

**XXXX XXXX**

**v.**

**MONTGOMERY COUNTY**

**PUBLIC SCHOOLS**

**\* BEFORE DANIEL ANDREWS,  
\* ADMINISTRATIVE LAW JUDGE,  
\* THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH NO.: MSDE-MONT-OT-15-08976**

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**DECISION**

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

**STATEMENT OF THE CASE**

On March 16, 2015, XXXX XXXX (Parent), on behalf of [Student] (Student), filed a Due Process Complaint (Complaint) with the Office of Administrative Hearings (OAH) contesting the Montgomery County Public Schools (MCPS) implementation of the Student’s individualized education plan (IEP) under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).<sup>1</sup> The parties agreed to waive a Resolution Meeting on March 25, 2015. Also, on March 25, 2015, the MCPS filed a Motion to Dismiss the Parent’s Complaint (Motion).

On April 2, 2015, I held a telephone prehearing conference, after which, I issued a prehearing conference report which established a scheduling order for a status conference and a hearing on the merits to be held on April 13 and April 23, 2015, respectively. On April 7, 2015,

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<sup>1</sup> The Parent filed a previous Due Process Complaint on February 9, 2015, which was withdrawn because the parties entered into a settlement agreement on February 23, 2015.

the Parent filed a Response to the Motion (Response). The MCPS filed a Reply to the Parent's Response (Reply) on April 8, 2015.

On April 13, 2015, the status conference was held, through which it was determined that a revised Individualized Education Plan (IEP) for the Student, dated April 1, 2015, did not resolve the Parent's Due Process Complaint and a merit hearing was still necessary. Also, I denied the MCPS' Motion on the record.<sup>2</sup>

I held the merit hearing on April 23, 2015. The Parent represented himself. Emily B. Rachlin, Esquire, represented the MCPS. A written decision addressing the Parent's Complaint is due within forty-five days of the parties' written waiver of the Resolution session on March 25, 2015. Accordingly, I am required to issue a decision on or before May 8, 2015. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014).<sup>3</sup>

The legal authority for the hearing is as follows: IDEA, 20 U.S.C.A. § 1415(f) (2010); 34 C.F.R. § 300.511(a) (2014); Md. Code Ann., Educ. § 8-413(e)(1) (2014); and Code of Maryland Regulations (COMAR) 13A.05.01.15C.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act; Maryland State Department of Education (MSDE) procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

### **ISSUE**

Did MCPS fail to implement the Student's March 27, 2014 IEP by not providing necessary and appropriate supplementary aids, services, or supports to afford the Student an

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<sup>2</sup> On the record, I stated that I would address the Motion in my written decision on the merits.

<sup>3</sup> The forty-five day period ends on Saturday, May 9, 2015 and the next business day upon which a decision could be issued is Monday, May 11, 2015. The parties did not agree to extend the time period to issue a decision and, through my status conference report, I informed the parties that I would issue my decision on or before May 8, 2015.

equal opportunity to participate in non-academic and extracurricular services and activities under the IDEA, if so, what is the appropriate remedy?

### **SUMMARY OF THE EVIDENCE**

#### **MCPS' Motion and Response Exhibits<sup>4</sup>**

The MCPS submitted the following exhibits with its Motion:

- Motion 1- Parent's Due Process Complaint, dated March 16, 2015
- Motion 2- Parent's Due Process Complaint, dated February 9, 2015
- Motion 3- Settlement Agreement between MCPS and Parent, dated February 23, 2015
- Response A- Student's IEP, dated April 1, 2015

#### **Parent's Reply Exhibits<sup>5</sup>**

The Parent submitted the following exhibits with his Reply:

- Reply Ex. 1- Student's IEP, Part III Special Considerations and Accommodations-Supplemental Aids, Services, Program Modifications and Supports, page 12, dated January 28, 2013
- Reply Ex. 2- Email from XXXX XXXX, MCPS, to Parent, dated May 2, 2014
- Reply Ex. 3- Student's IEP, Part III Special Considerations and Accommodations-Supplemental Aids, Services, Program Modifications and Supports, page 12, dated March 27, 2014

#### **Merit Hearing Exhibits**

I admitted the following exhibits on behalf of the Parent:

- Parent 1- Not Admitted<sup>6</sup>
- Parent 2- Not Admitted<sup>7</sup>

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<sup>4</sup> The Motion and Response exhibits are contained in the OAH case file.

<sup>5</sup> The Reply exhibits are contained in the OAH case file.

<sup>6</sup> This exhibit was identified as a Psychological Evaluation by XXXX XXXX, Ph.D., Licensed Psychologist, dated January 20, 2012. The Parent explained that this exhibit supported the identification of the Student's Attention Deficit and Hyperactivity Disorder (ADHD) and was incorporated into all relevant IEP's. I sustained MCPS' objection on the admissibility of this exhibit and concluded that it was not relevant to the issue before me concerning extracurricular activities.

<sup>7</sup> This exhibit was identified as a Children's National Evaluation, dated February 16, 2012. The Parent explained that this exhibit supported the identification of the Student's ADHD and was incorporated into all relevant IEP's. I sustained MCPS' objection on the admissibility of this exhibit and concluded that it was not relevant to the issue before me concerning extracurricular activities.

