establish a rule that requires compliance, without following established rule-making procedures. The OSEP further explains that the content of its letter was provided as informal guidance, is not legally binding, and only responds to general inquiries, not to any specific due process complaint that may be pending or resolved.

Simply, the *Letter to Zirkle* is not the law of Maryland as it pertains to a pending due process complaint before the OAH. As I determined earlier, in a due process hearing conducted by an ALJ from the OAH, an ALJ shall conduct the hearing in accordance with federal law, Title 10 of the State Government Article, the OAH Rules of Administrative Procedure; section 4-413(e)(1) of the Education Article, and the applicable regulations of the Maryland State Department of Education. *See* COMAR 28.02.01; COMAR 13A.05.01.15C. Accordingly, I shall apply applicable federal and Maryland law, including the OAH’s Rules of Procedures, which permits parties to file a motion to dismiss or for summary decision. *See* COMAR 28.02.01.12. Further, an ALJ may issue a ruling on any such motion on all or part of an action

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<sup>19</sup> *See* letter issued to the parties on December 28, 2022, which addressed a scheduling conference held on December 21, 2022, the applicable law and procedure, and issues related to Parent’s Motion to Amend the Complaint.



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. *Id.*

The Parent further opposed the allegation of bad faith by arguing that, on May 10, 2022, when she filed a due process complaint, she and the Student were represented by an attorney. At the time, the Parent and Student were represented by Ashley VanCleaf, who withdrew from the case on August 16, 2022. The Parent also explained that since May 2022, she obtained new information and other data, regarding the Student's reading comprehension, which the Parent argued was misrepresented by PGCPS and generated new issues not addressed in the May complaint. Additionally, the Parent contended that in August 2022, her family, including the Student, another child, the Parent's mother, and herself all were experiencing serious COVID-19 health issues. The Parent explained she struggled to support her family's health issues, to maintain her employment, and to provide adequate time and attention to prepare for a complex hearing before ALJ Henderson, particularly now that she was proceeding without an attorney. The Parent complains that PGCPS objected to her request to postpone or continue the hearing beginning August 30, 2022 and, for this reason, ALJ Henderson denied her request. For all these reasons, the Parent explained that she withdrew the May complaint, that she had a right to withdraw, and that there is no penalty to refile. The Parent also asserted that she had to refile a complaint as soon as possible because she had to be concerned with losing the right to assert claims based on any applicable limitation time periods. For this reason, the Parent contended that she withdrew the May complaint on August 25, 2022, in good faith, and filed the Complaint on August 31, 2022.

First, I will address the argument by PGCPS that, based on prior rulings issued by other ALJs in other due process hearing proceedings, this matter should be dismissed because the Complaint was filed in bad faith. It has long been determined that prior cases decided by other ALJs do not have *stare decisis* or binding effect on future decisions.<sup>20</sup> Each case before the OAH involves different facts and issues which should be considered by the assigned ALJ on the merits of the case pending before that ALJ. Each ALJ should consider those facts and issues and apply the law that the ALJ finds persuasive to resolve the case, without regard to how a colleague decided a different case. At the administrative hearing level, such judicial independence is crucial to the provision of an independent fair hearing. Therefore, I am not persuaded by prior ALJ rulings.

Next, as to the issue of withdrawing a complaint and subsequently filing a new complaint, I relied only on the procedural facts developed by the evidence. Issues of administrative efficiency and the unfairness to an opposing party to repeatedly prepare to defend claims are valid concerns. This is particularly the case where, as here, a separate ALJ was assigned to the prior case, and because of extensive filings submitted by each party, that ALJ issued multiple rulings and orders prior to the Parent's withdrawal of the May complaint on August 25, 2022. Plainly, there are salient reasons for precluding a party from filing and refiling a due process complaint.

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<sup>20</sup> See *The Independent Judiciary's Independence Myth*, James E. Moliterno, William and Mary Law School Scholarship Repository, p. 1198 (2006) (Administrative judges are also like civil law judges, and unlike common law judges, in that they are not formally bound by their own precedent. The fact that the doctrine of *stare decisis* generally is not ... fully or strictly applicable to administrative decisions is well understood by administrative law scholars and courts). <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2042&context=facpubs>, last visited February 16, 2023.

The Parent contends that the IDEA encourages collaboration between the parties, which often involves consideration of new information. The Parent also contends that treating the withdrawal of the earlier complaint as a dismissal with prejudice would frustrate the IDEA's goal of protecting the rights of students with disabilities.

However, despite the weighty policy considerations raised by the parties<sup>21</sup> the legal issue before me is whether the I should infer that the Parent acted in bad faith when she withdrew a due process complaint and then shortly thereafter filed another complaint; and find that action prejudiced PGCPS and the administrative process such that the subsequent filing should be dismissed. The Administrative Procedure Act (APA), and the regulations promulgated by the OAH do not contain language to discourage or prevent parties from withdrawing and refileing complaints; instead, the applicable law merely lists "withdrawal"--without further comment or caveat--as one permissible disposition of a case. Md. Code Ann., State Gov't § 10-210 (2021); COMAR 28.02.01.25B.

While certain general provisions in the OAH Rules of Procedure dealing with fairness and efficiency<sup>22</sup> could arguably be made to fit the circumstances to justify a finding of bad faith in refileing a complaint and subsequent dismissal of the complaint, this would raise due process concerns. Due process, meaning fundamental fairness, is guaranteed to the parties in administrative hearings. *See* Art. 24, Md. Dec. of Rights; *Regan v. Bd. of Chiropractic Examiners*, 120 Md. App. 494, 509-11 (1998), *aff'd* 355 Md. 397 (1999); *See also* Dan Friedman, *The Maryland State Constitution A Reference Guide*, at 34 (2006). A cornerstone of

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<sup>21</sup> While some of the policy considerations asserted by PGCPS are serious concerns for the OAH, the OAH is a creature of statute and it derives its authority from those statutes. The OAH operates as a central panel; as such the concern over forum shopping is inapplicable and there is no concern about venue shopping either, *see* COMAR 28.02.01.07. OAH proceedings are typically less formal and involve limited discovery and prehearing processes. Thus considerations of costs, while remaining relevant, do not impact the calculus as much as they might in a judicial proceeding.

<sup>22</sup> *See* COMAR 28.02.01.01B; COMAR 28.02.01.11B(12), (13); *see also* State Gov't § 10-201 (2021).

due process is the right to notice. *Regan*, 120 Md. App. at 519. In the absence of any language in the OAH Rules of Procedure, or elsewhere in State law or the IDEA, implementing a rule advising parties that a withdrawal of their initial pleading will prejudice a subsequently filed complaint would raise substantial notice issues. That lack of notice relates back to the time that the Parent withdrew the due process complaint on August 25, 2022 and there could be no cure for the resultant prejudice the Parent would incur if I were to take the course of action proposed by PGCPS. The OAH, as an agency, has not fashioned a procedure that addresses repeated withdrawal and refile of a claim; I cannot simply *sua sponte* implement procedures rendering the withdrawal dispositive, particularly where application of that procedure is requested on an after-the-fact basis.<sup>23</sup> Absent legal authority, I must deny the PGCPS' request for a summary decision dismissal based on bad faith.

