

**MONTGOMERY COUNTY PUBLIC
SCHOOLS**

v.

██████████,

PARENT,

ON BEHALF OF ██████████,

STUDENT

**BEFORE DENISE O. SHAFFER,
AN ADMINISTRATIVE LAW JUDGE
OF THE MARYLAND OFFICE
OF ADMINISTRATIVE HEARINGS
OAH No.: MSDE-MONT-OT-24-07785**

DECISION

STATEMENT OF THE CASE
ISSUES
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

On December 19, 2024, the Montgomery County Public School (MCPS) completed a psychological reevaluation of ██████████, Student. Following that assessment, ██████████, Parent, requested an Independent Educational Evaluation (IEE). On March 20, 2024, the MCPS filed a Due Process Complaint with the Office of Administrative Hearings (OAH) requesting a hearing to show that its psychological reevaluation of the Student was appropriate and that the Parent did not have a right to an IEE at public expense under the Individuals with Disabilities Education Act (IDEA).¹

¹ 20 U.S.C.A. § 1415(f)(1)(A) (2017).

On April 4, 2024, I held a prehearing conference (Conference) by Webex. The Parent² attended the Conference. The MCPS and its representative also attended. At the Conference, the parties and I discussed the timeframe for issuing this decision.

I advised the parties of the federal forty-five-day timeline for issuing a decision:

The public agency must ensure that not later than 45 days after the expiration of the [30-day resolution] period under § 300.510(b), or the adjusted [resolution] time periods described in § 300.510(c)—

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.³

The forty-five-day timeline ordinarily begins to run at the end of a thirty-day resolution period triggered by the filing of a due process complaint.⁴

In this case, there was no resolution period as contemplated in 34 C.F.R. §§ 300.510(b) and (c).⁵ Accordingly, under the regulatory timeline, the decision in this case normally would be due on May 3, 2024, which is forty-five days after the MCPS filed the Complaint.⁶ However, the regulations authorize me to grant a specific extension of time at the request of either party.⁷ In this case, the parties jointly requested an extension.

The first day counsel was available for hearing was April 27, 2024,⁸ and [REDACTED] was out of the country from April 27 through May 22, 2024.⁹

² [REDACTED] was accompanied by her mother, the Student's grandmother, [REDACTED].

³ 34 C.F.R. § 300.515(a).

⁴ *Id.* § 300.510(b)(2).

⁵ *See* COMAR 13A.05.01.15C(11)(d)(iii).

⁶ 34 C.F.R. § 300.515(a). Forty-five days after March 20, 2024 is Saturday, May 4, 2024. According to OAH policy, a special education decision that would be due on a weekend or holiday must be issued on the preceding business day in order to be timely issued.

⁷ *Id.* § 300.515(c).

⁸ Ms. Rachlin had the following conflicts: April 16, 18, 19, and 25 – IEP meetings; April 17 – off-site training; April 22 and 23 – scheduled leave; and April 24 and 26 – due process hearings.

⁹ [REDACTED] agreed to forward her travel itinerary to the OAH to document her absence from the country.

Accordingly, we reviewed specific dates and scheduled the hearing for the earliest date that would allow ██████████ to participate in hearing preparation and the five-day disclosure.¹⁰ The hearing was scheduled for May 29 and 30, 2024 beginning at 9:30 a.m. each day. For the reasons discussed above, and based on the parties' joint request for an extension of the forty-five-day timeframe, I found good cause to extend the timelines and agreed to issue a decision by June 28, 2024.

I held the hearing on May 29, 2024, beginning at 9:30 a.m., and the hearing concluded on that date. Emily Rachlin, Esquire, represented the MCPS. The Parent did not appear. After waiting for 15 minutes, I determined that the Parent had notice of the hearing and proceeded in her absence. The MCPS made a motion to dismiss and requested that I enter an Order, finding that the Parent's failure to participate in the hearing was a de facto withdrawal of her request for an IEE. I denied that request and held the hearing.¹¹

That same day, at approximately 2:30 p.m., the OAH received a fax from the Parent stating that she "was under the impression" that the hearing was scheduled for 3:00 p.m. The Parent requested that the hearing be rescheduled so that she could attend. The Parent did not copy the MCPS on her request. On May 30, 2024, Ms. Alexander, my administrative assistant, forwarded the faxed request to Ms. Rachlin. On June 5, 2024, Ms. Rachlin responded on behalf of the MCPS and opposed the request to reopen the hearing. For the reason stated below, I deny the request to reopen the hearing.