- Parent 3- Student's IEP, dated January 28, 2013
- Parent 4- Series of Emails, dated May 2 through May 5, 2014, between the Parent and XXXX XXXX, MCPS
- Parent 5- Not Admitted<sup>8</sup>
- Parent 6- Series of Emails, dated September 17 and 18, 2014, between the Parent, XXXX XXXX, and XXXX XXXX
- Parent 7- Series of Emails, dated January 28 and 29, 2015, between the Parent and XXXX XXXX
- Parent 8- Series of Emails, dated February 13, 2015, between the Parent and XXXX XXXX
- Parent 9- Signed written statement by the Student's mother, XXXX XXXX, dated April 15, 2015

I admitted the following exhibits on behalf of MCPS:

- MCPS 1- Student's IEP, dated March 27, 2014
- MCPS 2- Not Offered
- MCPS 3- Series of Emails, dated January 28 through 30, 2015, between the Parent, XXXX XXXX, and XXXX XXXX
- MCPS 4- Not Offered
- MCPS 5- Student's IEP, dated February 26, 2015
- MCPS 6- Student's IEP, dated April 1, 2015
- MCPS 7- Resume of XXXX XXXX
- MCPS 8- Resume of XXXX XXXX
- MCPS 9- Email from [School 1] ([School 1]) to Parent, dated February 2, 2015, with school newsletter links

Testimony

The Parent testified on his own behalf and did not present any other witnesses.

The MCPS presented the following witnesses:

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<sup>8</sup> This exhibit was identified as an audio compact-disc and/or digital recording of a telephone message by the Student's English

- XXXX XXXX, MCPS, [School 1] Resource Teacher, Department Chair for Special Education, and IEP Chairperson. Ms. XXXX was accepted as an expert in the field of Special Education.
- XXXX XXXX, [School 1] Principal and Seventh Grade Administrator. Mr. XXXX was accepted as an expert in the field of Education and School Administration.
- XXXX XXXX, [School 1] Health and Physical Education teacher, After School Activity Coordinator, Producer and Co-Director of After School Drama Club.

### **FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. The Student was born on XXXX, 2002 and is twelve years old. During the 2013-2014 school year, she was in the sixth grade and attended [School 1]. During the 2014-2015 school year, she was in the seventh grade and continued to attend the [School 1].
2. During the 2013-2014 school year, the Student did not participate in any after-school extracurricular activities.
3. During the 2013-2014 and 2014-2015 school years, the Student had an IEP which identified her educational disability as “other health impairment” which was further identified as ADHD. The Student’s ADHD affected the Student in the areas of math, attention, and self-advocacy.

#### The March 27, 2014 IEP

4. While in her sixth grade year of school, on March 27, 2014, [School 1] convened an IEP meeting to review the Student’s IEP.<sup>9</sup>
5. The IEP team included: XXXX XXXX, IEP Case Manager and Special Educator; XXXX XXXX, IEP Chair and Principal’s Designee; XXXX XXXX, General Educator; and XXXX and XXXX XXXX (Parents).

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teacher, Mrs. XXXX, which praised the Student’s performance of a Shakespeare poem in class. I sustained MCPS’ objection on the admissibility of this exhibit and concluded that this exhibit had no relevance.

<sup>9</sup> The Student had an existing IEP, dated January 28, 2013, which was created while the Student was attending fifth grade at [School 2].

6. The IEP described the Student's present level of academic achievement and functional performance in several academic areas including reading, math, oral language, and written language.

7. The IEP described the Student's present level of functional performance in the area of attention as:

[T]he Student is making improvements with keeping attention on task in class. However, she still needs reminders to start a task and remain on task. In Math, English, and Reading [the Student] needs reminders to continue working when completing independent work. In World Studies, memories (sic) needs reminders to prepare for class and begin working. Often, the Student is sitting in her seat and appears to be daydreaming. When redirected, the Student will immediately begin and/or continue working.

8. The Parent provided input on the Student's present level of academic achievement and functional performance which included that the Parent had seen improvement in the Student's independence and self-advocacy. The Parent had a concern about the Student's progress in Math but observed that the Student liked middle school and is very happy with the teachers. The Parent observed that the Student has become more independent with homework. Finally, the Parent raised a desire to meet with the teachers prior to the start of the 2014-2015 school year.

9. The IEP contained no other specific input by the Parent about the Student's functional performance related to curricular or extracurricular school activities.

10. The Student's IEP provided for special considerations and accommodations in several areas as follows:

- a. Presentation Accommodations - the Student will receive visual clues, notes, and outlines. These accommodations were provided because the Student's ADHD affects her ability to sustain attention to a task. The Student needs visual clues from staff to sustain her attention;
- b. Response Accommodations - the Student will receive monitoring of test responses, calculator devices, and graphic organizers. These accommodations were provided because the Student's ADHD causes her

to overlook some problems. The Student will have her test responses monitored to ensure she is answering every question. The Student will receive a graphic organizer for writing assignments to help keep her focused on the task. Because the Student's math was below grade level she received a calculator accommodation. Additionally, IEP provided that the Student will take her math assessments in a reduced distraction setting;

- c. Timing and Scheduling Accommodations - because of the Student's inability to remain focused on a task, she will be given 100 percent of extended time to complete assignments; and
- d. Setting Accommodations - the Student will take assessments in a reduced distraction setting to help the Student remain focused and to have her test responses monitored.

11. The IEP provided for supplementary aids, services, program modifications, and supports as follows:

- a. Instruction Support - in all academic classes, the Student will be allowed to use organizational aids. Additionally, instructors will check for understanding, monitor the Student's independent work, and repeat directions;
- b. Program Modification - in all academic classes, for larger assignments, those assignments will be broken down into smaller units;
- c. Social and Behavior Support – through the Student's Resource Class, the Student work on frequent eye contact and proximity control and work on strategies to initiate and sustain attention; and
- d. Physical and Environmental Support - the Student will receive preferential seating in all academic classes.