### *High School Graduation*

#### Maryland's High School Diploma Requirements

In Maryland, to be awarded a regular high school diploma, a student shall generally meet the following requirements:

- (1) Complete the enrollment, credit, and service requirements as specified in this chapter;
- (2) Complete local school system requirements; and
- (3) Meet the graduation assessment requirements in the following ways:
  - (a) Achieve a passing score on the Maryland Comprehensive Assessments for Algebra I, science, government, and English 10;
  - (b) Achieve a combined score(s) as established by the Department on the Maryland Comprehensive Assessments; or

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<sup>23</sup> Md. Code Ann., State Gov't §§ 10-101(g), 10-102, 10-111 (2021); *see also Engineering Mgt. Svcs. Inc. v. State Highway Admin.*, 375 Md. 211, 232-33 (2003) ("Under the Maryland [Administrative Procedure Act], an agency's organizational rules, procedural rules, interpretive rules and statements of policy all must go through the same procedures as required for legislative rules.").

(c) Achieve a passing score on an approved alternative assessment as established by the Department, such as Maryland Comprehensive Assessment for Algebra II, Advanced Placement examinations, SAT, ACT, or International Baccalaureate examinations.

COMAR 13A.03.02.09B.

To satisfy the enrollment and credit requirement for a high school diploma, a student who entered ninth grade in 2014-2015 was required to enroll in a mathematics course in each year of high school that the student attends, up to a maximum of 4 years of attendance. COMAR 13A.03.02.03A. Additionally, a student who entered ninth grade in 2020-2021 or earlier was required to be enrolled in a Maryland public school and earned a minimum of twenty-one credits that include the following specified credits:

- (1) English -- four credits of organized instruction in comprehension of literary and informational text, writing, speaking and listening, language, and literacy, of which one credit shall be aligned with the Maryland Comprehensive Assessment for English;
- (2) Fine Arts -- one credit in dance, media arts, music, theatre, or visual art, or a combination of these;
- (3) Mathematics -- three credits, including one with instruction in algebra aligned with the Maryland Comprehensive Assessment for algebra or one or more credits in subsequent mathematics courses for which Algebra I is a prerequisite, and one with instruction in geometry aligned with the content standards for geometry;
- (4) Physical education -- one-half credit;
- (5) Health education -- one-half credit;
- (6) Science -- three credits of organized instruction which includes a laboratory component engaging in the application of the science and engineering practices, the crosscutting concepts, and disciplinary core ideas including Earth/space science, life science, physical science (chemistry and physics), engineering, and technology, aligned to the Maryland Comprehensive Assessment for science;
- (7) Social studies -- three credits including one credit in United States history, one credit in world history, and one credit in local, State, and national government aligned with the Maryland Comprehensive Assessment for government;

(8) Technology education -- one credit that includes the application of knowledge, tools, and skills to solve practical problems and extend human capabilities; and

(9) One of the following:

(a) Two credits of world language, which may include American Sign Language;

(b) Two credits of advanced technology education; or

(c) Successfully complete a State-approved career and technology program.

COMAR 13A.03.02.03B.

In Maryland, to meet the community service requirements to graduate with a high school diploma, a student is required to complete one of the following:

A. Seventy-five hours of student service that includes preparation, action, and reflection components and that, at the discretion of the local school system, may begin during the middle grades; or

B. A locally designed program in student service that has been approved by the State Superintendent of Schools.<sup>24</sup>

COMAR 13A.03.02.05.

Finally, to meet Maryland's high school assessment requirements and be awarded a high school diploma, all students, who take high school level courses, must take the MCA for Algebra, Science, English, and Government after the student completes the required course or courses. COMAR 13A.03.02.06B. A school system must state on the student's performance record card only that the student has or has not met all assessment requirements. COMAR 13A.03.02.06E (1). "Met all assessment requirements" means achieving a passing score on all Maryland Comprehensive Assessments or meeting the requirements of the combined score option. COMAR 13A.03.02.06E (2).

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<sup>24</sup> As will be discussed later, the Student completed the community service requirement under Program 24, which was approved by both the Prince George's County Board of Education and the MSDE.

An exception applied for the 2020-2021 and 2021-2022 school years, which provided that a student met the assessment requirement for Algebra I, English 10, science, and government if:

- (1) The student has passed the Algebra I course, English 10 course, science course, and government course; and
- (2) The student takes the Algebra I, English 10, science, and government Maryland Comprehensive Assessment aligned with the course.

COMAR 13A.03.02.06F.<sup>25</sup>

### The IDEA and High School Graduation

Under the IDEA, the obligation to make a FAPE available to all children with disabilities does not apply to children with disabilities who have graduated from high school with a regular high school diploma. 34 C.F.R. § 300.102(a) (3)(i). An exception exists for children with disabilities who have graduated from high school but have not been awarded a regular high school diploma. *Id.* at (3)(ii). Case law illuminates the effect that graduation with a regular high school diploma may have on due process claims and a hearing.

In *T. S. v. Independent School District No. 54*, the Court held that whether it had jurisdiction to consider *T.S.*'s claims was a close question since the claims might be construed as seeking compensatory relief. *T. S. v. Independent School District No. 54*, 265 F.3d 1090, 1096 (10<sup>th</sup> Cir. 2001). The Court, however, held that the substantive basis for *T.S.*'s requests was so thin, and a possible challenge to his graduation so elusive, that the case was moot. *Id.* To understand the decision, it is important to understand the factual scenario the Court considered.

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<sup>25</sup> The exception to the MCA passing score requirement is also provided in COMAR 13A.03.02.09C (1), which provides that, for the 2020-2021 and 2021-2022 school years, students taking the Algebra I, English 10, science, and government Maryland Comprehensive Assessment will meet the graduation assessment requirement for Algebra I, English 10, science, and government.

*T.S.* originally filed a due process complaint in his senior year of high school alleging that his school denied him a FAPE. After a hearing, the complaint was denied. In April of his senior year, an IEP meeting was held, and *T.S.* argued that it did not focus on transition services for post-graduation. On May 19, 1999, the last day of school, *T.S.* delivered a request for a due process hearing to the school district. *T.S.* complained that his IEP was insufficient, and the April IEP meeting was improperly conducted. Subsequently, the school determined that *T.S.* successfully completed all his academic requirements to graduate. The school district concluded that *T.S.* had graduated before the request for a due process hearing was received and was due no further relief under the IDEA. *T.S.* appealed the decision to the federal district court, which concluded that the administrative decision to deny *T.S.*'s request for a due process hearing was proper. *T.S.* appealed that decision to the United States Court of Appeals for the Tenth Circuit (the Court).

To determine if the Court had jurisdiction to hear the case, it considered two legal concepts, which it succinctly stated as:

If a student has graduated and does not contest his graduation, the case is moot. Once a student has graduated, he is no longer entitled to a FAPE; thus any claim that a FAPE was deficient becomes moot upon graduation. This rule applies, of course, only where a student does not contest his graduation, and where is only seeking prospective – rather than compensatory relief.

*Id.* at 1092 (internal citations omitted).

It is important to note that *T.S.* filed his due process complaint on the day of graduation. The Court was uncertain if *T.S.* had challenged his graduation by the timing of the due process complaint. Therefore, the Court discussed the claims of *T.S.*, as if he sought to challenge graduation from high school and was seeking compensatory education services. *Id.* at 1092.



As to whether *T.S.* was challenging his graduation, the Court observed that:

For a claim based on deprivation of a due process hearing and/or other procedures, to be cognizable, it must be linked with a consequent loss of substantive benefits. *Here, these deprivations must involve loss of qualification for graduation.* This loss would import defects in the educational program such that *T.S.* had yet to meet certain requirements for graduation from the district. Thus, *T.S.* would have to argue that his graduation was invalid. It is difficult to find any such contentions in *T.S.*'s submissions on this appeal.

*Id.* at 1093 (emphasis provided).

