

██████████,

STUDENT

v.

BALTIMORE COUNTY PUBLIC

SCHOOLS

BEFORE DENISE O. SHAFFER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-BCNY-OT-23-26788

RULING ON BALTIMORE COUNTY PUBLIC SCHOOLS'
MOTION FOR SUMMARY DECISION

On October 17, 2023, ██████████ (Parent), on behalf of her son ██████████ (Student) filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) on the Student's behalf, requesting a hearing to review the provision of a free appropriate public education (FAPE) to the Student by the Baltimore County Public Schools (County PS) and the Baltimore City Public Schools (City PS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. §§ 1400-1419 (2017).¹ The Complaint was sent to the County PS on October 17, 2023, and to the City PS on October 26, 2023. On October 19, 2023, the County PS filed a Motion to Dismiss alleging that the Student did not attend County PS and that the Complaint was insufficient. On October 21, 2023, Administrative Law Judge L. Walder issued an Order denying the Motion to Dismiss on sufficiency grounds but deferring the Motion on the issue of whether the Motion should be granted because the Student was not enrolled in its schools.

On November 15, 2023, I conducted a pre-hearing conference (Conference). Code of Maryland Regulations (COMAR) 28.02.01.17; COMAR 28.02.01.20B(1)(b). At the Conference, I denied the County PS Motion to Dismiss and established a briefing schedule for a Motion for

¹ "U.S.C.A." is an abbreviation for the United States Code Annotated. All references made to Title 20 of the U.S.C.A., are to the version found in the 2017 volume.

Summary Decision. The County PS filed its Motion for Summary Decision (MSD) on December 4, 2023; the Parent did not respond by December 19, 2023, as required by the pre-hearing conference order issued on November 16, 2023.²

At the pre-hearing conference, the Parent agreed that the issue raised in the Complaint related to the County PS is: “Did the County PS violate the IDEA when it enrolled the Student on or about July 15, 2023, in the [REDACTED] School, a public separate day school?” The Parent also agreed to the following statement regarding the relief sought: “The Parent requests that the Student remain in his current placement at [REDACTED] Elementary School with appropriate support and services.” (See November 16, 2023, Pre-hearing Conference Report and Order)

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article; the Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2022); Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2021 & Supp. 2023); Code of Maryland Regulations (COMAR) 13A.05.01.15C; COMAR 28.02.01.

ISSUE

Whether the County PS is entitled to a summary decision because there is no genuine dispute of material fact, and the County PS is entitled to judgment as a matter of law?

SUMMARY OF THE EVIDENCE

Exhibits

The County PS attached the following exhibits to the Motion:

COUNTY PS Ex. 1 January 26, 2023, Prior Written Notice

COUNTY PS Ex. 2 February 23, 2023, Due Process Complaint

² On or about November 30, 2023, the Parent and the City PS resolved their dispute, and the Parent withdrew the hearing request against the City PS but not the hearing request against the County PS.

- COUNTY PS Ex. 3 March 1, 2023, Pre-hearing Conference Report and Order in OAH Case number MSDE-BCPS-OT-23-04205
- COUNTY PS Ex. 4 May 3, 2023 Letter from Ms. [REDACTED], Homeless Liaison, County PS, to Parent, affirming appeal.
- COUNTY PS Ex. 5 June 12, 2023 Letter from Mr. [REDACTED], Manager, Employee and Student Hearings, County PS, to Parent, affirming denial of homeless education appeal
- COUNTY PS Ex. 6 June 6, 2023 Default Order in OAH Case number MSDE-BCPS-OT-23-04205
- COUNTY PS Ex. 7 Attendance record for Student for August 29, 2022 through November 6, 2023, generated November 6, 2023
- COUNTY PS Ex. 8 Email correspondence from June 12, 2023 through June 21, 2023
- COUNTY PS Ex. 9 November 4, 2023 Affidavit of [REDACTED], Pupil Personnel Worker, County PS
- COUNTY PS Ex. 10 October 17, 2023 Due Process Complaint

UNDISPUTED MATERIAL FACTS

The following material facts are undisputed:

1. The Student was first identified as a child in need of special education services in the 2019-2020 school year when he was in kindergarten in the County PS, and he has continuously received services through an individualized education program (IEP) since then.
2. For the 2022-2023 school year, second grade, the Student attended the [REDACTED] program at [REDACTED] Elementary School ([REDACTED]), a County PS. During the 2022-2023 school year, the Student and his family moved from Baltimore County to Baltimore City. The Student was eligible for accommodations under the McKinney-Vento

Homeless Assistance Act³ (McKinney-Vento Act) and remained enrolled in [REDACTED]. The County PS provided transportation to the Student from his residence in Baltimore City to [REDACTED] for the 2022-2023 school year.