12. The Student's IEP provided goals and objectives for the Student to achieve in math and behavior as follows:

- a. Math Goal - through modeling, teacher support, repeated practice, positive reinforcement, and a use of a calculator, the Student's goal was to demonstrate the processes of mathematics by making connections and applying reasoning to solve problems and to communicate her findings with 80 percent accuracy;
- b. Related to this Math Goal are three Objectives:
  - i. apply a variety of concepts, processes, and skills to solve problems;

- ii. justify ideas or solutions with mathematical concepts or proofs;  
and
  - iii. present mathematical ideas using words, symbols, visual displays  
or technology.
- c. Behavior Goal - through coping strategies, preferential seating, extended  
time, and broken down assignments, the Student's goal was increase her  
work productivity with eighty percent accuracy; and
- d. Related to her Behavior Goal are three objectives:
  - i. with preferential seating, the Student will initiate assignments after  
directions have been given;
  - ii. if confused, the Student will let the teacher know that she needs  
help in a way that she feels comfortable; and
  - iii. with extended time and broken down assignments, the Student will  
complete her class work in school.

13. For each IEP goal, the Parent was notified through quarterly progress reports sent home with the Student's report on June 13 and October 30, 2014 and January 28, 2015.

14. The IEP did not contain any other descriptions of the Student's present level of academic achievement and functional performance related to her curricular or extracurricular needs.

Additionally, the IEP did not require any other special considerations and accommodations to provide instructional, supplementary aids, services, program modifications, supports, goals, and objectives to meet the Student's curricular and extracurricular needs.

15. Through the Prior Written Notice section of the IEP, as to any other topic discussed by the IEP team, no other issue was discussed, including a need to provide supplementary aid or supports or otherwise assist the Student in accessing extracurricular activities by reminding the Student or confirming her understanding about tryout registration information or deadlines for any drama or seasonal show offered by the [School 1] drama program.



16. In May 2014, at the end of the Student's sixth grade year, the Parent received a supportive comment from the Student's English teacher which noted the Student's ability to act and effectively orally communicate poetry.

17. On May 2, 2014, the Parent emailed XXXX XXXX<sup>10</sup> and expressed concern that the Student was struggling socially and is having difficulty being aware of what activities are going on and what she may be interested in. The Parent explained that the Student would have been interested in signing up as a member of the stage crew for the school's spring drama show but was unaware there was a sign-up sheet for this opportunity. The Parent requested Ms. XXXX to assist the Student in learning how to be aware of what after-school activities are available and to assist the Student in overcoming her anxiety to sign up for such activities.

18. On May 2, 2014, by reply email, Ms. XXXX informed the Parent that the Student's Resource Teacher discussed with the Student her interest in after-school activities. Ms. XXXX explained that the Student expressed an interest in after-school activities but also stated that she prefers to go home after school. Ms. XXXX, however, stated that she will remind the Student to listen to morning announcements for anything she may be interested in doing. Additionally, Ms. XXXX stated that she will also listen to morning announcements and suggest to the Student any activities that she may be interested in. Ms. XXXX informed the Parent that morning announcements are posted on the [School 1] website if the Parent or his wife wanted to review the announcement themselves. Finally, Ms. XXXX explained that the Student's Resource Teacher will work with the Student on her social skills.

19. On May 5, 2014, the Parent responded to Ms. XXXX that it is his experience that the Student, despite her desire to take part in an activity, will back out or lose interest when it

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<sup>10</sup> Ms. XXXX was the Student's designated March 27, 2014 IEP Team Case Manager and Special Educator.

comes to signing up. The Parent explained that the Student has stated that it is hard for her to make choices about what she would like to do. The Parent requested Ms. XXXX to continue to monitor and assist the Student with learning how to be aware of after-school activities and to assist her in having social confidence to choose activities that will allow her to interact with other children in a positive environment.

20. During the fall of the 2014-2015 school year, which was the Student's seventh-grade year, [School 1] presented its annual fall drama production. The Student signed-up for tryouts and participated in tryouts but was not selected for a role in the show.

21. On January 28, 2015, the Parent emailed XXXX XXXX and XXXX XXXX and informed them that the Student was interested in trying out for the [School 1] spring drama production.<sup>11</sup> The Parent requested that Ms. XXXX and Ms. XXXX talk with the Student so that she understands where and when the tryouts are to be held. The Parent explained that the Student did not hear anything about the tryouts, but her sister thought the tryouts were already happening.

22. On January 29, 2015, Ms. XXXX responded to the Parent's email and explained that auditions were held on January 23, 2015, call backs were happening on January 29, 2015, and that Stage Crew tryout was in late February. Ms. XXXX encouraged the Parent to contact the drama instructor, XXXX XXXX, to see if she was willing to let the Student tryout.

23. On January 29, 2015, the Parent replied to Ms. XXXX's email and requested to schedule a meeting with the Student's IEP team.

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<sup>11</sup> The [School 1] spring drama production was scheduled to occur on May 8, 2015.

24. On January 29, 2015, XXXX XXXX<sup>12</sup> emailed the Parent and informed him that an annual IEP was already scheduled and asked if his request to have an IEP meeting was related to drama tryouts.

25. In a reply email to Ms. XXXX, the Parent confirmed that his request for an IEP meeting was related to the Student missing drama tryouts again and explained that the Student is not hearing the morning announcements because of her ADHD diagnosis and related problems with being organized regarding schedules, assignments, and due dates. Finally, the Parent stated that the Student's challenge with ADHD is why she has an IEP.

26. On January 30, 2015, XXXX XXXX, [School 1] Principal, emailed the Parent. Mr. XXXX informed the Parent that since tryouts are over, the Student cannot be a member of the cast for the spring show. Mr. XXXX also informed the Parent that while tryouts are announced through morning announcements the same information is posted in the school cafeteria for students to read during lunch, and are contained in daily emails that go out to parents who subscribe to a Yahoo email group.<sup>13</sup> Finally, Mr. XXXX explained the Student can still be a part of the technical crew and that there is another after-school drama program occurring every Tuesday which the Student can join.

27. In addition to any information about the [School 1] after-school activities and dates of sign-ups being announced through morning announcements and being posted in the cafeteria, the sign-up sheet for extracurricular activities is also posted in the [School 1] cafeteria with access to all students. The same information is also sent to all parents through a blast email, which is separate from the parent Yahoo email group, and a blast telephone message.

