

Program (IEP) with sufficient supports and services to allow the Student to graduate in June 2024. The Parent's requested remedy is for MCPS to extend the Student's learning plan to a five-year plan, allow the Student to take "NOT for credit" courses through the [REDACTED] [REDACTED] ([REDACTED]) for the 2023-2024 school year, take all courses "NOT for credit" except English 12 (a required course for graduation) for the 2024-2025 school year, allow the Student to attend some clubs in-person at [REDACTED] for the 2023-2024 and 2024-2025 school years, eliminate attendance requirements and monitoring, and amend the graduation date to June 2025.

On March 22, 2024, MCPS filed a Motion to Dismiss, or, in the Alternative, Motion for Summary Decision (Motion). On April 8, 2024, the Parent filed a Response to the MCPS' Motion (Response).

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); COMAR 28.02.01.

ISSUES

Should the Student's Complaint be dismissed as moot?

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

SUMMARY OF THE EVIDENCE

Exhibits

MCPS attached the following exhibits to its Motion:

MCPS Ex. A Affidavit of [REDACTED], Acting Dean of [REDACTED], undated

MCPS Ex. B IEP, February 9, 2024

- MCPS Ex. C Annual Secondary School Performance Record, March 15, 2024
- MCPS Ex. D Prior Written Notice, February 28, 2023
- MCPS Ex. E Prior Written Notice, August 31, 2023
- MCPS Ex. F Letter from MCPS to the Parent, October 25, 2023
- MCPS Ex. G School Attendance Record, March 15, 2024
- MCPS Ex. H Email from the Parent to MCPS staff, October 19, 2023
- MCPS Ex. I Prior Written Notice, October 31, 2023
- MCPS Ex. J Report of the School Psychologist, January 4, 2024
- MCPS Ex. K Prior Written Notice, February 9, 2024
- MCPS Ex. L Email from [REDACTED], MCPS, to the Parent, February 27, 2024
- MCPS Ex. M Application for Interim Instructional Services, with Qualified Physical Health Condition ONLY, February 28, 2024
- MCPS Ex. N Email from the Parent to [REDACTED], MCPS, March 11, 2024
- MCPS Ex. O IIS Medical Report MCPS Form 311-15B IIS Supplement, March 11, 2024
- MCPS Ex. P Email from [REDACTED], MCPS, to the Parent, March 15, 2024
- MCPS Ex. Q Case Report, Gorski v. Lynchburg School Board, 875 F.2d 315 (4th Cir. 1989) (unpublished)

The Parent attached the following exhibits to his Response:

- P. Ex. 1 Affidavit of [REDACTED], Parent, April 8, 2024
- P. Ex. 2 Resume of [REDACTED], undated; Professional letters for [REDACTED], January 19, 1972, February 26, 1975, and December 23, 1993; Memorandum for Certain Graduate Record Examinations Examinees ([REDACTED]), November 22, 1978; Honorary Degrees for [REDACTED], April 27, 1968, and July 1, 1981
- P. Ex. 3 Prior Written Notice Facts Summaries by School of IEP Meetings, Summary of MCPS IEP Notes with Some Comments by Father, IEP Meetings: February 28, 2023; August 31, 2023; and February 6, 2024

UNDISPUTED FACTS

The following facts are undisputed:

1. The Student is identified by MCPS as a student eligible for special education and related services under the IDEA. He has disabilities, including [REDACTED] and [REDACTED], [REDACTED].

2. Since August 2021, the Student has attended [REDACTED], a MCPS virtual school, and has received special education and related services under an IEP.

3. The Student completed the 2022-2023 school year with very few absences, achieving mostly As and Bs in his classes. His weighted Grade Point Average was 3.92. He was on track to graduate with a high school diploma in June 2024, requiring only one English 12 course and 21 SSL² hours to meet graduation requirements.

4. In August 2023, the Parent raised concerns regarding the Student's health and his ability to complete the twelfth-grade curriculum, which he explained as follows:

[The Parent] expected [the Student] to eat more over the summer in order to put on more weight. [The Student] suffers from [REDACTED] and during the school year does not eat as much as he should due to spending time in class and completing school work.

