

██████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE PATRICK E. MAHER,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH NO.: MSDE-MONT-OT-24-03375

**RULING ON MOTION**

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SUMMARY OF THE EVIDENCE  
UNDISPUTED FACTS  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

On February 5, 2024, ██████████, the father of the Student, (Father)<sup>1</sup> filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) on the Student's behalf, requesting a hearing to review the identification, evaluation, or placement of the Student by the Montgomery County Public Schools (MCPS) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. §§ 1400-1419 (2017).<sup>2</sup> The Father did not file a request for mediation. The MCPS scheduled a resolution meeting for March 24, 2024, but it did not occur.

The Complaint alleges that the MCPS violated the Father's procedural and substantive rights under the IDEA. Father alleged that the MCPS failed to timely provide to him a parental rights and procedural safeguards notice; failed to timely respond to his request for educational

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<sup>1</sup> The parents of the Student are divorced and will be referred to as Father and Mother, respectively. The Student's Mother did not join in the Complaint.

<sup>2</sup> U.S.C.A. is an abbreviation for 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.

records; failed to include his input into the formation of the Student's Individualized Education Program (IEP); failed to document his concerns and input into three Prior Written Notices, failed to provide psychological assessment criteria applicable to an independent educational evaluation (IEE); prevented the Father being able to provide informed parental consent by failing to provide educational records, psychological assessment criteria, and the data collected for assessments; failed to properly measure and verify that the Student has a developmental delay and is eligible for special education services; failed to indicate in the IEP how the Student's disability affected his progress in the general education curriculum; and that the goals in the IEP are arbitrary and the data and reporting on how the Student meets the goals are ambiguous and subjective.

The Father's requested remedies are: an immediate stay of the implementation of the IEP until the matter of whether the Student's IEP will continue to be implemented has been resolved by the [REDACTED] [REDACTED]. [REDACTED];<sup>3</sup> appointment of a neutral IEP facilitator; and reimbursement for attorney's fees and expenses associated with having to bring this matter before the OAH.

On April 15, 2024, Craig Meuser, Esquire, counsel for the MCPS, filed a Motion for Summary Decision (Motion). On April 30, 2024, the Father, who is represented by Pawnee A. Davis, Esquire, filed an Opposition to the MCPS' Motion for Summary Decision (Opposition).

The contested case provisions of the Administrative Procedure Act, the procedures for fair hearing appeals under the IDEA, and the Rules of Procedure of the OAH govern procedure in this case. 20 U.S.C.A. §§ 1400-1419 (2017); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); Code of Maryland Regulations (COMAR) 28.02.01.

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<sup>3</sup> As will be discussed in detail below, the Student's parents are involved in litigation in the [REDACTED] Court regarding the authority to make educational decisions on behalf of the Student.

## ISSUE

Should the MCPS' Motion for Summary Decision be granted because there is no genuine dispute as to any material fact, and is the MCPS entitled to summary decision in its favor as a matter of law?

## SUMMARY OF THE EVIDENCE

### Exhibits

The MCPS attached the following exhibits to its Motion:<sup>4</sup>

- MCPS Ex. 1: Email from the MCPS's attorney, Craig Meuser, Esquire, to the Father's attorney, Pawnee Davis, Esquire, February 14, 2024 (p. 1)
- MCPS Ex. 2: Emails between Mr. Meuser and Ms. Davis, February 21, 2024 (p. 1)
- MCPS Ex. 3: Defendant's<sup>5</sup> Motion for Contempt and Enforcement of Legal Custody and Other Relief, [REDACTED], filed [REDACTED] (pp. 1-10)

## UNDISPUTED FACTS

The following facts are undisputed:

1. [REDACTED] is the Student's father and [REDACTED] is the Student's mother (Mother). The Mother lives in [REDACTED], Maryland. (Collectively, the parents)
2. The Student lives with each parent 50% of the time.
3. There are two court orders in effect from the [REDACTED] Court, Family Division, Domestic Relations Branch, entered in [REDACTED] and [REDACTED], respectively, which govern the parties' physical custody and legal decision-making authority.
4. In relevant part, the [REDACTED] Court's orders mandate the following regarding decision-making procedures for the child's parents:
  - a. Joint, 50/50, equal, physical custody of the Student to each parent.