Ultimately, the Court concluded that *T.S.* did not directly challenge his graduation and without a substantive deprivation, any procedural claims were meritless and provided no basis for compensatory relief.

Otherwise, the Court precisely stated that “once a student has graduated, he is no longer entitled to a FAPE; thus any claim that a FAPE was deficient becomes moot upon graduation.” *Id.* at 1092. The Court explained that “[ha]d *T.S.* contested his graduation, or shown entitlement to some post-graduation services, the timing issue might have been sticky.” *Id.* at 1096. The Court observed that the request for a due process hearing came on the day of *T.S.*'s graduation and that “[t]he school district cites<sup>26</sup> clearly established law that its obligations to *T.S.* ceased upon graduation.” *Id.* The obligation to make FAPE available to all children with disabilities does not apply with respect to ... [s]tudents with disabilities who have graduated from high school with a regular high school diploma *Id.* Thus, the Court held, if *T.S.* had properly graduated, the hearing officer would not have had jurisdiction over the IDEA claims, and *T.S.*'s case was properly dismissed. *Id.*

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<sup>26</sup> The school cited, 34 C.F.R. § 300.122(a)(3)(i), which has been recodified as 34 C.F.R. § 300.102(a)(3)(i).

Eventually, the Court determined that the specific point in time at which the due process hearing request became effective was immaterial because “T.S. presumably mailed his request for a due process hearing prior to the last day of school (May 19) since it was received by the school district on May 20.” *Id.* Accordingly, the Court noted that *T.S.* “arguably submitted the request prior to graduation and possibly prior to meeting the requirements for graduation, thereby establishing the need for the procedural safeguards he desires.” *Id.* However, the Court noted that were it required to address this issue, it would have to remand the case for a determination whether *T.S.* had, in fact, graduated before submitting his request.

#### PGCPS’s Graduation Case

██████████, a Professional School Counselor at ██████████ for the twelfth grade, provided testimony which explained the hearing exhibits offered into evidence by PGCPS regarding the Student’s graduation. As a school counselor, Mr. ██████████ was responsible to make sure seniors assigned to his case load were on track for graduation, meaning taking the right classes and meeting other graduation requirements. To meet this responsibility, Mr. ██████████ explained that he monitors a student’s schedule, transcripts, and holds a certification meeting with the student.

Mr. ██████████ testified that the graduation requirements are published in PGCPS’ Administrative Procedure 6150. S.H. Ex. 1. He summarized the academic credits a student must have to graduate as: four credits of English, three credits of Math, which includes Algebra 1, Geometry, and an additional math class, and be enrolled in a math class all four years of high school, three Science credits, which include a life Science, Physical Science, and Earth and Space science, three credits in Social Studies, which includes U.S. History, World History, and Local, State, and National Government, one credit in Fine Arts, one-half credit in Physical

Education, one-half credit in Health, one-half credit in Technology, and complete a “completer” program, which includes two credits in a world language.

Mr. [REDACTED] also testified that to graduate, a student must have earned at least twenty-one credits, completed at least twenty-four hours of community service, and all statewide assessments must be completed.

On March 25, 2022, Mr. [REDACTED] testified that he met with the Student, who was accompanied by a student aide. During the meeting, Mr. [REDACTED] explained that he reviewed a Graduation Notification Agreement form with the Student. S.H. Ex. 2. This form contains all the requirements for graduation and is reviewed with a student so that the student knows what classes and other requirement need to be completed to graduate. When reviewing this form with the Student, Mr. [REDACTED] explained that the Student had earned all the required credits, except that the Student was currently enrolled in English 12 and was taking a physical education class, so those credits were in the process of being earned. He added that the Student had to pass those courses to complete the credit requirements. Mr. [REDACTED] testified that as of March 25, 2022, the Student had earned a total of thirty credits.

Mr. [REDACTED] also testified that the Student needed to complete her community service hours. As to the requirement, Mr. [REDACTED] explained that PGPCPS initiated Project 24, to give students an opportunity to earn their community service hours during school-based projects during the school day. He explained that Project 24 was created for all students because of issues related to the COVID-19 pandemic. Mr. [REDACTED] testified that Project 24 was approved by both the Prince George’s County Board of Education and MSDE. As of March 25, 2022, Mr. [REDACTED] explained that the Student had completed one and one-half hours of community service but was required to complete twenty-four hours of community service.

Mr. [REDACTED] also testified about the Student's Student Record Card 3 (SR3). S.H. Ex. 3. He explained that the school principal must sign the SR3 to certify that a student has met all the graduation requirements to be eligible to receive a diploma. Mr. [REDACTED] added that Principal [REDACTED] signed the SR3 on May 19, 2022. By her signature, Principal [REDACTED] certified that the Student had met all graduation requirements for a diploma, including community service hours, and met all state-wide assessments. Mr. [REDACTED] further explained that the second page of the SR3 indicates the school year that the Student had completed a required course and credit hours and the credits that the Student had earned, as well as the total number of credits the Student had earned. Mr. [REDACTED] testified that the Student had earned a total of 36.5 credits and in excess of the minimum required of twenty-one credits.

Mr. [REDACTED] also testified about the Student's academic transcript. S.H. Ex. 4. Based on the transcript, Mr. [REDACTED] explained that the Student had earned a letter grade of A for almost all of her classes throughout high school. He added that the transcript also included two classes from middle school that counted as high school credit. Mr. [REDACTED] testified that the Student had earned each of those grades. Mr. [REDACTED] explained that the transcript reflects that the Student's graduation was on June 1, 2022, and that she had met all MSDE graduation requirements for a student whose ninth-grade year was 2018-2019.

Mr. [REDACTED] testified, that [REDACTED] commencement ceremonies occurred on June 2, 2022, at the [REDACTED], located at the [REDACTED]. Mr. [REDACTED] was on the stage during ceremonies to pass diplomas to the principal, who then congratulated each student for graduating from high school. He explained that the Student participated in the ceremony, walked across the stage, and received the diploma from the principal.

Mr. [REDACTED] explained that [REDACTED] would not confer a diploma on a student who did not meet the MSDE graduation requirements. On cross-examination, Mr. [REDACTED] explained that he did not know the Student's specific disabilities without reviewing her file. He admitted that he was not aware of each class that the Student took, nor did he visit the Student when she was in the classroom.

However, he explained that visiting students in class was not his specific responsibility as a counselor. Mr. [REDACTED] admitted that he was not aware of any specific IEP accommodations provided in classes but also explained that because the Student participated in school with an IEP, any accommodations and modifications would have been provided. Mr. [REDACTED] agreed that he had no firsthand knowledge of anything that occurred in any of the Student's classes at [REDACTED], including how grades were issued, the staffing of classroom, and the teachers' schedules.

#### Parent's Graduation Case

The Parent opposed the Motion by presenting several exhibits and testimony to demonstrate, that meeting all the requirements to graduate requires more than what PGCPs claimed. She argued that graduation requires a student to have the proficiency and skills to substantiate the diploma, which, she argued, the Student does not have. The Parent added that having completed a class does not mean that the grade received reflects what the student actually achieved or accomplished because of PGCPs' grading standards. The Parent argued that PGCPs changed its grading policy in 2016, allowing a student to redo work until the student got an A. The Parent also contended that because of this policy, in 2017, PGCPs was audited for fraud in issuing diplomas.

More directly, the Parent attacked the evidence provided by PGCPs that the Student met all graduation requirements by noting that on the SR3, there is no record of the Student taking the MCA in 2021 or that it was waived that year.