...

[The Student] has been using a treatment for the last 8 years that is rare in the U.S. and has been successful. Since the treatment is going very well [the Parent] does not want to change it. With the treatment, he has to follow a very specific and complicated diet as well as eat from a pump for months at a time. This causes him to feel full very quickly and needs to eat almost all day as a result. The losing weight issue is not a new problem and he normally compensates by using a pump when off from school. But this is more difficult the older he gets because of his size. He didn't gain any weight this summer and [the Parent] is worried him not growing enough before he stops growing. [The Parent] shared that he

² Student Service Learning.

needs a variety of supplements as well. This all [] makes it difficult to go to school because he is spending all his time in school. [The Parent] shared that he would like [the Student] to take an extra year and not graduate this year because he believes being in school would harm him.

(MCPS Ex. E). He requested that the Student be permitted to attend classes not for credit during the 2023-2024 school year, complete the twelfth-grade coursework during the 2024-2025 school year, and amend his graduation date to June 2025. MCPS denied the Parent's request. The Parent also stated that "he will homeschool if [MCPS] den[ies] his request." (*Id.*).

5. On September 29, 2023, the Parent requested an Administrative Review of MCPS' denial of his request to postpone the Student's coursework and graduation date.

6. The Student failed to attend the majority of his classes during the first several months of the 2023-2024 school year. MCPS staff notified the Parent of each absence and informed him of the importance of regular school attendance.

7. The Parent did not submit any documentation from the Student's treating healthcare providers to excuse the Student's absences. Instead, by emails to MCPS staff, he offered his own opinions based on his experience as a [REDACTED] with personal knowledge of the Student's continuing health concerns to explain the Student's inability to attend his virtual classes during the 2023-2024 school year.

8. On October 19, 2023, the Parent sent an email to the [REDACTED] Dean and the Student's teachers asking them to stop recording attendance and assigning grades, stating:

Please stop sending emails about not attending class. Do not mark absent. Do not send people to investigate me at my house. Do not use grades for [the Student].

Some teachers are apparently grading [the Student] in part. Some teachers are making comments about [the Student's] performance and sending me emails.

MCPS agreed that [the Student] does not need to take classes for grading. So, all classes should not be graded. He may attend some classes randomly for extra learning. He will take for credit English 12 in 2024-25.

[The Student] is not attending courses for grading. I requested school to withdraw him from all courses and NOT be graded in any course.

...

[The Student] is not attending for credit any courses/class this year. We [the Parent and Student] requested it from MCPS. We cannot change the registration. We asked the school and counselor to change it. Please do not grade [the Student]. Do not mark absent. We have filed an administrative appeal and may file a grievance and request for reasonable accommodation under the American with Disabilities Act (ADA). Essentially, for several reasons, [the Student] cannot attend a course for credit every day of class and complete homework this year. He can at random times attend some classes. We wrote to MCPS our request and the reasons (long and confidential to explain here), including not able to consistently attend a course and do homework. The plan is to graduate in 2025 instead of 2024. We made requests as a reasonable accommodation/modification (RAM) under the American with Disabilities Act (ADA), 504 rehab act and other federal laws, etc. However, [the Student] did not want to completely withdraw as a student from MCPS for several reasons. In particular, [the Student] wanted to attend some days of virtual academy, a few classes when he could.

Meanwhile, [the Student] may attend virtual café some days, and may attend some classes to maintain the mind. . . .

(MCP Ex. H).

9. On October 25, 2023, MCPS informed the Parent that, after meeting with the Parent, reviewing the Student's records, and consulting with MCPS staff, it determined that the denial of the Parent's request to postpone course completion and the graduation date was appropriate and the circumstances did not support a five-year educational plan or postponement of the Student's graduation date. It further informed, "I want to remind you that attendance is mandatory for students under the age of 18, and MCPS will take appropriate steps if [the Student] continues to miss classes." (MCPS Ex. F).

