XXXX XXXX	*	**BEFORE DEBORAH H. BUIE,**
STUDENT	*	**AN ADMINISTRATIVE LAW JUDGE**
v.	*	**OF THE MARYLAND OFFICE**
DEPARTMENT OF JUVENILE	*	**OF ADMINISTRATIVE HEARINGS**
SERVICES,	*	**OAH NO: MSDE-DJS-OT-14-41126**
MARYLAND STATE DEPARTMENT	*	
OF EDUCATION, AND	*	
BALTIMORE COUNTY PUBLIC	*	
SCHOOLS	*	

* * * * * * * * * * * * *

RULING ON MOTION

STATEMENT OF THE CASE

On November 19, 2014, Deborah St. Jean, Esquire, filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH), against the Maryland State Department of Education/Juvenile Services Education Program (MSDE/JSE), the Maryland Department of Juvenile Services (DJS) and the Baltimore County Public Schools (BCPS), on behalf of her clients XXXX XXXX (Student) and his mother XXXX XXXX (Parent), under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

Specifically, Ms. St. Jean alleged that MSDE/JSE, DJS and BCPS improperly changed the Student's educational placement and deprived the Parent of her IDEA participation rights.

On December 1, 2014, MSDE notified OAH that the parties had waived the resolution meeting. The matter was scheduled for a telephone prehearing conference on December 8, 2014. On December 8, 2014, I conducted a telephone pre-hearing conference (Conference) in the above-captioned matter at the Office of Administrative Hearings (OAH), 11101 Gilroy Road, Hunt Valley, Maryland. The following individuals participated by telephone from their respective locations: Deborah St. Jean, Esquire, Office of the Public Defender, on behalf of the Student and Parent; Elliott Schoen, Assistant Attorney General (AAG), on behalf of MSDE; and Shelly Mintz, AAG, on behalf of DJS. I issued a Prehearing Conference Report and Scheduling Order (PCR) on December 11, 2014.

Under the federal regulations, a hearing must be conducted and a decision is due within forty-five days of certain triggering events. 34 C.F.R. 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2012). In this case, the triggering event occurred on December 1, 2014 when the parties waived the resolution session. I had counsel for the parties' review each of their calendars to determine whether the hearing could be completed within the 45 days after this event. Each attorney reviewed their calendar with me. Due to scheduling conflicts and the upcoming winter holiday, the parties agreed that the hearing could not be completed within that period and then affirmatively waived their right to have the hearing within the forty-five-day period. By agreement, the parties requested that the hearing be scheduled for January 20, 21, and 22, 2015. The parties then proposed that the decision in this case be issued no later than fifteen days after the record closed. 34 C.F.R. § 300.515; Md. Code Ann., Educ. § 8-413(h) (2008).[1]

[1] Forty-five days from December 1, 2014, the date the parties waived the resolution process, is Thursday, January 15, 2015. The issuance of this decision dismissing the Complaint is within the timeframe required by federal regulations.

Following the Conference, on December 8, 2014, the MSDE/JSE and DJS filed a MSDE and DJS Joint Motion to Dismiss for Insufficiency of Due Process Complaint or Alternatively for Summary Decision (Motion). On the same date, Ms. St. Jean filed a Complainants' Opposition to the Motion (Response). On December 11, 2014, the MSDE/JSE and DJS filed a MSDE and DJS Joint Reply to the Response (Reply). On December 12, 2014, Ms. St. Jean filed supplemental authority (Supplement) to support the Response.

On December 17, 2014, I conducted a motions hearing and reserved ruling on the Motion. Deborah St. Jean, Esquire, with co-counsel Grace Reusing, Esquire, represented the Parent. Elliott Schoen, AAG represented MSDE, Shelly Mintz, AAG, represented DJS. Also present were Derek Simmonsen, an AAG with MSDE and J. Stephen Cowles, Esquire, representing Baltimore County Public Schools (BCPS).

ISSUE

The issue is whether MSDE's motion for summary decision should be granted.