The Parent argued that the Student has autism, intellectual impairment, mixed receptive language disorder, anxiety disorder, executive function disorder, and specific impairment with respect to reading. Based on these diagnoses, the Parent claimed that for the Student to be on a diploma track is shocking. The Parent asserted that the Student reads on a first-grade level, with a first-grade reading comprehension level, has been shuffled through the system, and probably will never read better than on a first-grade level.

The Parent argued that meeting graduation requirements is only one prong of the issue. Another prong is whether “the Student met the requirements that the PGCPs says were met?” As to the latter prong, the Parent testified that the Student does not have the comprehension or skill set commensurate with a high school diploma. The Parent testified that the Student cannot read, she cannot cross the street by herself, and that since the age of two, the Student had been a child with a disability and eligible for special education under the IDEA. When the Student was seven years old, she was sexually abused by someone at her school, which the Parent alleged was criminal. After this, the Parent asserted that the Student stopped progressing. She added that the Student must show meaningful progress to be issued a diploma. In her testimony, the Parent argued, that her whole case is that the Student should not have been on a diploma track. As she continued her testimony and argument, the Parent stated that “so I am being limited testimony

that did she graduate, did the Student ‘check the boxes’?, the answer is Yes.” But did the Student have any of the skills commensurate with the diploma, the answer is “No.”<sup>27</sup>

In support of the Parent’s testimony that the Student did not have the skills commensurate with a diploma, she offered several exhibits into evidence. After considering the Parent’s arguments and exhibits, I found the following evaluations to be most representative of the Parent’s arguments. Two of these evaluations were performed prior to the Student’s graduation in [REDACTED] 2022. One evaluation was performed after the Student’s graduation.

[REDACTED], a Speech Language Pathologist, with a Certificate of Clinical Competence, conducted a Speech and Language Evaluation of the Student in April 2021. P.H.

Ex 2. After conducting a series of standardized testing, Ms. [REDACTED] concluded that:

[The Student] is clearly struggling with all aspects of receptive and expressive language, higher level thinking and reasoning skills, reading comprehension and pragmatic skills. With few exceptions, [REDACTED]’s scores on all language testing, fell below the average range. Additionally, the discrepancy between [REDACTED]’s ability to decode quickly and comprehend what she’s read is considerable.

*Id.*

The Student also participated in a Psycho-Educational Evaluation, conducted by [REDACTED] [REDACTED] Ph.D., in May and June of 2021. P.H. Ex. 3. Through standardized testing to determine the Student’s cognitive functioning, the Student’s Full Scale IQ was 72, which was in the 3rd percentile and the Very Low range. *Id.* Based on standardized testing for reading comprehension, Dr. [REDACTED] observed that the Student read words and passages accurately, but struggled to generate meaning from written text, with performance below the 1st percentile. *Id.*

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<sup>27</sup> The Parent references my request to focus her evidence as to whether the Student met Maryland standards to receive a regular high school diploma; however, I also explained that I would give the Parent some leeway to establish that the Student should not have graduated high school.

Additionally, when reading longer passages, the Student read at a typical pace, but made several errors, largely around substitutions of small words and visually-similar words, and her score was in the Low Average range. *Id.*

Based on all the standardized testing, in relevant part, Dr. [REDACTED] made the following educational recommendation:

An educational environment that specializes in educating youth with autism spectrum disorders where she can receive individualized academic intervention and accommodations. In addition, [the Student] needs therapeutic services, such as speech-language therapy, occupational therapy, behavior support and social skills teaching during the school day. [The Student] needs strategies to support attention and manage impulsive responding.

*Id.*

On August 22, 2022, [REDACTED], Psy.D., a Licensed Psychologist and Neuropsychologist, conducted a Neuropsychological Evaluation of the Student. P.H. Ex. 10. To conduct the evaluation, Dr. [REDACTED] reviewed several prior evaluations and standardized testing of the Student. Dr. [REDACTED] also had the Student perform several standardized tests.

After considering all the data and information collected for the evaluation, Dr. [REDACTED] summarized her general findings, including in relevant part:

[The Student] is an 18-year-old young woman referred for neuropsychological evaluation after her longstanding history of an Autism Spectrum Disorder (ASD) marked by persistent social interaction and communication difficulties, language and comprehension deficits, low motor planning and coordination, poor problem solving and executive function skills, and limited independent living skills.

[The Student] has received [physical therapy], [occupational therapy], and speech-language therapy starting at a young age; services outside of school to address life skills, social skills, and executive function skills; as well as varying levels of special education and related services and supports through an IEP as a student with Autism. [The Parent] also provides [the Student] with a high level of support and assistance for her to complete her practical daily living skills, including self-care/hygiene and home living tasks, as well as maintaining her safety.



Despite her extensive history of services and supports, [the Parent] remains concerned about her progress across a number of domains of functioning. [The Parent] explained that there are significant discrepancies between ██████'s strong word decoding, ██████ skills, and basic math skills and her weak language and reading comprehension and daily living skills. [The Parent] is particularly concerned regarding ██████'s levels of functioning given that [the Student] will be transitioning from high school. [The Parent] is considering a number of educational options including programming through high school placements serving students on the spectrum. The purpose of the current evaluation was to assess ██████'s current levels of functioning and articulate her needs in order to inform appropriate educational planning, including supporting her transition from high school into adulthood.

*Id.*

Specifically, Dr. ██████ made the following relevant findings:

[The Student's] primary diagnosis and the primary source of her limitations remains her Autism Spectrum Disorder. The essential features of an Autism Spectrum Disorder are persistent impairments in reciprocal social communication and social interactions and restricted, repetitive patterns of behaviors, interest, or activities. [The Student] has substantial problems in both categories.

[The Student] presents with an accompanying intellectual impairment and deficits in adaptive behaviors that are part of her Autism Spectrum Disorder and closely related to intellectual disability. [The Student's] overall intellectual functioning fell in the extremely low range at the 2nd percentile (Full Scale IQ score = 69).

Overall, [the Student] presents with a complex neurodevelopmental profile marked by strengths in aspects of nonverbal cognition and in her math skills and foundational literacy skills in terms of her decoding and encoding/spelling. [The Student] also clearly has ██████ gifts, particularly in playing the ██████, in addition to her pleasant and agreeable demeanor and absence of interfering behaviors. As is common in individuals with ASD, despite these many assets and strengths, [the Student] higher-order thinking, language, social and communication skills, problem-solving and executive functioning substantially impact her ability to independently perform daily living activities at home and in the community.

*Id.*

Based upon her findings, Dr. [REDACTED] made several recommendations, the most relevant of which was:

[The Student] continues to require special education and related services and supports as a student with Autism. She requires a consistent, highly structured, specialized educational environment in order to address the complexity of her needs which include social and communication skills, receptive and expressive language, reading comprehension, written language expression, executive functions, and adaptive living skills. Students remain eligible for such services through their 21st birthday under IDEA.