3. In January of 2023, the [REDACTED] IEP team convened and recommended a more restrictive placement for the Student, specifically, a public separate day school, [REDACTED] Elementary ([REDACTED]), a County PS (Ex. 1). The Parent disagreed with the placement and filed a Due Process Complaint on February 13, 2023 (Ex. 2). The issue raised in the February 13, 2023 Complaint was: “Was placement of the Student at [REDACTED] School reasonably calculated to provide the Student with a FAPE?⁴” (Ex. 3). The relief requested was placement in a school other than [REDACTED] (Ex. 3). As a result of this filing, the Student remained at [REDACTED].⁵

4. After a pre-hearing conference, the due process hearing was scheduled for June 2 and 9, 2023 (Ex. 3). The hearing convened on June 2, 2023, and the Parent failed to appear. On June 6, 2023, the Administrative Law Judge issued a final Order of Default and dismissed the Due Process Complaint. The Parent did not appeal the Default Order or move to vacate it (Ex. 4).

5. Because the Default Order was only a few days before June 13, 2023, the last day of the 2022-2023 school year, the Student did not attend [REDACTED] during the 2022-2023 school year. After the last day of school, the Student was enrolled at [REDACTED], and the County PS notified the Parent that the Student could attend [REDACTED] over the summer and receive extended school year services. The Parent declined those services, and the Student never attended [REDACTED] (Exs. 8, 9)

³ The McKinney-Vento Act is a federal law requiring each State educational agency to ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, ..., as provided to other children and youth. 42 U.S.C.A. §11431 (1)(2023). *See also* COMAR 13A.05.09.04 (school placement for homeless youth.)

⁴ FAPE is a common acronym for “free and appropriate public education.”

⁵ Federal law provides that during the pendency of a due process hearing, the student shall remain (“stay put”) in the “then-current educational placement.” 20 U.S.C. § 1415(j).⁵ *See* 34 C.F.R. §300.518(a); *see also* COMAR 13A.05.01.15C(19) (using the term “present educational placement”).

6. The Student continued to live in Baltimore City. Before the 2023-2024 school year began, the Parent enrolled the Student in [REDACTED] Elementary School ([REDACTED]), a Baltimore City Public School. The Student is attending [REDACTED].

7. On November 30, 2023, the Parent withdrew the portion of her Complaint in this case against the City PS because the City PS agreed to convene an IEP team at [REDACTED] to update and revise the Student's IEP. At the pre-hearing conference, the Parent noted that the Student was doing well at [REDACTED], and she wanted him to remain there.

8. The Student was absent from school 38 times and late for school 35 times during the 2022-2023 school year. Based on this attendance record, the Student's Homeless Liaison, Ms. [REDACTED], determined that it was in the Student's educational best interest not to attend school at [REDACTED]. The Parent appealed that decision, and after a hearing on June 12, 2023, that decision was affirmed by Mr. [REDACTED], Superintendent's Designee, County PS' Manager of Employee and Student Hearings (Ex. 5). The Parent did not appeal. As a result, the Student was no longer eligible to attend [REDACTED] under the McKinney-Vento Act⁶ (Ex. 5).

DISCUSSION

Legal Standard for Motion for Summary Decision

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

D. Motion for Summary Decision.

(1) A party may file a motion for summary decision on all or part of an action on the ground that there is no genuine dispute as to any material fact and the party is entitled to judgment as a matter of law.

⁶ As Mr. [REDACTED] made clear in his decision, the Student remained eligible for services and accommodations under the McKinney-Vento Act; the decision was limited to the determination that it was not in his educational best interests to attend [REDACTED] as the excessive absences and lateness demonstrated that [REDACTED] was not meeting his academic needs. The decision invited the Parent to continue to work with the County PS Homeless Education Programs Office (Ex. 5).

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

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

On a motion for summary decision, the moving party, here, the County PS, bears the initial burden. COMAR 28.02.01.21K(3). I may grant a motion for summary decision and dismiss the hearing request only if I find that there is “no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” COMAR 28.02.01.12D(5); *see also Metro. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980).

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

Analysis

The County PS has established that there are no material facts in dispute and that it is entitled to judgment as a matter of law for two reasons.