SUMMARY OF THE EVIDENCE

Exhibits

The MSDE/JSE and DJS submitted the Motion with the following attachments:

- Affidavit of XXXX XXXX, December 4, 2014
- Affidavit of XXXX XXXX, December 3, 2014
- Affidavit of XXXX XXXX, November 24, 2014
- DJS Referral Form, November 10, 2014
- DJS Central Review Committee (CRC) Manual, undated

The Parent submitted the Response with the following attachments:

- [School 1] Child and Family Ministries Discharge/Transfer Summary, October 28, 2014
- *Statement of Interest of the United States of America* filed in *G.F., et al. v. Contra Costa County, et al.* Case No. 3:13-cv-03667-MEJ, February 13, 2014
- Letter from United States Department of Education, December 5, 2014

Testimony

No testimony was presented by either party.

FINDINGS OF FACT

I find the following facts to be undisputed:

(1) The Student is a sixteen-year old male committed to the DJS for violating his probation due to his removal of his electronic monitoring device.

(2) The Student is identified as a youth with a disability who is eligible for special education services under IDEA, with an Individualized Educational Program (IEP).

(3) The Student has a history of substance abuse, aggression towards adults and authority, suicidal ideation and frequently goes missing.

(4) On September 30, 2014, the Student was placed at [School 1] ([School 1]) to receive psychotherapeutic, psychiatric, educational and milieu-based services. The Student's expected discharge date was December 29, 2014.

(5) [School 1] operates a Type III non-public school and provides both treatment and educational programming in a residential setting, located in the same building in Baltimore County.

(6) While at [School 1], the Student took classes in English 9, Math 9, Science 9, Social Studies 9, Life Skills, and Physical Education.

(7) On October 28, 2014, the Student was discharged from [School 1] for leaving the premises without permission on two different occasions, for being extremely noncompliant with [School 1]'s program, for showing disrespect towards [School 1] staff members and threatening behaviors directed at [School 1]'s staff.

(8) After being discharged from [School 1], the Student was transferred to the [School 2] ([School 2]) until a new residential placement could be found. At [School 2], the Student's educational program was delivered consistent with the Student's IEP.

(9) At [School 2] the Student continues to interact with nondisabled peers.

DISCUSSION

Burdens

On the merits of the case, the Student and Parents bear the burdens of production and persuasion by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49 (2005).

On the motion for summary disposition, the movant bears the burdens. *See Herbert v. State*, 136 Md. App. 458, 481 (2001).

Motion for Summary Decision

When a party elects to litigate a special education dispute before the OAH, the Rules of Procedure of the OAH apply. COMAR 13A.05.01.15C(12). Under the OAH Rules of Procedure, a party can move for summary decision on any substantive issue in a case. The motion can be granted when it is determined that "there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law." COMAR 28.02.01.12D; s*ee also* Md. Code Ann. State Gov't. §10-210(6) (2009). In its essentials, OAH Rule .12D mirrors Rule 2-501 of the Maryland Rules, which governs motions for summary judgment in Maryland's circuit courts. *Assateague Coastkeeper v. Md. Dept. of the Env't.*, 200 Md. App. 665, 699 (2011). Thus, some discussion of Md. Rule 2-501 is appropriate.

To successfully invoke Md. Rule 2-501, the moving party must satisfy several burdens. First, a movant must identify the legal cause of action or legal defense that the movant relies upon. Second, a movant must set forth sufficient, undisputed factual grounds to satisfy the

elements of the movant's claim or defense. *See Bond v. NIBCO, Inc.*, 96 Md. App. 127, 136 (1993). Finally, a movant must explain to the court the legal authority for the court to grant the motion and the movant's reasoning for contending that the movant is entitled to judgment as a matter of law.

When a moving party has demonstrated grounds for summary judgment, the opposing party can defeat the motion by producing facts which are admissible in evidence and which establish a dispute of a material fact. *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993). In opposing a motion for summary decision, the non-moving party is aided by the principle that all inferences that can be drawn from the pleadings, affidavits, and admissions must be resolved against the moving party on the question of whether there is a genuine dispute of material fact. *Honacker v. W.C. & A.N. Miller*, 285 Md. 216, 231 (1979).

Bare and general allegations, which do not show facts with precision, will fail to establish that there is a genuine dispute of material fact. Accordingly, such assertions will not defeat a motion for summary judgment. *Melbourne v. Griffith*, 263 Md. 486, 492 (1971); *Lynx, Inc. v. Ordnance Products, Inc*., 273 Md. 1, 7-8 (1974). Similarly, an opposing party will not defeat a motion for summary judgment by merely showing that there is a dispute of fact. If a dispute does not relate to a material fact -- a fact that will affect the outcome of the case or one upon which the decision is rested -- then any such controversy will not prevent the entry of summary judgment. *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 113 (2000); *Salisbury Beauty Schools v. State Bd. of Cosmetologists*, 268 Md. 32, 40 (1973); *King v. Bankerd*, 303 Md. 98, 111 (1985); *Lynx*, 273 Md. at 7-8. A trial court will not determine any disputed facts when ruling on a summary judgment motion, but makes a ruling as a matter of law. *Salamon v. Progressive Classic Ins. Co.*, 379 Md. 301, 306-07 (2004).