¹⁰ I advised ██████████ and ██████████ that ██████████ could not represent the Parent during the due process hearing because she is not an attorney. ██████████ explained that she planned to retain an attorney, but that ██████████ was an important resource for herself and any attorney to prepare for the hearing.

¹¹ I set out the basis for my ruling on the record. *See* COMAR 28.02.01.23A.

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.¹²

ISSUES

1. Should the Parent's request to reopen the hearing be granted?
2. Did the MCPS conduct an appropriate psychological assessment of the Student?
3. If not, should the MCPS be required to pay for an IEE for the Student?

SUMMARY OF THE EVIDENCE

I admitted the following MCPS exhibits:

- | | |
|------------|---|
| MCPS Ex. 1 | January 11, 2024, Individualized Education Program (IEP) |
| MCPS Ex. 2 | February 27, 2024, Prior Written Notice |
| MCPS Ex. 3 | December 19, 2023, Reevaluation Report of School Psychologist |
| MCPS Ex. 4 | Resume of [REDACTED], School Psychologist |
| MCPS Ex. 5 | Resume of [REDACTED], School Psychologist |

Testimony

The MCPS presented the following witnesses who were accepted as experts on school psychology:

- [REDACTED]¹³ School Psychologist
- [REDACTED], School Psychologist

¹² Educ. § 8-413(e)(1) (Supp. 2023); Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

¹³ [REDACTED]

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. On April 4, 2024, the parties participated in a prehearing conference. At that time, the parties agreed to hold the hearing on May 29 and 30, 2024, beginning at 9:30 a.m. each day.

2. On April 9, 2024, I issued a Prehearing Conference Report and Order (PCR), which contained the following sections:

Hearing Dates

The hearing will convene on **Wednesday, May 29, 2024, and continue on Thursday, May 30, 2024, starting at 9:30 a.m. each day.** The hearing shall be held remotely using the Webex videoconferencing platform (Webex). COMAR 28.02.01.20B(1)(b). The OAH will issue a Notice of Remote Hearing that includes instructions on accessing the Webex platform for the hearing.

Discovery

In conformity with the federal five-day disclosure rule, the parties shall exchange paper copies of all exhibits and a list of witnesses they expect to offer at the hearing by **May 21, 2024.** 34 C.F.R. § 300.512. A party may prohibit the introduction of evidence that is not timely exchanged by the opposing party. *Id.* § 300.512(a)(3). If a party either withholds from production or redacts all or part of any relevant document based on an alleged privilege, that party shall identify the document/s or portion/s of the document/s withheld and the basis for the alleged privilege.

Corrections

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 five calendar days after the date below.

3. On April 17, 2024, the OAH sent a hearing notice to the parties. The hearing notice stated:

THIS IS TO ADVISE YOU THAT A REMOTE HEARING IN THE ABOVE REFERENCED CASE HAS BEEN SCHEDULED FOR : **Wednesday, May 29, 2024 AND Thursday, May 30, 2024 AT 9:30 AM VIA Webex (DS), Go to <http://oah.webex.com> Meeting No. [REDACTED], or Call 1 [REDACTED].**

Unless you have withdrawn your appeal, waived your appearance at the hearing (if available), or obtained a postponement, FAILURE TO APPEAR MAY RESULT IN DISMISSAL OF YOUR CASE OR A DECISION AGAINST YOU.

4. The Parent did not identify witnesses or submit exhibits by the May 21, 2024 deadline in the PCR. On May 21, 2024, the MCPS served copies of its exhibits and its witness list on the Parent.

5. The Student, who turned eight years old in [REDACTED] 2024, has been receiving special education and related services from the MCPS since June 2022 as a student with a developmental delay.

6. The Student could only remain coded as a student with a developmental delay until she turned eight years old, after which she would age out of this disability code.

7. In the fall of 2023, when the Student was in the second grade, the Student's IEP team met and determined that the Student required updated formal testing to determine if the Student was still eligible for special education and related services and, if so, under what new disability code.