*Id.*

In addition to these evaluations, as it pertains to PGCPs grading policy, the Parent offered into evidence Administrative Procedure 5121.3, Grading and Reporting for High Schools, Grade Nine through Grade Twelve. P.H. Ex. 19. As to grading elements at PGCPs, the policy provides that grades will be used on report cards for all courses taken for credit. *Id.* The grades will be reported on a numeric scale from 0 to 100 and final numeric grades will be converted to alpha grades. *Id.* In relevant part, the interpretation of letter grades is as follows: A = Excellent progress toward meeting course objectives and learning outcomes (90%-100%); and B = Above average progress toward meeting course objectives and learning outcomes (80%-89%). *Id.* Factors used to determine student grades must include the following items: class work, independent assignments, and assessments. *Id.* Teachers shall assign a minimum grade of 50% to assignments or assessments for which the student completed the entire assignment and made a good faith effort. *Id.* Good faith effort is evidenced by the student displaying persistence, striving for accuracy, time on task, and/or trying an alternative method to solve a problem (which may not be accurate). *Id.* It is also a display of thinking as a student works to sort through ideas, apply context or figure out how to solve problems. If a student does no work on an assignment, the teacher shall assign a grade of zero. *Id.*

As an attack on the Student's grades issued by [REDACTED], the Parent argued that PGCPs' good faith effort policy means, that a student could basically put their name on a piece of paper and get a 50%. Based on this policy, the Parent argued that a student would "have to be dead" to not earn an A. Another exhibit admitted into evidence by the Parent provided further explanation about the good faith effort policy. Published on the PGCPs website are Frequently Asked Questions about Grading and Reporting. P.H. Ex. 20. One relevant question was:

**If [students] do not complete 50%, but complete some questions, what is the score? Do they get a 50%? Do they get a 0 because they didn't complete at least 50%?** We recommend that for each assignment the teacher [should] encourage students to make a good faith effort and complete the entire assignment. If the student still does not meet the good faith effort benchmark of 50%, he or she should be given the score calculated. A student should receive a zero only if he or she did no work at all.

*Id.*

### Analysis

#### *Parties' Positions*

PGCPs contends that it demonstrated by evidence and testimony that the Student met all Maryland requirements to receive a regular high school diploma. As a result, as PGCPs argues, the right to a FAPE ended, any alleged claims under the IDEA are moot, and the Parent's claims should be dismissed.<sup>28</sup> PGCPs further argues that the Parent's allegations of grade fraud or perceived claims of negligence or abuse in the education of the Student by PGCPs fails to create a material dispute of fact.

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<sup>28</sup> I requested the parties to submit applicable case law regarding graduation and its effect, if any, in case. In its closing, the PGCPs explained that there was a lot of case law but finding a case that is factually like this case is a challenge. Aside from offering generic graduation cases, PGCPs asked that I consider a decision issued by an ALJ colleague, which found that "graduation is a matter of state law, and once a student graduates, that ends the right to FAPE." As I discussed earlier, I will not consider prior decisions of other ALJs. Instead, I will rely on the applicable law, including relevant case law, that I find persuasive.

The Parent argued that the IDEA is meant to protect children like the Student. She contended that even if a student graduated or aged out of the IDEA, that fact only ends what future benefits should be awarded to a child with disabilities. The Parent further argued, that if a student legitimately graduates, that does not end the requirement to provide a FAPE; there is still an issue of what happened prior to graduation. The Parent contended that this case was an egregious case of fraud or gross incompetence. But the Parent argued, even if a student graduated, there remain questions of whether the student received a FAPE and is entitled to compensatory education. The Parent further argued that this case is novel, and questioned that if the IDEA does not protect the Student, when there is gross fraud, negligence, and incompetence, then who does the IDEA protect?

The Parent asserted that, based on her testimony and the evaluations admitted into evidence, there is a material dispute of fact as to a genuine issue regarding the Student's graduation. Specifically, the Parent argued that PGCPS did not establish that the Student met the MCA requirements. She explained that there is no indication, on the transcript or otherwise, that the Student participated in the MCA for 2021 and 2022 school years. The Parent continued to argue that, apart from the issues of a FAPE, as to graduation, a student receiving a diploma must have the proficiency of skills that are aligned with Maryland's academic standards. As to this argument, the Parent argued that the assessments demonstrate the Student's reading comprehension is at first grade reading levels and that the Student should not have been issued a diploma unless she possessed the skills aligned with the requirements for that diploma. For these reasons, the Parent asserted that the diploma issued to the Student was void.

*Gross Fraud, Negligence, and Incompetence*

I must first address the Parent's very opposition to the PGCPS educational system and allegations that this case is about gross fraud, negligence, and incompetence. Underlying these allegations is the Parent's opposition to the grading policies of PGCPS and her desire to expose graduation fraud for graduating a student with abilities and skills that are not commensurate with the issued diploma. The Parent seemingly wants to scrutinize every assignment completed or test taken by the Student and then dispute the related grade. However, such attacks on the general education system of a local education agency are not favored in Maryland and are not without limitation under the IDEA.

In *Hunter v. Board of Education of Montgomery County.*, 292 Md. 481 (1982), the Supreme Court of Maryland (the *Hunter* Court) addressed whether a civil action for damages can be successfully asserted against a school board and various individual employees for improperly evaluating, placing or teaching a student. The *Hunter* Court determined that the gravamen of the petitioners' claim sounded in negligence, asserting damages for the alleged failure of the school system to properly educate young Hunter. *Id.* at 484. When considering if claims of "educational malpractice" were appropriate for a court to resolve, the *Hunter* Court noted that such claims have been unanimously rejected by those jurisdictions considering the topic. *Id.*

The *Hunter* Court observed that:

These decisions generally hold that a cause of action seeking damages for acts of negligence in the educational process is precluded by considerations of public policy, among them being the absence of a workable rule of care against which the defendant's conduct may be measured, the inherent uncertainty in determining the cause and nature of any damages, and the extreme burden which would be imposed on the already strained resources of the public school system to say nothing of those of the judiciary.

*Id.* (supporting citations omitted).

The *Hunter* Court agreed with the reasoning of the several decisions it reviewed and determined that allowing petitioners' asserted negligence claims to proceed would effectively position the courts of this State as overseers of both the day-to-day operation of our educational processes as well as the formulation of its governing policies. *Id.* at 487-88. This was a responsibility the *Hunter* Court was loathe to impose on Maryland courts. *Id.* Accordingly, the *Hunter* Court affirmed the dismissal of the petitioner's claims for damages based on an educational tort.

The Parent's opposition to the PGCPS's grading policy and alleged diploma fraud raise the type of claims of educational tort that the *Hunter* Court rejected. For similar reasons, I find that such claims are not factually or legally relevant to the issue of whether the Student met Maryland's requirements for a regular high school diploma. Thus, this type of claim fails to present a material fact of dispute as to whether the Student graduated in Maryland with a regular high school diploma.

Nevertheless, the *Hunter* Court observed that its decision did not imply that parents who feel aggrieved by an action of public educators affecting their child are without recourse. The *Hunter* Court explained that the General Assembly has provided a comprehensive scheme for reviewing a placement decision of a handicapped child including an appeal to the circuit court. *Id.* at 488; *see generally* 34 C.F.R. § 300.507 (a); Md. Code Ann., Educ. § 8-413. However, as discussed later, complaints under the IDEA and the related Maryland law are not without limitation.

#### *Skills Commensurate with a Diploma*

The Parent also raised the arguments regarding the high school diploma issued by PGCPS to the Student. The Parent repeatedly argued that for the diploma to be valid, the

Student must have skills that are commensurate with the diploma. The Parent claims the Student does not have such skills. She asserts that the evaluations entered into evidence support a finding that Student did not have the comprehension or skill set commensurate with a high school diploma.