A court can choose, in its discretion, to deny a motion for summary judgment, even if the movant has met the movant's burdens. *Foy v. Prudential Ins. Co.*, 316 Md. 418, 423 (1989). In determining whether a factual dispute exists, all inferences must be resolved against the moving party, even if underlying facts are undisputed. *DiGrazia v. County Executive*, 288 Md. 437, 445 (1980). Summary judgment is generally inappropriate for cases that involve the determination of "motive" or "intent." *Id.* The reason for this rule is that in order to determine "intent" there is often a need for greater-than-usual factual development. *Berkey v. Delia*, 287 Md. 302, 306 (1980).

A motion for summary decision may be made at any time. COMAR 28.02.01.12D(1). Both Md. Rule 2-501 and COMAR 28.02.01.12D require that the motion be supported with "personal knowledge" affidavits. In the instant case, MSDE and DJS filed an affidavit setting forth undisputed facts; the Parents did not offer any affidavit to refute those facts.

Overview of the Legal Framework

The identification, evaluation, and placement of students in special education are governed by the IDEA, State statutes, and state and federal regulations. 20 U.S.C. §§ 1400-1482 (2012); 34 C.F.R. Part 300 (2012); Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014) and COMAR 13A.05.01. The IDEA requires "that all children with disabilities have available to them a free appropriate public education [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) (2010); 20 U.S.C.A. § 1412; *see also* Md. Code Ann., Educ. § 8-403 (2014).

Title 20, Section 1401(9) of the United States Code defines FAPE:

> (9) Free appropriate public education -- The term "free appropriate public education" means special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

Similarly, 34 C.F.R. § 300.17 defines FAPE:

> Free appropriate public education or FAPE means special education and related services that —
>
> (a) Are provided at public expense, under public supervision and direction, and without charge;
>
> (b) Meet the standards of the SEA, including requirements of this part;
>
> (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
>
> (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.

The requirement to provide FAPE is satisfied by providing personalized instruction with sufficient support services to permit a child to benefit educationally from that instruction. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the Supreme Court defined FAPE as follows:

> Implicit in the congressional purpose of providing access to a "free appropriate public education" is the requirement that the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child….We therefore conclude that the basic "floor of opportunity" provided by the Act consists of access to specialized instruction and related services which are individually designed to give educational benefit to the handicapped child.

Rowley, 458 U.S. at 200, 201.

A student is not entitled to "[t]he best education, public or non-public, that money can buy" or "all the services necessary" to maximize educational benefits. *Hessler v. State Bd. of*

Educ., 700 F.2d 134, 139 (4th Cir. 1983), citing *Rowley*, 458 U.S. 176. The *Rowley* Court further stated that with regard to the IEP, the issue is whether the IEP is "reasonably calculated to enable the child to" benefit educationally. *Id*. at 203-04. The issue is not whether the IEP will enable the student to maximize his or her potential.

The IDEA requires an IEP to provide a "basic floor of opportunity that access to special education and related services provides." *Tice v. Botetourt County Sch. Bd*., 908 F.2d 1200, 1207 (4th Cir. 1990) (citing *Rowely*, 458 U.S. at 201). It does not establish a "requirement to guarantee any particular outcome for the child." *King v. Bd. of Educ.*, 999 F. Supp. 750, 767 (D. Md. 1998).

To the maximum extent possible, the IDEA seeks to have children placed in regular public school environments, but in any case, to have them placed in the "least restrictive environment" (LRE) that is consistent with their educational needs. 20 U.S.C.A. § 1412(a)(5).

The IDEA provides an opportunity for a student to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of a student, or the provision of FAPE. 20 U.S.C.A. § 1415(b)(6)(A) (2010); 34 C.F.R. § 300.507(a)(1). The provisions of the IDEA extend to Maryland State and local juvenile facilities. 34 C.F.R. § 300.2(b)(1)(iv).