8. Staff from the MCPS completed updated educational, speech-language, and psychological assessments.

9. On January 11, 2024, the IEP team met to review the assessments, determined that the Student continued to require special education services, and developed an IEP for the Student. During that meeting, the team determined that the Student qualified for special education services with a primary disability code of [REDACTED]. (MCPS. # 1, p. 3).

10. At the January 11, 2024, meeting, the Parent disagreed with the disability code of [REDACTED] and requested an IEE for the psychological assessment. (MCPS # 2).

11. On February 27, 2024, the MCPS issued a prior written notice declining to change the primary disability code and addressing the Parent's request for an IEE. (MCPS #2). In that notice, the MCPS noted the Parent's request for an IEE on January 11, 2024, stating: "The team also discussed the family request for an independent evaluation and provided the family with guidance to contact the Resolution and Compliance Unit (RACU) to follow up on their request for an independent evaluation of the psychological report." (MCPS # 2, p.1).

12. On March 20, 2024, [REDACTED], Supervisor, Resolution and Compliance Unit, sent a letter to the Parent advising that the MCPS chose to deny the request by filing a request for a due process hearing to defend the evaluation. The MCPS filed the request for a due process hearing on that same date.

DISCUSSION

Motion to Reopen Hearing

The OAH Rules of Procedure address the options available when a party fails to appear for a hearing as follows:

.23 Failure to Attend or Participate in a Hearing, Conference, or Other Proceeding; Default.

A. If, after receiving proper notice as provided in Regulation .05C of this chapter, a party fails to attend or participate, either personally or through a representative, in a prehearing conference, hearing, or other stage of a proceeding, the ALJ¹⁴ **may proceed in that party's absence** or may, in accordance with the hearing authority delegated by the agency, issue a final or proposed default order against the defaulting party.

¹⁴ Administrative Law Judge.

In this case, the MCPS did not seek a default order. Rather, it argued that I should dismiss its due process hearing request and determine that the Parent’s failure to appear for the hearing was a de facto withdrawal of her request for an IEE at public expense. The regulations governing IEEs require a local education agency (LEA) to “[f]ile a due process complaint to request a hearing to **show** that its evaluation is appropriate.”¹⁵ For the reasons explained on the record, I denied the Motion to Dismiss, stating that there was no factual basis for the finding that the Parent withdrew her request for an IEE at public expense and that the regulations required the LEA to both file the request for hearing, and show at a hearing, that its evaluation was appropriate.

Although I did not issue a default order, the OAH regulations address the appropriate standard when a party fails to appear for a hearing. They state that an ALJ should consider whether “there is good cause for a party’s failure to attend or participate in the proceeding.”¹⁶ The Supreme Court of Maryland¹⁷ has discussed the “good cause” standard comprehensively.¹⁸ “Good cause” depends upon the “facts and circumstances” of the case.¹⁹ When considering a motion to vacate a default order or to reopen the record after a failure to appear, a fact finder must “balance the individual litigant’s right to ultimately have his day in court against the public’s paramount interest in [e]nsuring that all citizens can obtain a prompt resolution of conflicts, while they still remain current,” and determine if the individual litigant exercised sufficient diligence.²⁰

¹⁵ 34 C.F.R. § 300.502(b)(2)(i)(emphasis added); *see also* Educ. § 8-405(b)(4).

¹⁶ COMAR 28.02.01.23C(2)

¹⁷ Effective December 14, 2022, the Maryland Court of Appeals was renamed the Supreme Court of Maryland.

¹⁸ *See In re Robert G.*, 296 Md. 175 (1983).

¹⁹ *Id.* at 180.

²⁰ *W.D. Curran & Assocs., Inc. v. Cheng-Shum Enters., Inc.*, 107 Md. App. 373, 389 (1995) (internal citations omitted; brackets added); *see also Rounds v. Maryland-Nat’l Capital Park and Planning Comm’n*, 441 Md. 621 (2015).

The Parent, as the party who filed the Motion, bears the burden of proof.²¹ The standard of proof is by a preponderance of the evidence.²² To prove an assertion by a preponderance of the evidence means to show that the assertion is “more likely so than not so” when all the evidence is considered.²³ The Parent must prove good cause by a preponderance of the evidence.