Finally, the same information is posted on the [School 1] website.

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<sup>12</sup> Ms. XXXX was the Student's designated March 27, 2014 IEP Chair and Principal's Designee.

<sup>13</sup> The Parent testified that he is not a part of the parent Yahoo email group.

The February 26, 2015 IEP

28. On February 26, 2015, [School 1] convened an IEP meeting to review the Student's IEP.

29. The IEP team included: XXXX XXXX, IEP Case Manager and Special Educator; XXXX XXXX, IEP Chair; XXXX XXXX, Principal; XXXX XXXX, General Educator; XXXX XXXX, School Psychologist; XXXX XXXX, Special Education Supervisor; and the Parents of the Student.

30. The IEP described the Student's present level of academic achievement and functional performance in the areas of oral and written language, reading, and math.

31. The IEP also provided that the Student's present level functional performance in the areas of Attention and Anxiety as follows:

- a. Attention - teachers notice that the Student can be inattentive during group instruction and requires prompting to get back on task and maintain focus. She can lose focus during independent work and can miss details or skip questions. Her inattentiveness is due to self-distraction, such as daydreaming or drawing. The Student seems to do better in small groups or with a partner. Regular check-ins and monitoring of work by teachers has shown to help the Student. Her inattentiveness impacts the Student's ability to take meaning from general announcements.
- b. Anxiety - the Student's anxiety impacts her confidence, prevents her from advocating for herself, asking questions, and seeking supports. The Student has been reluctant to try new activities.

32. The Parent had an opportunity to provide input on the Student's present level of academic achievement and functional performance. In relevant part, the Parent stated that the Student needs to grow in self advocacy and executive functioning. The Parent requested that the Student get support in monitoring for after-school activities.

33. The IEP retained the same special considerations and accommodations identified in the March 27, 2014 IEP.

34. The IEP retained the same supplementary aids, services, program modifications, and supports identified in the March 27, 2014 IEP. The IEP, however, included an additional

supplementary aid and support by requiring a review of after-school activities with the Student.

35. The IEP contained goals and objectives for self-advocacy including, in relevant part, that the Student will check in with a staff member two times per week regarding after-school activities between February 26, 2015 and the end of the school year. The Student will sign up for activities which interest her.

36. Academically, during her seventh grade year, the Student is on grade or above grade level in all her classes. The Student achieves A's and B's in her course work and has been invited to apply for the Junior National Honor Society based on her achievement to the Honor Roll.

### **DISCUSSION**

The identification, assessment, and placement of students in special education are governed by the IDEA. 20 U.S.C.A. §§ 1400-1482 (2010); 34 C.F.R. Part 300 (2014); *see also* Md. Code Ann., Educ. §§ 8-401 through 8-419 (2014) and COMAR 13A.05.01. The IDEA provides federal assistance to state and local education agencies for the education of disabled students, provided that states comply with the extensive goals and procedures of the IDEA. 20 U.S.C.A. §§ 1412-14; 34 C.F.R. § 300.2.

As a condition of receiving federal assistance, state and local public educational agencies must have in effect policies and procedures which assure that children with disabilities residing in the state have access to a free and appropriate public education (FAPE) “that emphasizes special education and related services<sup>14</sup> designed to meet their unique needs.” 20 U.S.C.A.

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<sup>14</sup> “Related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. § 300.34(a).

§§ 1400(d)(1)(A) and 1412(a)(1)(A); *see* Md. Code Ann., Educ. §§ 8-401 through 8-419; COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a FAPE. 20 U.S.C.A. § 1412.

To comply with the IDEA an IEP must, among other things, allow a disabled child to advance toward measurable annual academic and functional goals that meet the needs resulting from the child's disability or disabilities, by providing appropriate special education and related services, supplementary aids, program modifications, supports, and accommodations. 20 U.S.C.A. § 1414(d)(1)(A)(i)(II), (IV), (VI). The child's disability or disabilities and resulting needs are determined by using a variety of relevant functional, developmental, and academic information, including assessments and other evaluative materials. 20 U.S.C.A. § 1414(a)(1)(C)(i), (b)(2)-(3).

"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 C.F.R. §§ 300.114 through 300.116. 34 C.F.R § 300.42.

In furtherance of the requirement to provide supplemental aids, services, and other supports that are provided in extracurricular and nonacademic settings, a State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and

employment of students, including both employment by the public agency and assistance in making outside employment available.

34 C.F.R. § 300.107.

Additionally, the federal regulations provide:

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 300.107, each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

34 C.F.R. § 300.117.

An educational program offered to a student must be tailored to the particular needs of a child with disabilities through the development and implementation of an IEP, taking into account:

- (i) the strengths of the child;
- (ii) the concerns of the parents for enhancing the education of their child;
- (iii) the results of the initial evaluation or most recent evaluation of the child;  
and
- (iv) the academic, developmental, and functional needs of the child.

20 U.S.C.A. § 1414(d)(3) (2010).

The IEP identifies a student's present levels of academic and functional performance, sets forth annual goals and short-term objectives for improvements in that performance, describes the specifically-designed instruction and services that will assist the student in meeting those goals and objectives, and indicates the extent to which the child will be able to participate with children without disabilities in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A).

In *Bd. of Educ. of Hendrick Hudson Central Sch. District v. Rowley*, 458 U.S. 176 (1982), the Supreme Court stated that the congressional purpose in enacting the IDEA is the provision of a free appropriate public education (FAPE) to children with disabilities. Implicit in this purpose

is a requirement that the education to which access is provided is sufficient to “confer some educational benefit upon the handicapped child.” *Id.* at 200.

The requirement to provide a FAPE is satisfied by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. In *Rowley*, the Supreme Court defined a 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 provide educational benefit to the handicapped child.