Without question, the Parent's evidence established that the Student is a child with a disability and required special education provided through an IEP. The evaluations all support that fact. To comply with the IDEA, an IEP must include a statement of the child's present levels of academic achievement and functional performance, measurable annual goals, how progress will be measured, the required special education, related services, and supplementary aids and services, and an explanation of the extent, if any, to which a child will not participate with nondisabled children in the educational setting. *See* 34 C.F.R. § 300.320. The Parent's evidence demonstrates that the Student has several disabilities and has significant deficits in some academic and functional areas. As the Parent argues, those deficits are in reading comprehension and independent living skills. At best, however, the Parent's evidence demonstrates that the Student required an IEP and provided recommendations for the content of an IEP. These evaluations offer no evidentiary support, no factual allegation, or expert opinion that, based on the Student's levels of performance, she could not have met Maryland's requirements for a regular high school diploma. The legal inference the Parent attempts to make between the Student's levels of performance and the issuance of regular high school diploma is not present. The Student was a child with a disability who participated in school under an IEP and, through that IEP, was on a diploma-bound track.

The Parent now argues that the Student should never have been on a diploma track and should have been on a certificate track. But neither her arguments nor the evaluations create a material disputed fact as to whether the Student met Maryland's requirements for a regular high school diploma.

### *High School Diploma Requirements*

The Parent disputes that the PGCPs's evidence demonstrates that the Student met Maryland's MCA graduation assessment requirements. The Parent misunderstands PGCPs' evidence and the Maryland law regarding the MCA. First, there is no dispute that the Student completed the MCA required courses for Algebra, Science, English, and Government. There is also no dispute that Principal [REDACTED] certified on the SR3 that the Student met all MCA requirements. The Parent only disputes that PGCPs' evidence does not specifically indicate that the Student took the MCA in 2021 or 2022. This argument fails to recognize that Maryland regulations only require that the school principal report on a student's educational record that a student "met all assessment requirements," which means achieving a passing score on all MCAs. COMAR 13A.03.02.06E (1) and (2).

Further the regulations provide an exception for the 2020-2021 and 2021-2022 school years. For those years, a student will have met the assessment requirement for Algebra I, English 10, Science, and Government, if the student passed these courses and takes the MCA aligned with the course. COMAR 13A.03.02.06F. Importantly, the regulations do not require that the school principal report that a student "took" an assessment or even "passed" an MCA, only that the Student "met all assessment requirements." Accordingly, the Parent's argument that there is a material factual dispute as to whether the Student met the MCA requirement is without merit.



I find that based on the undisputed material facts, that the Student met Maryland's MCA requirement to receive a regular high school diploma. COMAR 13A.03.02.06

Nor did the Parent raise a factual dispute that the Student met Maryland's community service requirement to receive a regular high school diploma. To meet the community service requirement, a student is required to complete a locally designed program in student service that has been approved by the State Superintendent of Schools. COMAR 13A.03.02.05. Mr. [REDACTED] testified that PGCPS students participate in community service through Program 24, a locally designed program approved by the MSDE. This program offers an opportunity for students to complete a required twenty-four hours of community service, during the school day. The Parent did not dispute this testimony. The PGCPS' exhibits demonstrated that the Student completed the twenty-four hours of community service by May 19, 2022. Again, the Parent did not dispute this fact. Thus, there is no material dispute of fact that the Student met Maryland's community service hours requirement for a regular high school diploma. COMAR 13A.03.02.06.

To receive a regular high school diploma in Maryland, a Student must complete a minimum of twenty-one credit hours and have completed credits in several required subject areas and courses. On this issue, PGCPS presented evidence that as of March 25, 2022, the Student had earned all required credits, with two exceptions related to an English class and Physical Education class that the Student was taking at the time. As of May 19, 2022, the Student had passed those classes and earned those remaining credits. The evidence also demonstrated that the Student had accumulated a total of thirty-six and one-half credits including the credits in the specified subject areas and the courses required by Maryland regulation. The Parent did not materially dispute these facts.

The Parent attacked the Student's grades and the credits earned based on PGCPs' good faith effort grading policy and claims grade fraud or other educational tort claims. As discussed earlier, I found such claims factually and legally irrelevant.

In summary, as to whether the Student met Maryland's requirements for a regular high school diploma, I find that the undisputed material facts demonstrate that Student met the enrollment and credit requirement, the community service requirement, and the graduation assessment requirement. COMAR 13A.03.02.09B. Consequently, the Student was eligible to receive a Maryland High School Diploma as of May 27, 2022, and received that diploma on June 2, 2022.

#### *Graduation and IDEA*

The Parent argues that regardless of the Student's graduation there is still an issue of whether PGCPs provided a FAPE to the Student. The Parent seeks services to support the Student after graduation, which the Parent characterizes as compensatory education. In certain cases, as Dr. ██████████ observed, under the IDEA, students remain eligible for special education services through the age of twenty-one. *See* 34 C.F.R. § 300.102. However, an exception under that regulation provides that the obligation to make a FAPE available to all children with disabilities does not apply with respect to students who have graduated from high school with a regular high school diploma. 34 C.F.R. § 300.102 (a)(3)(i).

In support of the Parent's position that the issue of whether a FAPE was provided before graduation is a viable claim, despite graduation., she cited *Moseley v. Board of Education of Albuquerque Public Schools.*, 483 F.3d 689 (10<sup>th</sup> Cir. 2007). *Moseley's* parents filed a due process complaint for FAPE violations, which was later denied. *Moseley's* parents also filed a civil action seeking injunctive relief against the school district for not providing deaf students

with technologies and services, including real-time captioning and college transition services. On appeal to a federal district court, the parent's appeals were dismissed. The parents then filed an appeal to the United States Court of Appeals for the Tenth Circuit. Before the appeal was filed, *Moseley* graduated high school.

On appeal, the *Moseley* Court held that Moseley did not contest his graduation and held that he was no longer entitled to a FAPE, and any claim that a FAPE was deficient became moot upon a valid graduation. *Id.* at 692-63 (internal citations omitted). The *Moseley* Court, however, footnoted that:

[A] student's parents may file a 'complaint' with the school, contesting the graduation. The filing of such a complaint entitles the parents to an 'impartial due process hearing' at the administrative level, where they may present arguments as to why continued education is necessary for the student to receive a FAPE. Following exhaustion of an administrative appeal the parents may then challenge *the proposed graduation* by bringing an action in federal district court.

*Id.* at fn. 6 (internal citations omitted) (emphasis provided).

*Moseley* does not support the Parent's position. Even though the May complaint based on a denial of a FAPE was filed before graduation, the Parent withdrew that complaint, and those claims became moot upon graduation. I note that the *Moseley* Court indicated that Moseley did not challenge graduation and was seeking prospective relief. In this case, the Parent has challenged whether the Student should have graduated and seeks compensatory education for alleged FAPE violations. These facts distinguish this case from the facts in *Moseley*. But importantly, the *Moseley* Court also noted that a student may challenge the *proposed graduation*. In this case, the Parent filed the Complaint on August 31, 2022. The Student was eligible to graduate with a full high school diploma on May 27, 2022, and received that diploma on June 2, 2022.

At the time this Complaint was filed, the graduation was no longer proposed, it was completed. Only because of the unique circumstances of this case, do I have a record of the May complaint filed by the Parent. When the May complaint was filed the graduation was still pending. Notably, the May complaint did not challenge graduation and the Student graduated high school while that matter was pending before another ALJ. After withdrawing the May complaint, the Parent filed this Complaint. The fact that the graduation is no longer proposed is critical and the *Moseley* Court found any claims of FAPE deprivation to be mooted by graduation.

The Parent also cited *T.S.* as support for her position. But, based on the undisputed facts of this case, *T.S.* does not provide a support for the Parent's argument. In this case, unlike *T.S.*, there is no question that when the Complaint was filed, the Student had already graduated with a high school diploma. But as the *T.S.* Court explained, if there was a question of whether the Student had met graduation standards, it would have remanded the case for a determination. Here, I held such a hearing and, based on the undisputed facts, found that the Student met Maryland's graduation requirements for a regular high school diploma and graduated. As, the *T.S.* Court succinctly stated, once a student has graduated, he is no longer entitled to a FAPE; thus, any claim that a FAPE was deficient has become moot upon graduation. *T.S.* at 1092.