10. On October 31, 2023, in response to the Parent's request, the IEP team agreed to conduct updated cognitive assessments, which were completed in January 2024.

11. On February 6, 2024, the Parent filed the Complaint with the OAH on the Student's behalf, raising the following claims³:

Did MCPS fail to provide the Student with a FAPE for the 2023-2024 school year by denying the Parent's request to develop a five-year educational plan and amend the Student's graduation date to June 2025?

Did MCPS fail to develop an appropriate IEP based on the Student's unique needs with sufficient supports and services to allow the Student to meet the requirements for a June 2024 graduation?

Prehearing Conference Report and Order, March 26, 2024.

12. The Parent's requested remedy was for MCPS to extend the Student's learning plan to a five-year plan, allow the Student to take "NOT for credit" courses through the [REDACTED] for the 2023-2024 school year, take all courses "NOT for credit" except English 12 (a required course for graduation) for the 2024-2025 school year, allow the Student to attend some clubs in-person at [REDACTED] for the 2023-2024 and 2024-2025 school years, eliminate attendance requirements and monitoring, and amend the graduation date to June 2025.

13. In February 2024, the IEP team met to review the Student's IEP and his lack of progress on IEP goals.

14. As of February 9, 2024, the Student had earned failing grades in all of his classes due to his absences and missing work.

15. The school-based IEP team members proposed changes to the Student's IEP to allow the Student to meet all requirements for a June 2024 graduation, including: additional supplementary aids such as monitoring independent work, reduced workload, and frequent

³ These issues were confirmed by the parties at the prehearing conference. The Parent asserted that he believed there were other issues properly before the OAH and stated that he would file an amended complaint. On March 27, 2024, the Parent filed a request for leave to amend the Complaint and Amended Due Process Complaint. The Amended Complaint repeated the same issues as were previously raised, but provided more detail and added a claim regarding MCPS's grading of the Student during the 2023-2024 school year. MCPS opposed the request and I denied it after hearing arguments at the motions hearing.

breaks; updating the Student's attention and management goal; adding a co-taught or supported English class; and abbreviating the Student's class schedule to only three classes.

16. The Parent again proposed allowing the Student to complete his twelfth-grade course work under his IEP during the 2024-2025 school year and postponing the Student's graduation date to June 2025, which the school-based IEP team rejected, stating: "The team believes with supports in place that [the Student] can access the curriculum and graduate at the end of the 23/24 school year." (MCPS Ex. K).

17. On February 27, 2024, MCPS sent an email to the Parent explaining the IEP team's proposed changes to the IEP and how these changes would impact the Student's current schedule, permitting the Student to meet the graduation requirements for a 2024 graduation.

18. On February 29, 2024, the Parent submitted an Application for Interim Instructional Services (IIS), with Qualified Physical Health Condition ONLY. He completed both the parent and physician portions of the application.

19. On March 11, 2024, MCPS sent an email to the Parent requesting additional information on the medical verification portion of the IIS.

20. On March 15, 2025, MCPS denied the Application for IIS based on the following reasons:

Verification – Disallowed verifier – verifying medical provider is not treating the applicant for the diagnosed condition and/or has not provided the appropriate documentation to verify clinical treatment of the student.

Missing – Critical parts of the application are unclear, incomplete, missing.
The current symptoms preventing [the Student] from accessing his virtual classes at the [REDACTED] are not clear or verified through medical documentation.

(MCPS Ex. P).

21. On April 3, 2024, MCPS sent an email to the Parent indicating that it had not processed the Parent's request to home-school the Student based on the Parent's direction to hold the application and asking if the Parent was interested in home-schooling at that time. On that same date, the Parent responded and confirmed his interest, and MCPS approved the Parent's request to move the Student to a home-school program and withdrew the Student from the [REDACTED] and MCPS.