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<sup>4</sup> Although not supported by affidavit, Ms. Davis did not dispute the validity of the email correspondence between counsel in MCPS Exhibits 1 & 2. I find Exhibit 3 to be self-authenticating. COMAR 28.02.01.12D

<sup>5</sup> The Father is the listed Defendant in the Contempt proceeding pending before the [REDACTED] Court.

- b. Joint, 50/50, equal, decision-making authority to each parent over the Student's development and welfare, including, but not limited to, educational choices, medical or dental care providers, or mental health care providers.
- c. The parties shall defer to the recommendation of the Student's teacher, counselor, or other school official as to whether and when the Student will complete an intake for behavioral health assessment.
- d. If a teacher, counselor, or other school official asks either parent about the Student's behavior on the phone or in person, the parent may respond with information about the Student's behavior, but must send an email to the other parent and the school official memorializing the conversation within forty-eight hours. Each parent shall "reply all" or copy the other parent when addressing needs with the Student's teachers or counselors via email.

5. In relevant part, the [REDACTED] Court's orders mandate the following regarding dispute resolution procedures for the parents:

- a. When the parties disagree on an educational or behavioral health issue, the parties are required to go to mediation through the [REDACTED] Court's Multi-Door Mediation program to attempt to resolve a disagreement.
- b. If no resolution was reached through mediation, the parties may then file an action in the [REDACTED] Court's Family Division, Domestic Relations Branch, for resolution by a judge.

6. The Student attends Kindergarten in the MCPS system, at [REDACTED] [REDACTED] for the 2023-2024 school year.

7. The MCPS identified the Student as eligible for special education services and developed and implemented an IEP for the Student after a meeting held on November 15, 2022.

8. The Mother consented to the initial evaluation of the Student and subsequent provision of special education services to the Student.

9. The Father disagreed with the Mother's decision to consent to special education services, and the implementation of the IEP.

10. On February 5, 2024, the Father filed this Complaint against the MCPS. The Father alleges that the MCPS violated multiple procedural safeguards and offered the child an IEP that is not reasonably calculated to provide him with an educational benefit.

11. The Father requested three remedies to the alleged procedural and substantive violations referenced in his complaint:

- a. issue an immediate stay of the implementation of the student's IEP unless and until either the matter of whether the child's IEP will continue to be implemented has been resolved by the ██████████ Court having adjudicated the matter in litigation and the Court issued an order with its decision;
- b. order the MCPS to hire a neutral IEP facilitator to ensure that all IEP meetings be conducted in a manner that honors both parents' rights; and
- c. reimburse his incurred attorney's fees associated with filing the Complaint.

12. The Father represented in the Complaint that he and the child's mother participated in a mediation session with the ██████████ Court's Multi-Door Mediation program in November 2023 concerning the issues underlying the Complaint, but nothing had "been resolved by a judge."

13. On February 14, 2024, Mr. Meuser communicated with Ms. Davis to inquire about the status of any pending civil action in the ██████████ Court.

14. Mr. Meuser asked Ms. Davis the following questions about any pending civil action in the [REDACTED] Court via email:

- a. Can you clarify the procedural posture of any pending action in [REDACTED] Court's Family Division of the Domestic Relations Branch ([REDACTED])?
- b. Can you clarify if Mediation resulted in any definitive agreement about educational decision making for the 23-24 school year?
- c. If Mediation did not resolve any issues regarding educational decision making, has your client filed an action with the Family Division? And, if so, what is the nature of that action and what is the date of any scheduled hearing or conference in furtherance of that action? MCPS Ex. 1, p.1.

15. On February 21, 2024, Ms. Davis responded via email that:

- a. The parties had two mediation sessions with the [REDACTED] Court's Multi-Door Mediation program and some of it was relevant to this matter, but there was no resolution.
- b. Either party may file a motion seeking relief but has not yet. MCPS Ex. 2, p.1.

16. On February 21, 2024, Mr. Meuser followed up with Ms. Davis via email for clarification as to what the [REDACTED] Court is being asked to adjudicate. More specifically, Mr. Meuser asked if there is "an IEP issue that your client believes is in dispute and was the subject of the two mediation sessions convened in fall of 2023?" *Id.*

17. Ms. Davis did not respond to Mr. Meuser's February 21, 2024 email regarding the litigation in the [REDACTED] Court, Family Division, Domestic Relations Branch.