### **CONCLUSIONS OF LAW**

I find as a matter of law, based on the undisputed material facts, that PGCPs failed to establish that it is entitled to a summary decision based on the alleged bad faith conduct of the Parent to withdraw a previously filed due process complaint then file another due process complaint. COMAR 28.02.01.12D.

I further find as a matter of law, based on the undisputed material facts, that the Student met Maryland's requirements to receive a regular high school diploma and graduated from high school. COMAR 28.02.01.12D; COMAR 13A.03.02.03; COMAR 13A.03.02.05; COMAR 13A.03.02.06; COMAR 13A.03.02.09.

I further find as a matter of law, based on the undisputed facts, that PGCPS is entitled to summary decision, because the Student graduated with a full high school diploma and is no longer entitled to a FAPE; thus, any claim that a FAPE was deficient is moot. COMAR 28.02.01.12D; *Moseley v. Bd. of Educ. of Albuquerque Pub. Sch.*, 483 F.3d 689 (10<sup>th</sup> Cir. 2007); *T. S. v. Independent School District No. 54*, 265 F. 3d 1090 (10<sup>th</sup> Cir. 2001).

### **ORDER**

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

The PGCPS' Motion to Dismiss or for Summary Decision, on grounds that the Parent withdrew a previously filed due process complaint, in MSDE-PGEO-OT-22-10884, withdrew the due process complaint on August 25, 2022, and filed another due process complaint, in MDSE-PGEO-OT-22-21157, all in bad faith, is **DENIED**;

The PGCPS' Motion to Dismiss or for Summary Decision, on grounds that the Student graduated from high school with a full diploma, is no longer eligible for a FAPE, and any claims of a FAPE violation are moot, is **GRANTED**;

The due process complaint filed by the Parent on August 31, 2022 on behalf of the Student is hereby **DISMISSED**;

I further **ORDER** that all other proceedings in MSDE-PGEO-OT-22-21157 are hereby **DISMISSED or CANCELLED.**

February 23, 2023  
Date Ruling Mailed

Daniel Andrews  
Administrative Law Judge

DA/sh  
#203353

### **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 Emailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████,

STUDENT

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE DANIEL ANDREWS,  
AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-22-21157

**APPENDIX - EXHIBIT LIST**

*School Motion Exhibits<sup>1</sup>*

- |            |   |
|------------|---|
| S.M. Ex. A | Due Process Complaint, filed May 10, 2022   |
| S.M. Ex. B | Prehearing Conference Report, issued June 28, 2022  |
| S.M. Ex. C | PGCPS' Motion to Amend PCR, filed July 8, 2022  |
| S.M. Ex. D | PGCPS' Motion to Reschedule Hearings Dates, with attached exhibits, filed July 25, 2022   |
| S.M. Ex. E | PGCPS' Motion to Shorten Time, with attached exhibit, filed July 27, 2022   |
| S.M. Ex. F | PGCPS' Reply to Opposition to Shorten Time, filed July 29, 2022   |
| S.M. Ex. G | PGCPS' Request for Ruling on Motion to Amend PCR, filed July 29, 2022   |
| S.M. Ex. H | Decision on Motion to Reschedule Days of Due Process Hearing, issued August 5, 2022   |
| S.M. Ex. I | PGCPS's Motion for Reconsideration of Ruling on Timeliness of Parent's Response to Amend PCR, with attached exhibit, filed August 1, 2022 |
| S.M. Ex. J | PGCPS's Motion to Strike and Reply to Motion to Amend PCR, filed August 4, 2022   |

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<sup>1</sup> Motion Exhibits A through GG were documents previously filed in or related to OAH Case Number MSDE-PGEO-OT-22-10884. Any reference to "filed date" refers to the date each document was certified as being served on a party or received by the OAH by email and the date of that email delivery. See COMAR 28.02.01.02B (5); COMAR 28.02.01.10.



- S.M. Ex. K Decision on Motion to Amend PCR, issued August 11, 2022
- S.M. Ex. L OAH Notice of Remote Hearing Dates, beginning August 30, 2022, issued June 23, 2022
- S.M. Ex. M Parent Motion for Continuance and Motion to Restore Student's PGCPs Student Accounts, filed August 15, 2022
- S.M. Ex. N PGCPs' Request for Production of Documents, filed July 29, 2022; PGCPs letter request for subpoenas *duces tecum* for speech language pathologist, occupational therapist, [REDACTED], PhD., filed August 15, 2022
- S.M. Ex. O PGCPs' Motion to Strike Parent Request for Production of Documents, with attached exhibit, filed August 16, 2022
- S.M. Ex. P PGCPs' Motion for Sanctions, August 16, 2022
- S.M. Ex. Q PGCPs' Opposition to Motion for Continuance and to Continue Student Accounts, filed August 16, 2022
- S.M. Ex. R PGCPs' Motion to Accept Alternative Service of subpoena *duces tecum* upon [REDACTED], PhD., with attached affidavit, filed August 16, 2022
- S.M. Ex. S Letter from Ashely VanCleeef, Esquire to OAH withdrawing appearance on behalf of Parent, dated August 16, 2022
- S.M. Ex. T PGCPs' letter to Administrative Law Judge Henderson, regarding possible transfer of educational rights, dated August 16, 2022, with attached exhibits (letter to Ashley VanCleeef, Esq., June 3, 2022; Psychological Report January 21, 2022; Suicide Assessment and Safety Plan, December 16, 2021)
- S.M. Ex. U Parent's Supplemental Motion for Continuance and to Restore Student's PGCPs Student Accounts, filed August 21, 2022
- S.M. Ex. V PGCPs' letter regarding submission of proposed witnesses and index list of exhibits, dated August 23, 2022
- S.M. Ex. W Parent's Motion for Removal of PGCPs' Counsel, Order of Document Production, Motion to Strike August 19, 2022 letter contents, Bar PGCPs Witness [REDACTED], filed August 23, 2022
- S.M. Ex. X Parent's Motion to Clarify and Amend PCR, filed August 23, 2022

- S.M. Ex. Y Parent’s Motion for Ruling on Subpoena Use by PGCPs on Parent’s Witnesses and Extension of Five Day Disclosure Deadline, filed August 23, 2022
- S.M. Ex. Z PGCPs’ Consolidated Interim Response to Parent’s Filings on August 23, 2022, filed on August 23, 2022
- S.M. Ex. AA Parent’s Response to PGCPs’ Motion to Strike Request for Document Production and PGCPs’ Motion for Sanctions; Parent’s Motion to Compel PGCPs Document Production, filed August 24, 2022
- S.M. Ex. BB PGCPs’ letter to ALJ Henderson regarding Power of Attorney, dated August 24, 2022
- S.M. Ex. CC Parent’s Motion to Refer PGCPs Counsel to Maryland Bar and for PGCPs Communications to be made a part of the Official Record, filed August 24, 2022
- S.M. Ex. DD Transcript of August 24, 2022 Prehearing Conference
- S.M. Ex. EE Email from Parent to OAH withdrawing Complaint, dated August 25, 2022; email from OAH to PGCPs, August 26, 2022
- S.M. Ex. FF Due Process Complaint, filed on August 31, 2022<sup>2</sup>
- S.M. Ex. GG Amended Due Process Complaint, filed on October 17, 2022

*Parent Opposition Exhibits*

- P.O. Ex. A Email between Parent, PGCPs, and OAH regarding postponement request, August 25, 2022

*School Hearing Exhibits*

I admitted into evidence the following exhibits on behalf of the School:

- S.H. Ex. 1 PGCPs Administrative Procedure 6150, High School Graduation Requirements, Class of 2021 through 2024, Fall 2022
- S.H. Ex. 2 Graduation Notification Agreement, March 25, 2022
- S.H. Ex. 3 Student Record Card 3, Annual School Performance Data Summary, Grade Levels 06-12, May 19, 2022

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<sup>2</sup> This exhibit was docketed as OAH case number MSDE-PGEO-OT-22-21157.