22. The Student no longer receives special education and related services under an IEP.

DISCUSSION

MCPS contends that the Complaint should be dismissed for several reasons. First, it claims that the Complaint is moot based on the Parent's decision to withdraw the Student from MCPS and the [REDACTED] and pursue home instruction. Under this circumstance, it argues that the Parent has provided the Student with the remedy requested in the Complaint since the Student is not eligible to graduate in June 2024 and the Parent may reenroll the Student in a county public school and, if requirements are met, graduate in June 2025. Second, it claims that the Complaint should be dismissed because the Parent has failed to state a claim for which relief may be granted under the IDEA. Specifically, it states that the Parent's request to allow the Student to audit his classes for the remainder of the 2023-2024 school year and postpone the Student's graduation date to June 2025, does not involve a special education issue under the IDEA. At the motions hearing, MCPS also argued that the issue concerning the Student's grades is not justiciable under the IDEA.

The Parent argues that all issues stated in the Complaint and Amended Complaint are covered under the IDEA since they involve the Student's education plan,⁴ which is set forth in his IEP.⁵ As such, he maintains that the issues before me should include whether MCPS properly denied his request to postpone the Student's courses and graduation date to the 2024-2025 school year, whether MCPS developed an appropriate IEP based on the Student's unique needs, and whether MCPS improperly assigned failing grades to the Student based on absences and missing assignments for the 2023-2024 school year. He also claims that a hearing on the merits is necessary because material facts are in dispute such as whether the Parent requested that the Student be permitted to audit English 12⁶ and whether a FAPE was provided to the Student.

As the proponent of the Motion, MCPS bears the burden to prove by a preponderance of the evidence that the Complaint and Order should be dismissed. COMAR 28.02.01.21K(1), (3). To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002). For the reasons set forth, I conclude that the Complaint should be dismissed as moot and the Parent's claims regarding the denial of his request to audit classes and eliminate grading requirements are not justiciable under the IDEA.

The OAH's Rules of Procedure allow a case to be resolved on various motions. COMAR 28.02.01.12. The rules also allow an administrative law judge (ALJ) to "take action to avoid

⁴ The issue regarding the Student's failing grades was clearly raised for the first time at the motions hearing. The Parent argued that MCPS should remove from the Student's record the failing grades that the Student received based on his absences and missing work during the 2023-2024 school year. He explained that the Student should have been excused from attendance requirements and grades based on the Student's health concerns and the Parent's request to allow the Student to audit his classes, complete the twelfth-grade coursework during the 2024-2025 school year, and postpone the graduation date to June 2025.

⁵ The Parent does not complain about the content of the IEP. He only objects to MCPS' denial of his request to extend the learning plan to a five-year plan and permit the Student to graduate in June 2025.

⁶ At the motions hearing, MCPS agreed that the Parent's request was to audit classes taken during the 2023-2024 school year and take his required English class for credit during the 2024-2025 school year. Thus, there is no dispute of fact on this contention.

unnecessary delay in the disposition of the proceedings.” COMAR 28.02.01.11(2). The OAH’s Rules of Procedure provide for consideration of a motion to dismiss under COMAR 28.02.01.12C, which provides as follows:

C. Motion to Dismiss: Upon motion, the ALJ may issue a proposed or final decision dismissing an initial pleading that fails to state a claim for which relief may be granted.

In considering a motion to dismiss, an ALJ may not look beyond the “initial pleading,” defined by COMAR 28.02.01.02B(9) as “a notice of agency action, a request for a hearing on an agency action, or any other transmittal that initiates a proceeding scheduled by the Office.” The initial pleadings are the due process complaint and the MCPS response.

The OAH Rules of Procedure further provide for consideration of a motion for summary decision under COMAR 28.02.01.12D, 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.

(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.

Under this regulation, I may grant a motion for summary decision and dismiss the hearing request 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).⁷

If the moving party meets their initial burden, the opposing party must come forward with admissible evidence that establishes a genuine dispute of material fact, after all reasonable inferences are drawn in the opposing party’s favor. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737-39 (1993); *see also Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991) (stating that a judge must “draw all justifiable inferences in favor of the nonmoving party including questions of credibility and of the weight to be accorded particular evidence”). 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)).