*Id.* at 200-01.

Providing a student with access to specialized instruction and related services does not mean that a student is entitled to “the best education, public or non-public that money can buy” or to “all services necessary to maximize his or her potential.” *Hessler v. State Bd. of Educ.*, 700 F.2d 134, 139 (4th Cir. 1983) (citing *Rowley*, 458 U.S. 176). “[T]he issue is not whether [the placement advocated by the parents] is better, or even appropriate, but whether [the school system] has offered...an appropriate program for the Child at [the placement which it recommended].” *A.B. ex rel D.B. v. Lawson*, 354 F.3d 315, 324 (4th Cir. 2004). In *Doe v. Bd. of Educ. of Tullahoma City Sch.*, 9 F.3d 455 (6th Cir. 1993), the Court found:

The [IDEA] requires that the Tullahoma schools provide the educational equivalent of a serviceable Chevrolet to every handicapped student. Appellant, however, demands that the Tullahoma school system provide a Cadillac solely for appellant’s use. We suspect that the Chevrolet offered to appellant is in fact a much nicer model than that offered to the average Tullahoma student. Be that as it may, we hold that the Board is not required to provide a Cadillac, and that the proposed IEP is reasonably calculated to provide educational benefits to the appellant, and is therefore in compliance with the requirements of the IDEA.

*Id.* at 459-60.

The Supreme Court has placed the burden of proof in an administrative hearing under the



IDEA upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005). In this case, that is the Parent.

### The Motion

MCPS filed the Motion seeking to dismiss the Parent's Due Process Complaint by arguing that the Parent's Due Process Complaint sought to enforce a settlement agreement entered into by the parties on February 23, 2015 through an administrative hearing. Otherwise, the MCPS argued that the Parent's Complaint was without any specific factual allegations that the MCPS failed to properly implement the Student's IEP. In support of its Motion, the MCPS attached several Motion Exhibits.

The Parent filed a Response to the Motion and argued that the Complaint is about the failure of the MCPS to properly implement the Student's IEP which has resulted in the Student not participating with non-disabled peers in extracurricular activities. To support his argument, the Parent contends that, under the Student's IEP, the school is required to check for understanding, paraphrase instruction, and repeat instructions. In support of the Response, the Parent attached exhibits to document the schools responsibility under the IEP.

In the MCPS' Response to the Parent's Reply, the MCPS reasserts that the Parent is attempting to enforce a settlement agreement, which the OAH lacks jurisdiction to enforce pursuant to 20 U.S.C.A. § 1415(e)(2)(F). Additionally, the MCPS argues that that the Parent's Response relies on evidence beyond the four corners of the Complaint and should not be considered. Alternatively, the MCPS contends that the Parent misunderstands the purpose of supplementary aids and services, which apply to curricular instructional support not extracurricular activities. Finally, the MCPS asserts that the issues raised by the Parent concerning the March 27, 2014 IEP have been addressed through a subsequent IEP, dated February 26, 2015, which rendered the Parent's Complaint moot.

OAH's Rules of Procedure provide for consideration of a motion to dismiss under COMAR 28.02.01.12C and a motion for summary decision under COMAR 28.02.01.12D.

Those regulations provide as follows:

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

D. Motion for Summary Decision.

(1) Any party may file a motion for summary decision on all or part of an action, at any time, on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. Motions for summary decision shall be supported by affidavits.

(2) The response to a motion for summary decision shall identify the material facts that are disputed.

(3) An affidavit supporting or opposing a motion for summary decision shall be made upon personal knowledge, shall set forth the facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(4) The judge 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.

In considering a motion to dismiss, an administrative law judge may not go beyond the "initial pleading," defined under COMAR 28.02.01.02B(7) as "a notice of agency action, an appeal of an agency action, or any other request for a hearing by a person." In contrast, when ruling on a motion for summary decision, an administrative law judge may also consider admissions, exhibits, affidavits, and sworn testimony, for the purpose of determining whether a hearing on the merits is necessary. *See Davis v. DiPino*, 337 Md. 642, 648 (1995) (comparison of motions to dismiss and for summary judgment), *vacated in part on other grounds*, 354 Md. 18, 729 A.2d 354 (1999).<sup>15</sup>

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<sup>15</sup> Maryland appellate cases on motions to dismiss and for summary judgment under the Maryland Rules of Procedure (the

When a motion to dismiss goes beyond the initial pleading, relying (as it does in this case) upon other documents, then the motion may properly be treated as a motion for summary decision. COMAR 28.02.01.12D. *See also Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772 (1992), *cert. denied*, 330 Md. 319 (1993). Accordingly, because I have taken the exhibits appended to the Motion and Response into consideration in making my decision, I am treating that Motion as one for summary decision under COMAR 28.02.01.12D. This regulation is substantially similar to both Maryland Rule 2-501 and Rule 56 of the Federal Rules of Civil Procedure. It is appropriate, therefore, to refer to interpretations of each for guidance in the application of the proper standard.

An administrative law judge ruling upon a motion for summary judgment, or summary decision, is concerned with whether a dispute of material fact exists and whether the moving party is entitled to judgment strictly as a matter of law. *Tri-Towns Shopping Ctr., Inc. v. First Fed. Sav. Bank of W. Md.*, 114 Md. App. 63, 65 (1997). Maryland courts have provided the following guidance about what constitutes a “material fact,” about the method of proving such facts, and about how a judge ruling upon such a motion should weigh the information presented:

“A material fact is a fact the resolution of which will somehow affect the outcome of the case.” A dispute as to a fact “relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment.” We have further opined that in order for there to be disputed facts sufficient to render summary judgment inappropriate “there must be evidence on which the jury could reasonably find for the [non-moving party].”

...