I do not find good cause to excuse the Parent’s failure to appear for the May 29, 2024 hearing. The Parent participated in the prehearing conference. During the conference, the parties agreed that two days of hearing would be needed to hear from two witnesses for the MCPS and two to three witnesses from the Parent. On April 7, 2024, I issued the PCR, noting in bold that the hearing was scheduled for **“Wednesday, May 29, 2024, and continue on Thursday, May 30, 2024, starting at 9:30 a.m. each day.”** The PCR was mailed and emailed to the Parent. On April 17, 2024, the OAH mailed a notice of hearing to the Parent clearly setting out the date, time and location of the hearing as follows: **“Wednesday, May 29, 2024 AND Thursday, May 30, 2024 AT 9:30 AM VIA Webex (DS), Go to <http://oah.webex.com> Meeting No. [REDACTED], or Call [REDACTED].”**

The Parent did not assert that she did not receive these documents. Rather, she stated that she was “under the impression that the meeting would be held at 3:00 p.m.,” and referred to a “misunderstanding” or “miscommunication” concerning the hearing time. However, all of the communications from the OAH were clear and unambiguous. Moreover, the Parent did not comply with the five-day disclosure requirement or the requirement that subpoenas must be requested fifteen days in advance of the hearing.²⁴

²¹ COMAR 28.02.01.21K(3).

²² COMAR 28.02.01.21K(1).

²³ *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

²⁴ I advised the Parent of the five-day disclosure requirement verbally at the hearing and again in writing in the PCR. I also advised that subpoenas must be requested fifteen days in advance of the hearing. Although I did not know it at the time the hearing convened, I learned from OAH’s docket clerk in the afternoon of May 29, 2024, that the Parent requested a subpoena for [REDACTED] that was date stamped received at OAH on May 28, 2024.

Therefore, I find that the Parent did not exercise sufficient diligence with respect to the hearing in this matter. When balancing this lack of good cause against the interest of the MCPS, I note that the MCPS, the party with the burden of proof, was prepared to proceed and presented its case, including calling two MCPS witnesses to testify at the hearing. It would be burdensome for these school staff to re-testify. For these reasons, the Parent’s request to reopen the hearing is denied.

Legal Framework for IEEs

To determine if a student qualifies as a child with a disability under the IDEA, the student must undergo an appropriate evaluation process to ascertain if the student has an educational disability and, as a result, requires special education services.²⁵ Additionally, a local education agency generally must ensure a child with a disability is reevaluated at least once every three years.²⁶ An IEE is defined as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.”²⁷ Public expense means that “the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.”²⁸

Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations. Under the IDEA, “[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.”²⁹ In Maryland, a parent may also obtain an IEE if the local educational agency (LEA) fails to respond within 30 days of the parent’s request.³⁰

²⁵ 34 C.F.R. §§ 300.8, 300.301; COMAR 13A.05.01.06; *see also* 20 U.S.C.A. § 1414 (2017).

²⁶ 20 U.S.C.A. § 1414(a)(2); 34 C.F.R. § 300.303; COMAR 13A.05.01.06E.

²⁷ 34 C.F.R. § 300.502(a)(3)(i).

²⁸ 34 C.F.R. § 300.502(a)(3)(ii).

²⁹ 34 C.F.R. § 300.502(b)(1); *see also* Educ. § 8-405(b)(4)(i)(1); COMAR 13A.05.01.14B(1).

³⁰ “When a parent requests an [IEE] at public expense, the public agency shall provide a written response approving or denying the request within 30 days of the date the request was made.” COMAR 13A.05.01.14B(2); *see also* Educ. § 8-405(b)(4)(ii).

Upon receiving a request for an IEE at public expense, an LEA has two choices: provide the evaluation at public expense or reject the request in writing and file a special education due process complaint to defend its evaluation.³¹

The MCPS bears the burden of showing, by a preponderance of the evidence, that it complied with State law and that its psychological evaluation is appropriate under the IDEA.³²

Analysis

I conclude that the MCPS has failed to demonstrate that it complied with the State statutes and regulations governing IEEs in Maryland. The evidence establishes that the Parent requested an IEE prior to and during the January 11, 2024, IEP meeting.