Arguments of the Parties

In this matter, the Parent contends that the MSDE/JSE, DJS, and BCPS improperly changed the Student's residential placement from [School 1] to [School 2] without giving the Parent access to the notice and participation procedural rights under the IDEA. The Parent asserts that [School 1] should have informed the BCPS that it was terminating the Student's placement so that BCPS could provide notice to the Parent and conduct an IEP meeting to

determine if the Student's behavior was a manifestation of his disability.[2] Further, the Parent argues that [School 1] gave DJS 72 hours notice before discharging the Student, which would have been enough time to convene an IEP meeting. The Parent argues that she was not informed of the change in placement until the Student was transferred back to [School 2].

MSDE and DJS argue that the Student's transfer from [School 1] to [School 2] was not a change in educational placement, but rather a move between residential facilities, due to safety/security concerns, that did not prevent the Student from continuing to receive special education services, related services and access to the general curriculum. The MSDE/JSE and DJS further argue that the Student did not violate a "code of student conduct" as traditionally envisioned in 20 U.S.C.A. § 1415(k), but rather his behaviors violated facility rules intended to maintain an effective discipline system in a correctional institution. Finally, MSDE and DJS rely on the attached affidavits of Dr. XXXX XXXX, XXXX XXXX and XXXX XXXX all attesting to the placement considerations of a student committed to DJS revolving around a comprehensive service plan, to include an educational program, but also targeting therapy for assaultive/aggressive behaviors, substance abuse treatment, and/or mental health concerns.

With regard to the Parent's argument that the move from [School 1] to [School 2] was a change in educational placement triggering the IDEA protections, the Parent relies on a Statement of Interest of the United States filed in G.F. v. Contra Costa County, Case No. 3:13-cv-03667-MEJ (filed February 13, 2014). In that California case, youth were sent to solitary

[2] The IDEA provides protections for a student with a disability with regard to disciplinary measures, including the requirement that a manifestation determination be held within ten school days of any decision to change the student's placement because of a violation of a code of student conduct to determine 1) if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or 2) if the conduct was the direct result of the local educational agency's failure to implement an IEP. If the answer is "yes" as to either question, the behavior must be considered a manifestation of the student's disability and the student must be returned to the placement from which he was removed. *See* 20 U.S.C.A. § 1415(k); 34 C.F.R. §§ 300.530 and 536; COMAR 13A.08.03.05-.10.

confinement for discipline and missed hundreds of hours of education. The federal government stepped in on behalf of the Parents and criticized the local entity for failing to uphold its duty, pursuant to the IDEA, to provide access to special education and related services to confined youth with disabilities.[3]

In addition, the Parent cites a recent (December 5, 2014) letter from the United States Department of Education (DOE) intended to provide interpretative guidance to the IDEA requirements in educating students with disabilities who are in correctional facilities. Finally, the Parent also argues that a motion for summary decision is not appropriate because there are two important disputed facts: 1) when exactly was the Student discharged; and 2) what actions formed the basis for the Student's removal from [School 1].

Addressing this last argument first, the Parent fails to assert a dispute related to a material fact, one that will affect the outcome of the case or one upon which the decision is rested. The Parent argues that one of the documents does not mention that the [School 1] staff person was a female. Whether the [School 1] staff member the Student is alleged to have threatened was a female or not or whether the discharge date was October 23rd or 28th is not material, particularly since the Parent is not asserting an interruption in the delivery of education services.[4] Accordingly, this controversy will not prevent the entry of summary judgment.

[3] In the Parent's Response, Morgan v. Chris L, 927 F. Supp. 267 (E.D. Tenn. 1994) was cited for the proposition that reporting a crime committed by a juvenile with a disability constitutes an change in educational placement. MSDE argued that the 1997 amendments of the IDEA specifically overruled that holding by providing that …Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities… *See* 20 U.S.C.A. § 1415(k)(6)(A). I was not asked to rely on this case during oral argument.

[4] The Parent's reference to October 23, 2014 as a discharge date is unclear based upon the affidavits presented. A review of the attachments indicates the discharge date was October 28, 2014.

Was there a change in educational placement?