First, the Student's proposed placement at [REDACTED] was challenged through a Due Process Complaint during the 2022-2023 school year. When the Parent failed to move to vacate or appeal the June 6, 2023 Default Order the decision to dismiss her Complaint became final. The October 17, 2023 Complaint against the County PS addresses the same placement issue that was the subject of the February 13, 2023 Complaint, specifically, placement at [REDACTED].⁷

It is a fundamental principle of law that a final order or judgment creates important vested rights that the parties have the right to rely upon. *See MAS Associates, LLC v. Korotki*, 475 Md. 325, 364 (2021); COMAR 28.02.01.23C(3). *Res judicata*, sometimes called claim preclusion, is a common law doctrine "designed to preclude the relitigation of ... the same cause[] of action ... decided in a prior action." *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 312 (2013). The traditional principle of *res judicata* has three elements: "(1) the parties in the present litigation should be the same or in privity with the parties to the earlier case; (2) the second suit must present the same cause of action or claim as the first; and (3) in the first suit, there must have been a valid final judgment on the merits by a court of competent jurisdiction." *FWB Bank v. Richman*, 354 Md. 472, 492-93 (1999), citing *deLeon v. Slear*, 328 Md. 569, 580 (1992). *See also Kim v. Council of Unit Owners of Collington Center III Condominium*, 180 Md. App. 606, 624 (2008) ("That the underlying judgment ... was a default judgment that the District Court did not vacate does not erode its *res judicata* effect in the case."). In this case, the parties are the same, the issues are the same, and the June 6, 2023, Default Order became final on July 6, 2023.

⁷ The first Complaint involved the proposed placement at [REDACTED]. The current Complaint involves the actual placement at [REDACTED], which, as a consequence of the hearing timeline coinciding with the end of the school year and the Parent's declination of extended school year services, never occurred.

Consequently, I conclude that the Complaint against the County PS must be dismissed based on *res judicata*.

Second, the October 17, 2023 Complaint is moot. A case is moot when there is no longer an existing controversy between the parties at the time it is before the court, so the court cannot provide an effective remedy. *Coburn v. Coburn*, 342 Md. 244, 250, 674 A.2d 951 (1996); *see also Cavanaugh v. Grasmick*, 76 F. Supp. 446 (D. Md. 1999) (upholding decision to dismiss Due Process Complaint as moot where parties reached an agreement regarding prospective placement). Moot cases are generally dismissed without a decision on the merits. *Coburn*, 342 Md. at 250, 674 A.2d 951.

During the pre-hearing conference, the Parent defined her Complaint against the County PS as follows: “Did the County PS violate the IDEA when it enrolled the Student on or about July 15, 2023, in the [REDACTED] School, a public separate day school?” She defined the relief requested as follows: “The Parent requests that the Student remain in his current placement at [REDACTED] Elementary School with appropriate support and services.” (See November 16, 2023, Pre-hearing Conference Report and Order). The Pre-hearing Conference Report and Order provided: “Any motions to correct this Pre-Hearing Conference Report and Order shall be filed with me and served on the opposing party no later than ten calendar days after the date below.” *Id.* No such motion was filed.

The undisputed facts establish that (1) the Student never attended [REDACTED]; (2) the Parent declined extended school year services at [REDACTED] in the summer of 2023; (3) the Student was no longer eligible to attend [REDACTED] pursuant to the McKinney-Vento Act; (3) the Parent enrolled the Student before the 2023-2024 school year at [REDACTED], a City PS; (4) the relief requested by the Parent, that the Student remain in [REDACTED] with appropriate supports and services has been provided – the Student’s continues to be enrolled at [REDACTED],

and the City PS IEP team is revising and updating his IEP. Moreover, if the Parent disagrees with the City PS IEP team, she has the right to file a Due Process Complaint against the City PS but not the County PS, as the Student no longer receives services under a County PS IEP.

CONCLUSIONS OF LAW

I find as a matter of law, based on the undisputed facts, that the County PS is entitled to summary decision because:

(1) The June 6, 2023 Default Order became final on July 6, 2023. COMAR 28.02.01.23C(3). The Parent's October 17, 2023 Complaint against the County PS is barred by *res judicata* and must be dismissed. COMAR 28.02.01.23C; *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 312 (2013); *FWB Bank v. Richman*, 354 Md. 472, 492-93 (1999); *Kim v. Council of Unit Owners of Collington Center III Condominium*, 180 Md. App. 606, 624 (2008).

(2) The October 17, 2023 Complaint is moot, and the requested relief has been obtained. *Coburn v. Coburn*, 342 Md. 244, 250, 674 A.2d 951 (1996); *Cavanaugh v. Grasmick*, 76 F. Supp. 446 (D. Md. 1999); COMAR 28.02.01.16D.

ORDER

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

The County PS's Motion for Summary Decision is **GRANTED**;

The October 17, 2023, Due Process Complaint filed by the Parent on behalf of the Student is hereby **DISMISSED**;

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

January 12, 2024
Date Ruling Mailed

Denise O. Shaffer
Administrative Law Judge

DOS/ja
#209226

REVIEW RIGHTS

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (2022). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

The Office of Administrative Hearings is not a party to any review process.

Copies Mailed To:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

KAI DOWNS,

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FILE EXHIBIT LIST

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