The February 27, 2024, prior written notice issued after that meeting states: “The meeting was held on January 11, 2024...the purpose of the meeting was in response to a parent request to get an independent evaluation due to disagreement with the disability code of a [REDACTED] ...” (MCPS Ex. # 2) The February 27, 2024, prior written notice was issued forty-seven (47) days after the Parent requested an IEE. Arguably, the prior written notice does not communicate the MCPS’ rejection of the Parent’s request for an IEE. The prior written notice merely states that “The team also discussed the family request for an independent evaluation and provided the family with guidance to contact the Resolution and Compliance Unit (RACU) to follow up on their request for an independent evaluation of the psychological report.”³³ (MCPS Ex. 2, p. 2). Sixty-nine days later, on March 20, 2024, the MCPS provided a written response denying the request.

The MCPS did not document a different timeline for the Parent requesting an IEE than the one contained in its own prior written notice. Moreover, neither the statute nor the regulation

³¹ 34 C.F.R. § 300.502(b)(2)(i)-(ii); Educ. § 8-405(b)(4)(iii)-(iv).

³² *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005); 34 C.F.R. § 300.502(b)(2)(i).

³³ The LEA is obligated to do this by regulation: “On request, a public agency shall provide the parent with information about where an independent educational evaluation may be obtained and the public agency’s criteria applicable for independent educational evaluations consistent with 34 CFR §300.502.” COMAR 13A.05.01.14A(2).

requires that the request for an IEE be in writing. The statute states: “A parent may request an independent educational evaluation at public expense in accordance with regulations adopted by the Department.”³⁴ When a Parent does so, the statute requires that “the local school system **shall** provide a written response approving or denying a request within 30 days of the date the request was made.”³⁵ The regulations adopted by the Maryland Department of Education are titled “Procedural Safeguards – Independent Educational Evaluation” and provide:

When a parent requests an independent educational evaluation at public expense, the public agency **shall provide a written response approving or denying the request within 30 days of the date the request was made**, and:

(a) If the public agency approves the request, advise the parent of the process for arranging the evaluation at public expense; or

(b) If the public agency denies the request, file a due process complaint in accordance with Regulation .15C of this chapter within 30 days of the date of the denial.³⁶

The record establishes that the MCPS did not comply with this obligation. It did not deny the request for an IEE until March 20, 2024, when it sent the letter stating the same and filed the due process hearing request.

While the statute and the regulations do not address the impact of an LEA’s failure to comply with these timelines, the U.S. Supreme Court has established that procedural violations may form the basis for relief in special education due process proceedings.³⁷ Moreover, Parents are afforded important procedural rights under the IDEA and the governing federal regulations and state laws implementing it. Emphasizing the importance of the procedural safeguards embodied in title 20, section 1415 of the U.S.C.A., the Supreme Court, in *Rowley*, explained:

When the elaborate and highly specific procedural safeguards embodied in § 1415 are contrasted with the general and somewhat imprecise substantive admonitions contained in the Act,^[38] we think that the importance Congress attached to these

³⁴ Educ. § 8-405(b)(4)(i).

³⁵ Educ. § 8-405(b)(4)(ii) (emphasis added).

³⁶ COMAR 13A.05.01.14B(2) (emphasis added).

³⁷ See *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 206-207 (1982).

³⁸ The Supreme Court in *Rowley* interpreted what was titled the Education for All Handicapped Children Act

procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP . . . demonstrates the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.³⁹

As this passage explains, the essence of the procedural safeguards afforded under the IDEA is to ensure full and meaningful participation of “concerned parties,” including the parents of a child, throughout the IEP development process. The statutes and regulations governing IEEs are part of the IEP development process. In a case brought by a Parent alleging a procedural violation, the Parent is also required to prove that the procedural violation led to a denial of a free and appropriate education “only if the procedural inadequacies- (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.”⁴⁰ The Parent does not have that burden in this case. The Parent has not filed a due process complaint alleging that the Student has been denied a free and appropriate public education, so the Parent does not have a burden of proof in this hearing. Nor is the Parent otherwise required to demonstrate prejudice.⁴¹

(EHA), the predecessor to the IDEA.

³⁹ *Id.*, 458 U.S. at 205–06 (citation omitted).

⁴⁰ 20 U.S.C.A. Section 1415(f)(3)(E)(ii).

⁴¹ It is a general principle of administrative law that State and federal administrative agencies must follow their own regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 483 (2003). When they fail to do so, “claimants must *demonstrate prejudice* resulting from the violation to have the agency action invalidated.” *Pollock* at 496 (emphasis added). In this case, the MCPS violated a Maryland statute, not merely a regulation.