Educational Placement

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that –

(a) The placement decision –

(1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation date, and the placement options; and

(2) Is made in conformity with the LRE[5] provisions of this subpart, including §§ 300.550 -300.554;

(b) The child's placement –

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that (?) he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

34 C.F.R. § 300.552 (2006).

The term "placement" as used in 34 C.F.R. § 300.551[6] means the educational setting in which the student is educated, rather than the precise location. Section 300.551 describes

[5] Least Restrictive Environment.

[6] Section 300.551 relates to the requirement for local educational agencies to provide a continuum of alternative placements for children with disabilities, such as regular classes, special classes, special schools, home instruction, instruction in hospitals and institutions, and supplementary services such as resource room or itinerant instruction.

different "placement" options a school must make available to a disabled student, including "regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." The MSDE/JSE and DJS assert that transferring the Student from [School 1] to [School 2] did not result in a change in the Student's educational placement under IDEA. To support their argument, the MSDE/JSE and DJS cited to *A.W. v. Fairfax County School Board*, 372 F.3d 674 (4th Cir. 2004), in which the court wrote:

> Although the foregoing indicates that the definition of "educational placement" should reflect the "mainstreaming" ideal of the LRE requirement, it does not appear that the term also includes the precise physical location where a disabled student is educated. The LRE requirement directs that the disabled student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. *See Rowley,* 458 U.S. at 202-03 & n. 24. The IDEA's concern with location thus focuses on the degree to which any particular assignment segregates a disabled student from non-disabled students, rather than on the precise location of the assignment itself. Given the IDEA's concern with "mainstreaming" and appropriate educational content, we find little support in the IDEA's underlying principles for AW's assertion that "educational placement" should be construed to secure his right to attend school in a particular classroom at a particular location.

Id. at 681. The opinion further reads:

> Consideration of the structure and the goals of the IDEA as a whole, in addition to its implementing regulations, reinforces our conclusion that **the touchstone of the term "educational placement" is not the location to which the student is assigned but rather the environment in which educational services are provided**. To the extent that a new setting replicates the educational program contemplated by the student's original assignment and is consistent with the principles of "mainstreaming" and affording access to a FAPE, the goal of protecting the student's "educational placement" served by the "stay-put" provision appears to be met. **Likewise, where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in "educational placement" occurs**.

Id. at 682 (emphasis added). The court went on to say:

> In light of our conclusion that "educational placement" fixes the overall instructional setting in which the student receives his education, rather than the precise location of that setting, we conclude that AW's transfer between such

> materially identical settings does not implicate the "stay-put" provision of § 1415(j). *See White*, 343 F.3d at 380. The parties do not dispute that the GT program at the nearby elementary school to which the FCSB transferred AW was materially identical in its educational offerings and that AW would be placed in an identical setting (a regular GT program classroom). Moreover, there is nothing in the record to suggest that the new location selected for AW by the FCSB would work such a change in the student's routine that the new location cannot fairly be described as an identical setting.

Id. at 683.

Similarily, in *White ex rel. White v. Ascension Parish School Bd.*, 343 F.3d 373 (5th Cir. 2003), the court reversed a District Court summary judgment and rendered judgment for the local education agency on the site-selection issue. Regarding whether the IDEA's procedural requirements had been followed, the parent and disabled student first asserted that they were improperly denied input into the site selection. The court stated in its opinion:

> These statutory provisions do not, however, explicitly require parental participation in site selection. **"Educational placement," as used in the IDEA, means educational program-not the particular institution where that program is implemented**. *E.g., Sherri A.D. v. Kirby*, 975 F.2d 193 (5th Cir.1992) ("educational placement" not a place, but a program of services); *Weil v. Board of Elem. & Secondary Educ.*, 931 F.2d 1069 (5th Cir.1991) (transfer of child to another school was not a change in "educational placement"). Thus, contrary to the Whites' position, that parents must be involved in determining "educational placement" does not necessarily mean they must be involved in site selection.

Id. at 379.

In her oral argument, the Parent also cited *Cavanaugh v. Grasmick*, 75 F. Supp. 2d 446, 467-68 (D. Md. 1999) and argued that a fundamental change in or elimination of a basic element of the educational program which adversely affects a child's learning experience in a significant way constitutes a change in educational placement under the IDEA. According to the court in *Cavanaugh*, whether a change in educational placement has occurred turns on whether the proposed change would substantially or materially alter the child's educational program and is

based on (a) whether the educational program set out in the IEP has been revised; (b) whether the child will be able to be educated with nondisabled children to the same extent; (c) whether the child will have the same opportunities to participate in non-academic and extracurricular services; and (d) whether the new placement option is the same option on the continuum of alternative placements. *Id.* at 468.