The OAH procedural regulations do not require a party to support an answer to a motion for summary decision with an affidavit, but the regulations do require a response to identify the

⁷ 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.

material facts that are disputed. COMAR 28.02.02.12D(3). Only a genuine dispute as to a material fact is relevant in opposition to a motion for summary decision. *Seaboard Sur. Co. v. Kline, Inc.*, 91 Md. App. 236, 242 (1992). A general denial is not sufficient to establish a genuine dispute of material fact that defeats a motion for summary decision. *Alamo Trailer Sales, Inc. v. Howard Cnty. Metro. Comm'n*, 243 Md. 666, 671 (1966). 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) (*quoting Talley v. Dep’t of Corr.*, 230 Md. 22, 28-29 (1962)).

The Parent’s Response does not raise disputes of material fact.

The Parent argues that a hearing on the merits is necessary because there are disputes of material facts. Specifically, he notes that MCPS “incorrectly alleges Parent requested student audit English 12 instead of taking it for credit.” (Response at p. 1). He further argues that he did object to the IEP and disputes whether MCPS provided a FAPE when it denied his request to postpone the Student’s coursework and graduation date. In support, he points to his twenty-two- page affidavit with 197 statements.

Based on my review of the Motion, response, and attachments, I conclude that there are no disputes of material facts. Many of the Parent’s claims of disputed facts involve legal conclusions regarding the ultimate issue before me such as whether MCPS denied the Student a FAPE. Indeed, the Parent makes many general assertions in his affidavit that may more appropriately be considered arguments on the merits of the case. For instance, the Parent states:

The School’s FAPE and IEP is a fantasy, an illusion, like an IEP to teach [the Student] to fly like a bird, or teaching a student who barely knows arithmetic and fails at Algebra how to complete Calculus. School claims that by providing instruction/education, they are providing a FAPE. The facts are that [the Student] did not attend, the school graded him with E’s, so he did not receive a FAPE.

(P. Ex. 1 at p. 9-10). Further, the Parent generally disputes inferences that MCPS has drawn from documentary evidence attached to its Motion and argues that the attachments are not relevant to the Motion. Without any documentary support, he argues that his statements in his Affidavit are sufficient to require denial of the motion for summary decision. I am not persuaded by this argument.

In his Response, the Parent does not dispute any of the underlying material facts alleged by MCPS. He agrees that he requested that the Student complete his required English course and any other graduation requirements during the 2024-2025 school year and postpone graduation to June 2025, a request denied by MCPS; that the Student failed to attend classes during the 2023-2024 school year even though his request to audit classes and eliminate attendance requirements was denied; that the Student did not meet graduation requirements to permit graduation in June 2024; and that the Parent elected to withdraw the Student from MCPS and the [REDACTED] and to pursue home instruction in April 2024. The Parent also agrees that he may now obtain the relief he requested when he filed the Complaint in February by reenrolling the Student in a public school for the 2024-2025 school year, allowing the Student to graduate in 2025 if he meets the requirements for graduation. Based on the undisputed evidence, I conclude that dismissal of the Parent's Complaint is appropriate under the circumstances of this case.

The Student's Due Process Complaint is moot and MCPS is entitled to summary decision in its favor as a matter of law.

MCPS maintains that the Parent's actions have rendered the Complaint moot. It argues that the Parent's decision to withdraw the Student from MCPS and the [REDACTED] and pursue home instruction in April 2024 prevents the Student from meeting the eligibility requirements for a June 2024 graduation and provides the Parent with his requested remedy because the Parent may reenroll the Student at MCPS for the 2024-2025 school year. Under this circumstance, the Student may graduate in 2025 if he meets all graduation requirements.