Moreover, it is a general principle of statutory construction that “the word ‘shall’ is regarded as being a direct indication that the legislature directed that certain conduct is required.”⁴²

Section 8-405(b)(4) originated in House Bill 11 of the 2019 regular session of the Maryland General Assembly. These sections were unanimously passed into law and signed by the Governor, effective July 1, 2019, for the following purpose:

FOR the purpose of authorizing a certain parent of a student with a disability to request an independent educational evaluation at public expense under certain circumstances; **requiring a local school system to issue a written response approving or denying a certain request within a certain time period**; requiring a local school system, on approving a certain request, to advise a certain parent of the process for arranging a certain evaluation; requiring a local school system, on denying a request, to file a due process complaint within a certain time period; requiring the State Department of Education to adopt certain regulations; and generally relating to independent educational evaluations for students with a disability.⁴³

I find that the MCPS’ failure to comply with the Maryland state law timeline governing IEEs requires a determination that they should provide the IEE at public expense. If I were to decide otherwise, the timeline adopted by the Maryland General Assembly and refined by the MSDE in regulation would be meaningless.⁴⁴ Moreover, no other remedy is appropriate on these facts. The Parent sought a single IEE because she disagreed with the psychological evaluation and wanted a second opinion.⁴⁵ I also conclude that it would be inappropriate to consider whether [REDACTED] psychological evaluation complied with the other legal requirements.⁴⁶

⁴² *Prince George’s County v. Vieira*, 340 Md 651, 660 (1995).

⁴³ 2019 Maryland Laws Ch. 547 (emphasis added).

⁴⁴ *Id.*, at 658 (“no word in the statute or no portion of the statutory scheme should be read ‘so as to render the other, or any portion of it, meaningless, surplusage, superfluous or nugatory.’” (quoting *GEICO v. Insurance Comm’r*, 332 Md. 124, 132 (1993))).

⁴⁵ The Parent did not challenge the other two assessments conducted on the same timeline. She also did not challenge the goals and objectives of the Student’s IEP or the placement recommended by the IEP team.

⁴⁶ 20 U.S.C.A. § 1414(b); 34 C.F.R. § 300.304; COMAR 13A.05.01.05B; *see also* 34 C.F.R. §§ 300.15, 300.304-.311; COMAR 13A.05.01.06.

If MSDE wished to reject the Parent's request for an IEE and defend its evaluation, it should have advised the Parent of that response in thirty days. Instead, it responded sixty-nine days after the request.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that (1) the Parent has not established good cause to excuse her failure to appear and reopen the hearing;⁴⁷ (2) that the MCPS failed to comply with Maryland law in responding to the Parent's request for an IEE at public expense;⁴⁸ and (3) that the MCPS is required to provide the requested independent educational evaluation at the public's expense.⁴⁹

ORDER

I **ORDER** that Montgomery County Public Schools shall pay for an independent educational evaluation of the Student at the public's expense; and further

ORDER that Montgomery County Public Schools shall, within thirty days of the date of this decision, provide proof of compliance with this Order to the Chief of the Complaint Investigation and Due Process Branch, Division of Special Education and Early Intervention Services, Maryland State Department of Education.

June 11, 2024
Date Decision Issued

Denise O. Shaffer
Administrative Law Judge

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⁴⁷ COMAR 28.02.01.23C(2); *W.D. Curran & Assocs., Inc. v. Cheng-Shum Enters., Inc.*, 107 Md. App. 373, 389 (1995) (internal citations omitted; brackets added); *see also Rounds v. Maryland-Nat'l Capital Park and Planning Comm'n*, 441 Md. 621 (2015).

⁴⁸ Educ. § 8-405(b)(4)(ii); COMAR 13A.05.01.14B(2).

⁴⁹ COMAR 13A.05.01.14B(2); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Prince George's County v. Vieira*, 340 Md. 651 (1995).

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:

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[REDACTED]

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FILE EXHIBIT LIST

I admitted the following MCPS exhibits:

- MCPS Ex. 1 January 11, 2024, Individualized Education Program (IEP)
- MCPS Ex. 2 February 27, 2024, Prior Written Notice
- MCPS Ex. 3 December 19, 2023, Reevaluation Report of School Psychologist
- MCPS Ex. 4 Resume of ████████████████████, School Psychologist
- MCPS Ex. 5 Resume of ████████████████████, School Psychologist