18. On April 3, 2024, Ms. Davis, on behalf of the Father, filed a Motion in the [REDACTED] Court, Family Division, Domestic Relations Branch, seeking a Contempt Order,

Enforcement of Legal Custody and Other Relief against the Mother. The action alleges that she has violated the legal custody provisions of the parties' child custody orders relating to the Student's behavioral health, physical health, and education by, among other things consenting to the provision of special education services and the implementation of the IEP.

19. The contempt action seeks an Order that the Mother be required to withdraw her consent for special education services to the MCPS and that she be prevented from pursuing special education services without the recommendation of a [REDACTED] Medicaid provider.

### **DISCUSSION**

#### **Standard of Determination**

The OAH's Rules of Procedure provide for consideration of a motion for summary decision under COMAR 28.02.01.12D. Under that regulation, I may grant a motion for summary decision and dismiss the hearing request in this case 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).

The moving party bears the burden to establish they are entitled to a summary decision in their favor. COMAR 28.02.01.21K(3). To prevail on a motion for summary decision, the moving party must identify the relevant legal cause of action or legal defense and then set forth sufficient, undisputed facts to satisfy the elements of the claim or defense or detail the absence of evidence in the record to support an opponent's claim. *See Bond v. NIBCO, Inc.*, 96 Md. App. 127, 134-36 (1993).<sup>6</sup> As the MCPS filed the Motion, it bears the burden of proof.

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<sup>6</sup> The requirements for summary decision under the OAH Rules of Procedure are similar to those for summary judgment under Maryland Rule 2-501. *Assateague Coastkeeper v. Md. Dep't of Env't*, 200 Md. App. 665, 698-99 (2011). Accordingly, the Maryland Rules and case law interpreting those rules provide guidance for analyzing a motion for summary decision.

## Analysis

### I. Injunctive Relief

I find that the premise of the Father's requested remedy, that the Student's current IEP be stayed, and the implementation of the IEP halted until the dispute regarding the custody and decision-making authority for the Student has been resolved in the [REDACTED] Court, is contrary to the mandate of the IDEA. In its Motion, the MCPS argued that it is entitled to judgment as a matter of law because the Father cannot meet the judicial requirements for an immediate stay of the IEP as injunctive relief.

In his Opposition, the Father argued that the request for a stay is similar to the legal precedent set forth in *A.B. v. Balt. City Bd. Of Sch. Comm'rs*, Civil Action No. WMN-14-3851 (D. Md. June 9, 2015). The Father argued that the Administrative Law Judge (ALJ) ordered a "stay put" of the educational placement of the child during the pendency of the proceedings when an IEP had proposed the student be placed in another school. The "stay put" order in the *A.B.* decision ensured that the child remained in the original special education placement pending the resolution of the proposal to place the child in another school. In this case, the Father is arguing the opposite of a "stay put," that is, that the Student should be immediately removed from his current special education services program (stay and cease to implement the IEP) while he is pursuing contempt proceedings in the [REDACTED] Court against the Student's mother for the decisions she made on behalf of the Student.

The "stay put" rule, as found in 20 U.S.C.A. § 1415 (j), expressly requires that absent an agreement between the parties, during the pendency of any proceedings challenging a child's IEP, the child "shall remain in the then current educational placement of such child." The "stay put" rule "guarantees an injunction that prohibits a school board from removing the child from his or her current placement" during the proceedings." *S.T. v. Howard Cnty. Pub. Sch. Sys.*,



Civil No. JFM-14-00701 (D. Md. Sep 25, 2014). “Among the purposes of the IDEA is to ensure that the rights of children with disabilities and their parents are protected and that disabled children have access to special education and related services. 20 U.S.C.A § 1400(d)(1)(A), (B) (2000).” *Charles County Public Schools*, 35 IDELR 265, MSDE-CHAS-OT-200100364 (SEA MD) (October 2021); *see also*, 20 U.S.C.A. § 1400(d)(1)(A).