The Supreme Court of Maryland has held “[a] case is moot when there is no longer any existing controversy between the parties at the time that the case is before the court, or when the court can no longer fashion an effective remedy.” *Dept. of Human Res. v. Roth*, 398 Md. 137, 143 (2007) (quoting *In re Kaela C.*, 394 Md. 432, 452 (2006)). Accord *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 prehearing conference and at the motions hearing, the Parent confirmed the issues raised in the Complaint and his requested relief. He agreed that the requested remedy was to extend the Student’s learning plan to a five-year plan, allow the Student to take “NOT for credit” courses through the [REDACTED] for the 2023-2024 school year, take all courses “NOT for credit” except English 12 (a required course for graduation) during the 2024-2025 school year, allow the Student to attend some clubs in-person at [REDACTED] for the 2023-2024 and 2024-2025 school years, eliminate attendance requirements and monitoring, and amend the graduation date to June 2025.

On April 3, 2024, the Parent withdrew the Student from MCPS and the [REDACTED] and elected to provide home instruction for the remainder of the 2023-2024 school year. At that time, the Student had not earned his remaining English credit or completed his SSL hours and had not yet met all requirements for graduation. See COMAR 13A.03.02.03 (providing that, before a Maryland High School Diploma may be awarded to a student, the student must “be enrolled in a Maryland public school system” and have met certain requirements, including earning four credits in English). Under this circumstance, the Student is not eligible to graduate in June 2024. However, the Parent may reenroll the Student in a county public school for the 2024-2025 school

year, and if the Student meets the graduation requirements, the Student may graduate in June 2025. In effect, the Parent has created a circumstance that provides the Student with the relief he requested when he filed the Complaint, rendering the Complaint moot.

To the extent that the Parent now argues that a decision on the merits is necessary to determine whether MCPS improperly continued to monitor attendance and grade the Student during the 2023-2024 school year or should have granted the Parent's request to home-school the Student sooner,⁸ these issues were not raised in the original Complaint and are not properly before me.

The Student's request to audit classes during the 2023-2024 school year is not justiciable under the IDEA.

The Parent argues that MCPS improperly denied his request for the Student to audit his 2023-2024 classes and for teachers to stop taking attendance and grading the Student. MCPS contends that this issue does not fall within the purview of the IDEA. I agree with MCPS.

The identification, evaluation, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482; 34 C.F.R. pt. 300; Md. Code Ann., Educ. §§ 8-401 through 8-417; COMAR 13A.05.01. The IDEA requires "that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living." 20 U.S.C.A. § 1400(d)(1)(A); *see also* Md. Code Ann., § 8-403(a).

A FAPE is, in part, furnished through the development and implementation of an IEP for each disabled child. *Andrew F. v. Douglas County School District*, 137 S. Ct. 988, 999 (2017);

⁸ At the motions hearing, the Parent argued that MCPS should have granted the Parent's request to home-school the Student when he first requested it. The undisputed evidence is unclear, however, if or when the Parent made such a request. The documents presented at the motions hearing suggest that the Parent informed MCPS that he would pursue home instruction if MCPS denied his request in September, but did not actually pursue this option until April 2024. On an unknown date, the Parent submitted an application to be considered for home instruction. At that time, he requested that the application be held. In February 2024, the Parent continued to request that the Student attend classes at the [REDACTED] and attend the virtual café during the 2023-2024 school year.

Bd. of Educ. of the Hendrik Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 181-82 (1982).

COMAR 13A.05.01.09 defines an IEP and outlines the required content of an IEP as a written description of the special education needs of the student and the special education and related services to be provided to meet those needs. The goals, objectives, activities, and materials must be adapted to the needs, interests, and abilities of each student. 20 U.S.C.A. § 1414(d).

The Parent's concerns regarding MCPS' denial of his request for the Student to audit 2023-2024 classes and to be exempt from grades and attendance requirements do not involve the identification, evaluation, or placement of the Student. When the Parent requested that the Student be permitted to take his virtual classes at the [REDACTED] "not for credit," he did not request a change in placement or a change to his IEP.⁹ Indeed, at the time of the Parent's request, the Student was placed in the [REDACTED] program. The Parent requested that the Student be permitted to continue attending his virtual classes at the [REDACTED], but be permitted to attend when he wanted without any consequence for absences or missing work. Attendance requirements and information on how the Student would be graded are not described in the Student's IEP. These issues are not covered by the IDEA. Accordingly, on this issue, the Parent's Complaint fails to state a claim upon which relief may be granted and MCPS is entitled to summary decision in its favor as a matter of law.