The trial court in accordance with Maryland Rule 2-501(e) shall render summary judgment forthwith if the motion and response show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. The purpose of the summary judgment procedure is not to try the case or to decide factual disputes, but to decide whether there is an issue of fact that is sufficiently material to be tried. Thus, once the moving party

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Maryland Rules) are instructive in an analysis of similar motions under OAH’s procedural regulations. *Compare* COMAR 28.02.01.12C with Maryland Rule 2-322(b) and COMAR 28.02.01.12D(1) *with* Maryland Rule 2-501(a).

has provided the court with sufficient grounds for summary judgment, it is . . . incumbent upon the other party to demonstrate that there is indeed a genuine dispute as to a material fact.

*Id.* at 65-66 (citations omitted) (emphasis in original).

As the moving party, the MCPS bears the burden to demonstrate both the absence of material disputes of fact and that it is entitled to judgment as a matter of law. *See Schaffer*, 546 U.S. at 56-57; *Comm'r of Labor & Indus. v. Bethlehem Steel Corp.*, 344 Md. 17, 34 (1996).

In this case, the initial pleading is the Parent's Complaint which states:

The school has discriminated against [the Student], based on her physical and psychological disability. The school has been aware of [the Student's] disability and that she has an IEP, but the school has refused to allow [the Student] the opportunity to participate in school activities, such as the school play, by only communicating with her in manner (such as loudspeakers or posters) that the school knows will be ineffective for her. [The Parent] has twice received, in writing plans/agreements from the school to address this problem, but each time the school has deliberately broken their own agreement.

The MCPS' argument that the Parent seeks to enforce a settlement agreement and the OAH's lack of authority to enforce such an agreement is understandable. The Parent filed an original due process complaint on February 9, 2015; which is identical to the Complaint filed on March 16, 2015. In the Complaint, the Parent uses vague terms which seemingly reference the settlement agreement reached by the parties on February 23, 2015. If the allegations raised by the Parent were clearly about requiring the MCPS to specifically perform its duties under the settlement agreement, then I would grant the Motion. The OAH is without jurisdiction to enforcement settlement agreements under the IDEA. *See* 20 U.S.C.A § 1415(e)(2)(F); *J.K. v. Council Rock Sch. Dist.*, 833 F. Supp. 2d 436, 448 (E.D. Penn. 2011).

The Parent's Complaint, however, asserts that the Student has an IEP and that the MCPS has failed to properly implement that IEP to allow the Student to participate in after-school activities like a school play. The Parent further complains that the MCPS has failed to communicate with the Student in a manner that is effective for the Student. To support this last

argument, the Parent attached portions of the Student's IEP to demonstrate that the school is required to provide supplementary aids and services to promote the Student's understanding of communication.

Under the IDEA, an IEP is required to provide a student with an educational benefit. The IDEA, however, also requires that a school system "must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities." 34 C.F.R. § 300.107. After reviewing the Parent's Complaint, I find that he sufficiently raised a factual issue about whether the MCPS properly implemented the Student's IEP to allow the Student an opportunity to participate in extracurricular activities. The MCPS argues that any supplemental aids and services in the Student's IEP are for curricular activities and not for extracurricular activities. But this argument only highlights that there is a material dispute of fact. For this reason and for any other reason I stated on the record, I denied the Motion.

### Merits

The Parent's Complaint is focused on requiring the MCPS to provide the Student with an opportunity to develop her socialization skills and increase her self-confidence through after-school, extracurricular activities, like those offered by the [School 1]' fall and spring drama productions. The Parent argues that, under the IDEA and through the Student's IEP, the MCPS is required to provide the Student with "supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities." 34 C.F.R. §§ 300.107 and 300.117. The Parent

demonstrated that the Student did not participate in any extracurricular activities during her sixth grade year. In her seventh grade year, however, the Student did sign up and participated in a try-out for the [School 1]' fall drama production but was not selected for a role in this show. Finally, the Student missed the opportunity to sign up for the spring drama production and for this reason was once again denied an opportunity to participate in extracurricular activities. The Parent asserts that the Student is being denied an opportunity to participate in extracurricular activities because these activities and the related sign-up dates are announced through the school's morning announcements. The Parent contends that due to the Student's level of distraction, caused by her ADHD, she is unable to hear or retain the information being communicated through morning announcements. The Parent argues that the MCPS has failed to implement the Student's IEP by not implementing the supplementary aids and services contained in the Student's March 27, 2014 IEP, which was formulated in the Student's sixth grade year and carried over into the Student's seventh grade year. In essence, the Parent contends that the MCPS has failed to check-in with the Student to determine her level of understanding of the morning announcements and has failed to repeat the morning announcements in a manner which would be effective for the Student.

The Student's March 27, 2014 IEP identifies the Student's educational disability as ADHD which affects her in the areas of math, attention and self-advocacy. The Student's IEP acknowledges that the Student's functional performance is affected by a distracted attention which requires the Student to receive reminders to stay on task. The IEP provides specific accommodations to assist the Student in achieving an education benefit, including receiving visual clues, notes, outlines, monitoring of test responses, a calculator in math, extended time to complete tasks, and taking assessments in a reduced distraction setting. Further, the IEP provides that, in all academic settings, the Student will receive supplementary aids, services,

program modifications, and supports including: requiring an instructor to check-in with the Student for understanding, monitoring of Student's independent work, and repeating directions.