The Parent makes bold assertions that the December 5, 2014 DOE letter mandates that youth who are in correctional institutions are entitled to the same IDEA protections as other disabled students. That assertion is an overstatement of the letter's position. The letter provides a summary of particular sections of the IDEA and merely reiterates the meaning, but does not make changes to the language contained in the legislation. For example, under Parental Engagement, the letter states the responsible public agency must provide the parents with the required prior written notice…a reasonable time before the public agency "proposes or refuses to initiate or change the …educational placement of a child with a disability…" (Parent's Response, attachment 3, at p. 17).

The MSDE/JSE and DJS argue that the December 5, 2014 DOE letter states the law consistent with how it is viewed by both state agencies; that is, when a student who is in a correctional institution is denied educational services and/or his IEP is not properly implemented, an IDEA violation has occurred.

Based upon the discussion above, I conclude that no change in educational placement occurred. The Student's educational location changed; however, his educational program; that is, his special education services, were uninterrupted and were delivered per his IEP with continued participation with nondisabled peers. The Parent's argument is not persuasive because she cites the *Contra* case, the facts of which are completely different; that is, youth who missed

many hours of instruction while in seclusion. In addition, the Parent holds out the December 5, 2014 DOE letter as the *coup de grace* impacting the movant party's case. The letter, however, does not state that correctional institutions must convene an IEP meeting before a disabled student can be moved due to safety/security concerns. The letter simply reiterates that disabled children are entitled to the procedural protections of the IDEA. Finally, the Parent relies on the procedural safeguards laid out in *Cavanagh*, but again, the facts in that case involved a private placement and, when applying the test, cannot be compared to this case; that is, does the change affect the Student in a significant way. The Parent presented no facts to suggest the Student's special education services were impacted in a significant way.

As discussed above, it is clear that educational placement entails an educational program and not the site where that program will be implemented. In fact, although parents must be involved in determining educational placement, *i.e.* educational program, they have much less influence in determining the location where that program will be administered.

The Parent's requested remedy

The MSDE/JSE and DJS also argue that the OAH is unable to designate which specific residential placement the Student can attend as requested in the Parent's due process complaint. To support this assertion, the MSDE/JSE and DJS cite to *In re Demetrius J.*, 321 Md. 468 (1991), which states, in pertinent part, as follows:

> The Juvenile Causes Act authorizes the court to commit a delinquent child to the custody of DJS and permits it, upon such commitment, to designate "the type of facility where the child is to be accommodated." . . . But it does not go so far as to permit the court to designate the specific facility. The short of it is that the language of the statutes in the context in which it appears, considered with the legislative purpose, the general aim or policy, the ends to be accomplished and the evils to be redressed by the enactments, lead inevitably to the conclusion that the Legislature intended that the particular facility in which a delinquent child may be placed is within the exclusive discretion of DJS.

Id. at 475-76. Hence, the MSDE/JSE and DJS argue that I lack the authority to grant the relief sought by the Parent. The Parent argues that the juvenile court is without the authority to hear this issue, as it is an administrative action, which would mean that the issue would go without any type of review. I need not reach this issue as I have dismissed the complaint.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that MSDE/DJS has met its burdens on the motion for summary decision. Md. Code Ann., State Gov't §10-210(6); COMAR 28.02.01.12D. I conclude that there are no disputes of material fact, and MSDE/DJS have shown that they are entitled to judgment as a matter of law. COMAR 28.02.01.12D. I further conclude that the Student's move to [School 2] did not constitute a change in educational placement. 34 C.F.R. § 300.551; *A.W. v. Fairfax County School Board*, 372 F.3d 674 (4th Cir. 2004).

ORDER

I **ORDER** that the MSDE and DJS Joint Motion for Summary Decision is **GRANTED**, the Parent's due process complaint in OAH case number MSDE-DJS-OT-14-41126 is **DISMISSED**, and no further proceedings in this matter will be held.

January 13, 2015
Date Decision Issued

Deborah H. Buie
Administrative Law Judge

DHB

REVIEW RIGHTS

Within 120 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. § 8-413(j) (2008).

Should a party file an appeal of the hearing decision, that party 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 court action. The written notification of the filing of the court action must include the Office of Administrative Hearings' case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

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