CONCLUSIONS OF LAW

Upon consideration of the Motion and Response, I conclude, as a matter of law, that the Parent's Due Process Complaint is moot because the Student has obtained the requested relief and shall be dismissed. *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.

⁹ The Parent requested a change in placement for the Student when he applied to the [REDACTED] program, which was denied by MCPS. The Parent did not challenge this decision in his Complaint.

I further conclude, as a matter of law, that the Parent's claim regarding MCPS' denial of his request for the Student to audit his 2023-2024 classes without attendance or grading requirements fails to state a claim upon which relief may be granted under the IDEA. 20 U.S.C.A. § 1415(b)(6)(A); 34 C.F.R. pt. 300; Md. Code Ann., Educ. § 8-413(a)(3), (d)(1) (2022); 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 MCPS' Motion for Summary Decision is **GRANTED**;

The February 27, 2024 Due Process Complaint filed by the Parent on behalf of the Student is **DISMISSED**;

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

April 22, 2024
Date Ruling Mailed

Michelle W. Cole
Administrative Law Judge

MWC/dlm
#211391

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 & Emailed To:

[REDACTED]

Emily B. Rachlin, Esquire

[REDACTED]

[REDACTED]

[REDACTED]

████████████████████,

STUDENT

v.

MONTGOMERY COUNTY

PUBLIC SCHOOLS

BEFORE MICHELLE W. COLE,

AN ADMINISTRATIVE LAW JUDGE

OF THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-MONT-OT-24-03645

FILE EXHIBIT LIST

MCPS attached the following exhibits to its Motion:

MCPS Ex. A Affidavit of ██████████, Acting Dean of ██████████, undated

MCPS Ex. B IEP, February 9, 2024

MCPS Ex. C Annual Secondary School Performance Record, March 15, 2024

MCPS Ex. D Prior Written Notice, February 28, 2023

MCPS Ex. E Prior Written Notice, August 31, 2023

MCPS Ex. F Letter from MCPS to the Parent, October 25, 2023

MCPS Ex. G School Attendance Record, March 15, 2024

MCPS Ex. H Email from the Parent to MCPS staff, October 19, 2023

MCPS Ex. I Prior Written Notice, October 31, 2023

MCPS Ex. J Report of the School Psychologist, January 4, 2024

MCPS Ex. K Prior Written Notice, February 9, 2024

MCPS Ex. L Email from ██████████, MCPS, to the Parent, February 27, 2024

MCPS Ex. M Application for Interim Instructional Services, with Qualified Physical Health Condition ONLY, February 28, 2024

MCPS Ex. N Email from the Parent to ██████████, MCPS, March 11, 2024

MCPS Ex. O ██████████ Report MCPS Form 311-15B IIS Supplement, March 11, 2024

MCPS Ex. P Email from ██████████, MCPS, to the Parent, March 15, 2024

MCPS Ex. Q Case Report, Gorski v. Lynchburg School Board, 875 F.2d 315 (4th Cir. 1989)
(unpublished)

The Parent attached the following exhibits to his Response:

- P. Ex. 1 Affidavit of [REDACTED], Parent, April 8, 2024
- P. Ex. 2 Resume of [REDACTED], undated; Professional letters for [REDACTED],
January 19, 1972, February 26, 1975, and December 23, 1993; Memorandum for
Certain Graduate Record Examinations Examinees ([REDACTED]), November
22, 1978; Honorary Degrees for [REDACTED], April 27, 1968, and July 1, 1981
- P. Ex. Prior Written Notice Facts Summaries by School of IEP Meetings, Summary of
MCPS IEP Notes with Some Comments by Father, IEP Meetings: February 28,
2023; August 31, 2023; and February 6, 2024