Finally, in support of his argument that the MCPS failed to properly implement the Student's IEP, he relies on a series of emails, occurring in May 2014, between the Parent and XXXX XXXX, the Student's designated IEP Case Manager and Special Educator for the development of the March 27, 2014 IEP. Through the emails, the Parent informed Ms. XXXX that the Student was struggling socially and was unaware of the extracurricular activities that were occurring. The Parent explained that the Student had an interest in the [School 1]' seasonal drama production but was not aware that there was a sign-up sheet for this activity. The Parent requested that Ms. XXXX assist the Student to become aware of the extracurricular activities and to help the student overcome her anxiety in signing up for these activities. In response, Ms. XXXX informed the Parent that the Student's Resource Teacher discussed after-school activities with the Student which revealed that the Student had an interest in such activities, but preferred to go home after school. Nevertheless, Ms. XXXX informed the Parent that she will remind the Student to listen to morning announcements and suggest to the Student possible extracurricular activities that might interest her. Based on the Student's March 27, 2014 IEP and the email communication with Ms. XXXX, the Parent contends that the MCPS was required to ensure that the Student was able to learn of extracurricular activities and assist her in signing up for those activities.

In the fall of the Student's seventh grade year, the Student signed-up and tried out for the [School 1]' fall drama production, but was not selected for a role in the show. In January 2015, however, despite morning announcements that the school's spring show sign-up and tryouts were occurring, the Student failed to learn of this information and missed the opportunity to participate in this extracurricular activity. For this reason, the Parent contends that the MCPS

failed to properly implement the Student's March 27, 2014 IEP. If a violation of the IDEA was established, the Parent did not clearly explain what remedy he was seeking. Instead, the Parent asks that the MCPS comply with the IDEA to ensure that the Student has an equal opportunity to participate in extracurricular activities by implementing an IEP that will ensure her access to information provided to all students about extracurricular activities and assist the Student in involving herself in activities which interest her. The Parent also wanted the [School 1] to communicate with him in a manner which would alert him to specific extracurricular activities as opposed to a general email blast with embedded information about all extracurricular activities.

The MCPS responds that the Student's March 27, 2014 IEP, including any supplemental aids and services, was designed to provide the Student with an educational benefit in academic or curricular areas only and was not intended for any extracurricular activities. In support of this position, the MCPS presented the testimony of XXXX XXXX. Ms. XXXX has an undergraduate degree in elementary and special education. She has been a Special Education Resource Teacher at [School 1] for the past eleven years. She is the Special Education Department Chair and is responsible for the supervision of all special education teachers and students with IEPs. Finally, Ms. XXXX is the chairperson for all IEP team meetings at [School 1]. Based on her education qualifications and work experience, Ms. XXXX was accepted as an expert in the field of special education.

Ms. XXXX explained that she is familiar with the Student's ADHD and how it challenges the Student in a classroom setting. Ms. XXXX explained that the supplemental aids, services, program modifications, and supports contained in the Student's March 27, 2014 IEP were designed to provide the Student with instructional support in all academic classes. Ms. XXXX added that the supplemental services, aids, or supports were not designed for the purpose of assisting the Student to access or understand morning announcements regarding



extracurricular activities. Ms. XXXX explained that despite receiving minimal supports through her IEP, the Student achieves A's and B's, and is at grade level or above grade level in all her classes. In other aspects of a school environment, Ms. XXXX explained that the Student is capable of following directions that relate to changes in normal school activities like field trips, fire drills, and assemblies. Ms. XXXX testified that after-school activities, such as the school drama production, are announced throughout the school in multiple ways including: morning announcements, blast emails and phone calls to parents from the administration, announcements in the school cafeteria, and a posting with a sign-up sheet on the cafeteria bulletin board. Based on her understanding of the Student's ADHD and how it affects the Student in the classroom, combined with the Student's ability to perform in academic areas as well as in activities outside a normal school day, Ms. XXXX opined that the Student does not need any specific supplemental supports in her IEP to access extracurricular announcements or to participate in extracurricular activities.

Ms. XXXX explained that on February 26, 2015, [School 1] conducted an IEP Team meeting to review the Student's IEP. As a result of the IEP meeting, the Student's IEP was revised to update the Student's present level of academic achievement and functional performance. The IEP Team also included additional supplemental aids and services to require a review with the Student of after-school activities on a weekly basis. Further, the Student's revised IEP included additional goals and objectives to increase the Student's self-advocacy by having a teacher check-in with the Student two times per week regarding after-school activities and signing-up for any activities which interest the Student. Ms. XXXX explained that these changes were made in response to a settlement agreement with the Parent, but she was still of the opinion that the Student did not need any supplementary aids or services to have an equal opportunity to participate with non-disabled peers in extracurricular activities.

The MCPS also presented the testimony of XXXX XXXX, principal at [School 1]. He has an undergraduate Bachelor of Science degree in technology education and a Master's degree in administration and supervision. Mr. XXXX has been employed by the MCPS for twenty-one years. In addition to being the school's principal, Mr. XXXX has been the Student's sixth and seventh grade administrator and is familiar with the Student, her IEP, and the Student's ADHD. Mr. XXXX was accepted as an expert in the field of education and school administration. Mr. XXXX offered corroborative testimony in support of Ms. XXXX's testimony regarding the multiple methods by which [School 1] communicates with students and parents about extracurricular activities. Mr. XXXX testified that he is in the school cafeteria during lunch period and has experienced the Student coming to him for permission to access the bathroom, to go to the Media Center, or to go meet a teacher. Mr. XXXX explained that he has observed the Student go to the cafeteria bulletin board and look at the posted extracurricular activities whether or not she was interested. Based on his knowledge of the Student and his experience with her in the cafeteria, Mr. XXXX opined that the Student did not need any specialized supports in her IEP in order to have an opportunity to participate in extracurricular activities.

The final MCPS witness was XXXX XXXX. Ms. XXXX is the [School 1] health and physical education instructor and is also the co-director for the after-school drama program. Ms. XXXX testified about the methods she used to communicate with students at [School 1] and [School 2] regarding tryouts for the spring drama production occurring in May 2015. Ms. XXXX also explained that she had approximately sixty-five students try out for the show and had to cut or not offer roles to twenty-two students.