The purpose of stay-put is to preserve the last agreed-upon special education services while a due process complaint is pending as a form of injunctive relief so that changes proposed by the IEP team will not go into effect while the parties litigate the issues. The Father misinterprets the facts of this case as applied to the stay put rule, and the stay put rule itself. In this case, as in the *A.B.* decision, the Student was receiving special education services under an IEP when the due process complaint was filed. To deny the Student any special education services when the IEP team identified the Student as needing such services is contrary to the statute and federal regulations. Here, the Father is seeking to revert the Student to a general education curriculum which contradicts the plain meaning of the stay put provision—especially when the appropriate mechanism is revocation of consent when a Parent no longer wants the local education agency to provide special education services. *See* COMAR 13A.05.01.13B(5).<sup>7</sup>

Further, I agree with the MCPS that the Father has not sufficiently set forth a genuine issue as to material facts regarding the injunctive relief which he seeks. As noted in the MCPS’s Motion, the party seeking preliminary injunctive relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary

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<sup>7</sup> The Father sought this injunctive relief before following the Court-ordered process to resolve educational disputes in the ██████ Courts. In this case, there is a process for revoking parental consent that is governed by the ██████ Court orders. As of April 3, 2024, the Father has engaged that process. If the ██████ Court agrees with the Father that the Mother is in contempt and must revoke her consent, the issue will be moot. Likewise, if the ██████ Court rejects the Father’s contempt provision and the Mother’s consent is valid, this requested remedy will not be available.

relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 374 (2008).

The Father has not established that the Student will suffer irreparable harm should he continue to receive special education services pending the outcome of the litigation in the ██████ Court. Instead, the Father alleges that I have the authority to fix “the wrong that took place” with the remedies requested. *See* Opposition, p. 3. While I do have the authority to award broad equitable relief upon a finding of a violation of FAPE,<sup>8</sup> the IDEA’s stay-put provisions are not implicated here.

The Father is seeking a resolution of this matter through litigation in the ██████ Court to determine whether there will be a continuation or termination of the Student’s IEP based on a decision confirming or revoking parental consent. Given the statutory purpose of the IDEA, I agree with the MCPS that there is no public interest in furthering the FAPE goal of the IDEA by enjoining the MCPS from implementing the Student’s IEP for an indefinite period of time while the litigation is continuing in the ██████ Court.

Accordingly, I do not find that the Father has set forth any genuine issues of material facts regarding injunctive relief. As such, I find that there are no genuine issues of material facts with respect to the elements of injunctive relief and find that the MCPS is entitled to judgment as a matter of law on this issue. COMAR 28.02.10.12D

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<sup>8</sup> The IDEA provides authority to “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(e)(2). Under this provision, ‘equitable considerations are relevant in fashioning relief,’ *Burlington*, 471 U.S., at 374, 105 S. Ct., at 2005, and the court enjoys ‘broad discretion’ in so doing, *id.*, at 369, 105 S.Ct., at 2002. Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required.” *Florence Cnty. Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7, 15–16 (1993).

## II. Jurisdiction

The MCPS argued that there is no dispute of any material fact and that it is entitled to judgement as a matter of law because the Father has not shown that I have subject matter jurisdiction to preside over a claim that involves consideration and interpretation of issues beyond special education issues. *See* Motion, pp. 9-11. The Father contended that the pending matter in ██████████ Court seeks accountability for the Mother's actions for allegedly violating the custody order, while the Complaint seeks to hold the MCPS accountable for allegedly violating the Student's and the Father's rights under the IDEA. *See* Opposition, p. 4-5.

Under Maryland law and the regulations of the IDEA, parents may initiate a hearing on the identification, evaluation, educational placement, or provision of a Free Appropriate Public Education (FAPE) for a child with a disability. *See* COMAR §13A.05.01.15 (C). "Parent" is defined in the federal regulations:

(a) Parent means—

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with § 300.519 or section 639(a)(5) of the Act.