- S.H. Ex. 4                Student Transcript, December 14, 2022
- S.H. Ex. 5                Photograph of Student
- S.H. Ex. 6                Scholastic Aptitude Test (SAT) Score Report, test date May 8, 2021

*Parent Hearing Exhibits*<sup>3</sup>

Unless otherwise indicated, I admitted the following exhibits into evidence on behalf of the Parent:

- P.H. Ex.1                Riverview School, 2022-23 Report Card and Progress Report (001-013) (Not Admitted)
- P.H. Ex. 2                Speech and Language Evaluation, [REDACTED], April 7 and April 14, 2021 (014-022)
- P. H. Ex. 3                Psycho-Educational Evaluation, [REDACTED], September 1, 2021 (023-043)
- P.H. Ex. 4                Occupational Therapy Evaluation, [REDACTED], November 2, 2021 (044-053)
- P.H. Ex. 5                Measure of Academic Performance (MAP) - Mathematics, January 27, 2022 (054-094)
- P.H. Ex. 6                MAP - Reading, January 26, 2022 (095-114)
- P.H. Ex. 7                Executive Function for Effective Cognitive Transformation Evaluation, [REDACTED], June 1, 2022 (115-121)
- P.H. Ex. 8                Learning Ability Evaluation Summary, Lindamood-Bell Learning Processes, June 1, 2022 (122-139)
- P.H. Ex. 9                [REDACTED]<sup>4</sup> Evaluation Form, August 5, 2022 (140-144) (Not Admitted)

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<sup>3</sup> The Parent’s Hearing Exhibits were pre-marked with Bates Stamped page numbers but without separate exhibits numbers. During the hearing, each exhibit was separately identified by exhibit number and Bates Stamp page numbers. On January 30, 2023, PGCPs reproduced the Parent’s exhibits in a binder with each exhibit separately identified by exhibit number, without out any change to the Parent’s exhibits. I notified the parties that I would substitute this binder of organized exhibits with the original version offered by the Parent. After confirming for the Parent that the binder of exhibits did not contain any alteration to her exhibits, the Parent did not object to this process.

<sup>4</sup> [REDACTED] means [REDACTED]. See [https://\[REDACTED\]](https://[REDACTED]) (last visited February 7, 2023).

- P.H. Ex. 10 Neuropsychological Evaluation, [REDACTED], August 22, 2022 (145-173)
- P.H. Ex. 11 Occupational Therapy Evaluation, December 7, 2022 (174-178)
- P.H. Ex. 12 Occupational Therapy Evaluation, November 22, 2022 (179-185) (Not Admitted)
- P.H. Ex. 13 Educational Consultation, Integrated Center for Child Development, January 26, 2023 (186-205) (Not Admitted)
- P.H. Ex. 14 Student's handwriting sample, undated (206)
- P.H. Ex. 15 Photograph of Student's ceramic cup, undated (207) (Not Admitted)
- P.H. Ex. 16 Article, Girls on the Autism Spectrum are Being Overlooked, Duke Integrated Pediatric Mental Health, March 28, 2018 (208-211) (Not Admitted)
- P.H. Ex. 17 Email between Parent and PGCPs regarding graduation at [REDACTED], June 1, 2022 (212-213)
- P.H. Ex. 18 Article, [REDACTED], 77% of students at Baltimore high school reading at elementary levels, teacher says, [REDACTED] 2022 (214-215) (Not Admitted)
- P.H. Ex. 19 PGCPs Administrative Procedure 5121.3, Grading and Reporting for High Schools, Grade Nine through Grade Twelve, August 19, 2022 (216-233)
- P.H. Ex. 20 PGCPs, Grading and Reporting – Frequently Asked Questions, October 2, 2022 (234-240)
- P.H. Ex. 21 Article, [REDACTED], Many PGCPs students marked “below expectations” on standardized English and Math test, [REDACTED], 2022 (241-242) (Not Admitted)
- P.H. Ex. 22 Article, [REDACTED], Most Prince George's students scoring below grade level on district tests, [REDACTED] 2022 (243-244) (Not Admitted)
- P.H. Ex. 23 Article, [REDACTED], Prince George's mulls changes to grading policy, [REDACTED], 2016 (245-247) (Not Admitted)
- P.H. Ex. 24 Article, [REDACTED], Prince George's Co. grade-fixing report says 5 percent of students in sample shouldn't have graduated, [REDACTED] 2017 (248-252) (Not Admitted)

- P.H. Ex. 25 PGCPS Administrative Procedure 5121.3 Highlights, undated (253)
- P.H. Ex. 26 Article, National Education Association News, Teachers Divided Over Controversial “No-Zero” Grading Policy, August 4, 2016 (254-258)
- P.H. Ex. 27 Email between Parent, PGCPS, and OAH regarding postponement request, MSDE-PGEO-OT-22-10884, August 25, 2022 (259-263)
- P.H. Ex. 28 Photograph of COVID Rapid Test, [REDACTED], COVID 19 Patient: Providing Care at Home, August 9 and August 25, 2022 (264-266)
- P.H. Ex. 29 Parent Motion for Continuance and Motion to Restore Student’s Student Accounts and Parent Supplemental Motion for Continuance and to Restore Student Accounts, MSDE-PGEO-OT-10884, August 15 and August 21, 2022 (267-286)
- P.H. Ex. 30 Parent MRI, October 11, 2022, Article Cybersickness is Real, October 30, 2022, Article - Can Your Computer Make You Feel Dizzy?; November 9, 2020, Article - What Your Computer Is Doing To Your Eyes, September 2, 2014; Parent Orthopedic Spine Visit, March 2, 2022 (287-307) (Not Admitted)
- P.H. Ex. 31 Email between Parent, PGCPS, and OAH regarding withdrawal without prejudice, MSDE-PGEO-OT-22-10884, August 25, 2022 (308) (Not Admitted)
- P.H. Ex. 32 Due Process Complaint, MSDE-PGEO-OT-22-10884, May 10, 2022 (309-319) (Not Admitted)
- P.H. Ex. 33 Parent Motion to Clarify and to Amend Pre-Hearing Conference Report, MSDE-PGEO-OT-22-10884, August 23, 2022 (320-324) (Not Admitted)
- P.H. Ex. 34 Maryland State Department of Education (MSDE), Listing of Participating Low Performing Schools, February 23, 2022 (325-329) (Not Admitted)
- P.H. Ex. 35 MSDE, [REDACTED] High School Report Card, 2018-2019 (330-338) (Not Admitted)
- P.H. Ex. 36 United States Department of Education (USDE), Office of Special Education Programs Update, May 2022 (339-342) (Not Admitted)
- P.H. Ex. 37 USDE, OSEP, Letter to Zirkle, April 15, 2022 (343-353) (Not Admitted)
- P.H. Ex. 38 SAT Score Report, test date December 4, 2021