Based on the evidence presented, the MCPS argues that the Student's March 27, 2014 IEP provided the Student with FAPE. Additionally, the MCPS contends that the approved IEP did not require the MCPS to provide any supplemental supports to provide the Student with an

equal opportunity to participate with non-disabled peers in extracurricular activities. The MCPS also contends that, based on the expert opinions of Ms. XXXX and Mr. XXXX, the Student does not need any supplemental aids or services to provide the Student with an equal opportunity to participate with non-disabled peers in extracurricular activities.

After considering all the evidence, I am not persuaded, by a preponderance of the evidence, that the MCPS failed to properly implement the Student's IEP to provide the Student with an equal opportunity to participate in extracurricular activities under the IDEA and 34 C.F.R. §§ 300.107 and .117. I am also not persuaded that the MCPS failed to provide the Student with appropriate and necessary supplemental aids and services in her IEP to provide the Student with an equal opportunity to participate in extracurricular activities under the IDEA and 34 C.F.R. §§ 300.107 and .117.

The evidence established that the Student's March 27, 2014 IEP considered the Student's present level of academic achievement and functional performance in several academic and behavioral areas. The Student's educational challenge is to learn with a disability which causes her to become distracted and to lose her attention. She also has an issue with self-advocacy which may prevent her from requesting help or assistance with information she missed while her attention was distracted. The Parent contends that the Student's March 27, 2014 IEP contains the supplemental aids and services which would give her an equal opportunity to learn about extracurricular activities and to participate in those activities but that the school failed to properly implement those supplemental aids and services. I disagree with the Parent's interpretation of the Student's March 27, 2014 IEP. The Student's IEP plainly states that the applicable supplemental aids and services are to be provided in all academic settings. There is no language in the IEP that requires the MCPS to provide the IEP's supplemental aids and services for access to extracurricular activities, including assisting the Student to access the announcements of

extracurricular activities or the posted sign-up sheets for such activities in the school cafeteria. The evidence, however, established that with the supplemental aids and services provided, the Student was doing well in her academic classes, earning As and Bs, and was on grade level or above in all her classes. This evidence tends to establish, that through the IEP, the MCPS was providing the Student with an educational benefit and she was receiving a FAPE. The Student's academic performance demonstrates that she can learn in academic classes with supplemental aids and services. By comparison, the Student can also perform in the general school environment, without supplemental aids and services, as demonstrated by her ability to perform in fire drills and on field trips. Mr. XXXX's testimony that he has observed the Student in the school cafeteria accessing the bulletin board which contains information about extracurricular activities and sign-up sheets for those activities was important. His uncontradicted testimony demonstrates that the Student has the ability, without supplemental aids and services, to access the cafeteria bulletin board and to sign up for extracurricular activities, which she did for the [School 1] 2014 fall drama production. Collectively, this evidence tends to establish that the IEP Team had no reason to address the issue of whether the Student's IEP required supplementary aids and services to access extracurricular activities. As a result, I am in agreement with the opinion of Ms. XXXX, and conclude that there is no credible evidence to support a finding that Student needs supplemental aids and services to access extracurricular activities.

Without question, the IDEA requires a school system to provide supplemental aids and services determined appropriate and necessary by a child's IEP Team to provide extracurricular services and activates in a manner necessary to afford children with disabilities an equal opportunity for participation on those services or activities. 34 C.F.R. §§ 300.107 and .117. Likewise, the Parent has a valid concern about the Student's reluctance to involve herself socially because of her ADHD. The Parent, however, was a member of the IEP Team on March

27, 2014 and did not raise any concern about the Student's ability to access morning announcements or her reluctance to learn about extracurricular activities and sign up for such activities. I understand the Parent informed a member of the IEP Team in May of 2014 that he was concerned about the Student's ability to access information about extracurricular activities and there was a promise to help the Student to do so. Even if this evidence raised a need to address the issue through an IEP meeting, there was evidence that the issue was resolved, without a need for an IEP meeting, because the Student had an opportunity to tryout for the [School 1] 2014 fall drama production, without the need for any IEP related supplemental aids and services. It was not until January 2015, that the Parent made a clear request for an IEP meeting to address the Student's need for supplemental aids and services to access extracurricular activities. In response, an IEP meeting was convened on February 26, 2015. Through this IEP meeting, the Parent was able to request that the Student get support in monitoring for after-school activities. The Student's IEP was changed to include a description of the Student's present level of functional performance including that her inattentiveness impacts the Student's ability to take meaning from general announcements. Additionally, the IEP provided that the Student's anxiety impacts her confidence, prevents her from advocating for herself, asking questions, seeking supports, and causes her to be reluctant to try new activities. The February 26, 2015 IEP also provided goals and objectives to assist the Student to access information about extracurricular activities including that the Student will check in with a staff member two times per week regarding after-school activities and will sign up for activities which interest her. The Parent does not trust that MCPS will implement the February 26, 2015 IEP. That issue is not before me because the Parent's Complaint addressed alleged violations of the Student's March 27, 2014 IEP and events involving the [School 1] drama production which

occurred in January 2015 and prior. In other words, the Parent did not specifically complain that the February 26, 2015 IEP did not provide the Student a FAPE under the IDEA.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law that the Student was not denied a free appropriate public education during the 2014-2015 school year and that the MCPS properly implemented the Student's March 27, 2014 IEP. 20 U.S.C.A. §§ 1401(9), 1412(a)(1)(A) (2010); 34 C.F.R. §§ 300.107 and .117; Md. Code Ann., Educ. § 8-401(a)(3) (2014); COMAR 13A.05.01.03B(27); COMAR 13A.05.01.06A; COMAR 13A.05.01.09D.

### **ORDER**

I **ORDER** that the Complaint filed by the Parent on March 16, 2015, on behalf of the Student is hereby **DENIED** and **DISMISSED**.

May 8, 2015  
Date Decision Mailed

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Daniel Andrews  
Administrative Law Judge

DA/da

### **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) (2014).

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.