(b)(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to

make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

7 C.F.R.<sup>9</sup> § 300.30 (2023).

Parents are afforded certain procedural safeguards under the IDEA including the ability to consent to the initiation of special education services (34 C.F.R. §300.300(b)(1) (2023)) and to revoke such consent (34 C.F.R. §300.300(b)(4) (2023)). Generally, the law presumes that biological parents retain all educational decision-making authority for their child, unless otherwise revoked or restricted by a court of law. 7 C.F.R. §300.30(b)(1); *see also Navin v. Park Ridge Sch. Dist. 64*, 270 F.3d 1147, 1149 (7th Cir. 2001) (“[N]othing in the IDEA overrides states’ allocation of [parental] authority as part of a custody determination.”) Typically, if there is tiebreaking authority or sole physical custody in a court order, the tiebreaking parent or custodial parent has the final say with respect to educational decisions. *Id.*<sup>10</sup> But when parents have equal rights, the language of the divorce and/or custody agreement controls. *See Taylor v. Vermont Department of Education*, 313 F.3d 768 (2<sup>nd</sup> Cir. 2002). In *Taylor*, the non-custodial mother appealed the dismissal of her IDEA claim based on her not having standing as a natural parent. The Court reviewed with approval the 1987 policy letter of the Department of Education’s Office of Special Education Programs (OSEP) which stated:

The question of which divorced parent should be allowed to perform parental functions under the [IDEA] is not properly a matter for OSEP to decide. Rather, this is a matter for State or local divorce courts. Just as these courts deal with matters of custody, they can appropriately deal with matters related to the responsibility for making educational decisions on behalf of the child. OSEP would not seek to create a rule intruding on the jurisdiction of the courts and State family law in this area.

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<sup>9</sup> Code of Federal Regulations.

<sup>10</sup> The Seventh Circuit explained: “If the [divorce] decree had wiped out all of [the father’s] parental rights, it would have left him with no claim under the IDEA. But this is not what the divorce decree does. The district court did not analyze its language, but it is in the record and shows that [the father] retains some important rights, including the opportunity to be informed about and remain involved in the education of his son. If [the father] and [the mother] disagree about educational decisions, then [the mother’s] view prevails[.]” *Id.*

The Court upheld the dismissal and concluded that there is a strong presumption that issues of domestic relations fall within the traditional sphere of state authority. *Id.*, at 780. The Court concluded that the state has the authority to determine who may make educational decisions on behalf of the child. *Id.*

In this case, the express language of the [REDACTED] Court orders provide that the parents have equal rights with respect to decision making on educational issues and requires the parents of the Student to resolve conflicts through the [REDACTED] Court. The Father has initiated contempt proceedings in the [REDACTED] Court and as of the date of this ruling, the matter is pending.

The pending litigation in the [REDACTED] Court, not the OAH, is the appropriate forum to adjudicate the [REDACTED] family law issue of whether the Father may require the Mother to revoke her consent regarding the Student's eligibility for and receipt of special education services under the IEP. Allowing the [REDACTED] Court to make that decision before adjudicating this Complaint is consistent with Department of Education policy and case law that declares that issues regarding the authority to challenge educational decisions involving the divorced parents of the child are to be resolved in the state courts where the custody matters were initially decided. *See Taylor, supra.*

Until the [REDACTED] Court has made such determination, the issues raised in the Complaint are not ripe. The [REDACTED] Court could rule in favor of the Mother and find she acted properly within the scope of the custody agreement, or it could agree that the Mother did not follow the proper process to obtain mutual agreement for the consent of special education services and find that it was not properly given, and order her, as the Father seeks in his petition, to revoke her consent. If the Parents revoke consent for special education services, then the school cannot implement the IEP, and the specific requested remedies become moot. In either

situation, the Complaint cannot proceed unless and until a decision is made on how to resolve the issue of consent.

In his Opposition, the Father did not set forth any facts, arguments, or legal authority to counter the MCPS' assertion that this tribunal lacks subject matter jurisdiction to hear this matter.<sup>11</sup> Instead, the Father argued that this case differs from the pending contempt case and that he filed this case in order to exhaust administrative remedies. While it may be true that the purposes or expected outcomes of the two matters are different, I find the Father's request for injunctive relief is predicated on the outcome of [REDACTED] Court's decision.

Regarding the Father's argument that he must exhaust administrative remedies, the requested remedies are unrelated to the denial of FAPE and do not implicate the exhaustion requirements under the IDEA. *See Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743, 754 (2017) (The exhaustion rule found in § 1415(l) "hinges on whether a lawsuit seeks relief for the denial of a free appropriate public education."). As noted above, the injunctive relief to stay implementation of the IEP does seek to provide the Student with a FAPE based upon any alleged violation by the MCPS.

Similarly, the other two requested remedies do not serve this purpose either. The reimbursement of attorney's fees makes the prevailing party whole, not the Student. Also, attorney fees are not recoverable in due process hearings before the OAH. Upon appeal to a state or federal court, a court may award "reasonable attorneys' fees" to a parent who is a "prevailing party" in due process or litigation. 20 U.S.C.A. § 1415(i)(3)(B)(i)(I). Also, the Father requested as a remedy that I order a neutral facilitator be appointed for any future IEP meeting. A

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<sup>11</sup> It is not a neutral judge's role "to research the supporting law on behalf of [a party] in order to persuade himself. The judge is not [a party's] law clerk. To do those things is [the party's] burden . . ." *State v. Mason*, 173 Md. App. 414, 429 (2007); *see also Remsburg v. Montgomery*, 376 Md. 568, 584 n. 8 (2003) (duty of a party to present with particularity one's argument).

facilitator may be requested by the parent or the school, however, both parties must agree to participate in the process. There is no cost to the parent or the school. To request a facilitated IEP meeting from the MCPS, the process is started by contacting the MCPS's Conflict Resolution Center of [REDACTED].<sup>12</sup> The Father has not presented any evidence that he has requested a facilitator for any past or future IEP meeting or that the MCPS has refused to participate in a facilitated IEP meeting. Accordingly, this proposed remedy is not ripe for consideration.

As noted in *Fry*, "a court in IDEA litigation may provide a substantive remedy only when it determines that a school has denied a FAPE. Without such a finding, that kind of relief is (once again) unavailable under the Act." *Fry*, at 754 n.7 (internal citation omitted). I appreciate the Student's position that he must exhaust this administrative process; however, I have no authority to interpret the [REDACTED] Court's order regarding tiebreaking authority and who has authority to consent to the provision of special education services in reaching my determination. As persuasively argued by the MCPS, I am without subject matter jurisdiction to do so. Until the [REDACTED] Court has resolved the conflict between the parents, this matter is not ripe for resolution and should be dismissed without prejudice, which would allow the Father to refile should the [REDACTED] Court rule in his favor. *Moore v. Pomory*, 329 Md. 428 (1993).

### **CONCLUSIONS OF LAW**

Upon consideration of the Motion and Opposition, I conclude, as a matter of law, that there are no material facts in dispute regarding (1) whether the Father is entitled to injunctive relief and a stay of the implementation of the IEP, and (2) whether the Office of Administrative

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<sup>12</sup> [https://mdmediation.org/wp-content/uploads/2021/02/IEP\\_FAQ.Feb\\_2021-update.pdf](https://mdmediation.org/wp-content/uploads/2021/02/IEP_FAQ.Feb_2021-update.pdf)

Hearings has subject matter jurisdiction to hear this matter until the question of which parent has authority to make educational decisions regarding consenting to the special education services for the Student has been resolved by the [REDACTED] Court. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365, 374 (2008); 7 C.F.R. § 300.30 (2023); 20 U.S.C.A. § 1400(d)(1)(A), (B); 20 U.S.C.A. § 1415 (j); *Taylor v. Vermont Department of Education*, 313 F.3d 768 (2002); Md. Code Ann., Educ. § 8-413(a)(3), (d)(1) (2022); 34 C.F.R. pt. 300; COMAR 13A.05.01.

I further conclude, as a matter of law, that Montgomery County Public Schools is entitled to summary decision in its favor. COMAR 28.02.01.12D.

**ORDER**

I **ORDER** that the MCPS' Motion for Summary Decision is **GRANTED**;

I further **ORDER** that the February 5, 2024 Due Process Complaint filed by The Father is **DISMISSED** without prejudice;

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

May 23, 2024  
Date Report and Order Issued

Patrick E. Maher  
Administrative Law Judge

PEM/ja  
#211745



## **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) (Supp. 2023). 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:<sup>1</sup>**

[REDACTED]

Pawnee A. Davis, Esquire

[REDACTED]

Craig S. Meuser, Esquire

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> Parties elected to have electronic delivery.

██████████,

STUDENT

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MONTGOMERY COUNTY

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BEFORE PATRICK E. MAHER,

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**FILE EXHIBIT LIST**

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MCPS Ex. 3: Defendant's<sup>1</sup> Motion for Contempt and Enforcement of Legal Custody and Other Relief, ██████████ Court, filed ██████████ (pp. 1-10)

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<sup>1</sup> The Father is the listed Defendant in the Contempt proceeding pending before the D.C. Superior Court.