XXXX XXXX	*	**BEFORE MICHAEL J. WALLACE,**
v.	*	**AN ADMINISTRATIVE LAW JUDGE**
MONTGOMERY COUNTY	*	**OF THE MARYLAND OFFICE**
PUBLIC SCHOOLS	*	**OF ADMINISTRATIVE HEARINGS**
	*	**OAH NO.: MSDE-MONT-OT-15-34451**

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

DECISION

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STATEMENT OF THE CASE

This case arises from a request by XXXX XXXX (Parent), on behalf of her child XXXX XXXX (Student), for a hearing to review the identification, evaluation, or placement of the child under the Individuals with Disabilities Education Act (IDEA). 20 U.S.C.A. § 1415(f)(1)(A) (2010).

I held a telephone pre-hearing conference on November 9, 2015. The Parent represented herself and Zvi Greismann, Esquire, represented the Montgomery County Public Schools (MCPS). At the pre-hearing conference, the parties requested that the hearing be held on December 10, 2015; the Parents waived on the record their right to have a decision issued within the forty-five day time frame for a decision. 34 C.F.R. § 300.510(b) and (c); 34 C.F.R. § 300.515(a) and (c) (2014). That timeframe began when the parties did not resolve the issues between them at the resolution conference that was held on October 29, 2015 and would have

required a decision on or before December 14, 2015 but the December 10, 2015 date was the earliest on which the parties and/or counsel were available.

I held the hearing on December 10, 2015, at the MCPS Carver Educational Center in Rockville, Maryland. The Parent was present, and represented herself. Mr. Greismann represented MCPS. Due to the limited time frame, the parties requested an extension of time for thirty days for me to issue a decision. Because the thirtieth day, January 9, 2016, falls on a Saturday, the decision is actually due not later than January 8, 2016. 34 C.F.R. 300.515 (2014); Md. Code Ann., Educ. § 8-413(h) (2014).

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 Office of Administrative Hearings (OAH). Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014); COMAR 13A.05.01.15C; COMAR 28.02.01.

ISSUES

The issues are as follows:

1. Should MCPS's Motion be granted because there is no genuine dispute of material fact and the MCPS is entitled to judgment as a matter of law?
2. Should MCPS's Motion be granted because the Parent seeks relief which cannot be granted?

SUMMARY OF THE EVIDENCE

Exhibits

Motion

MCPS submitted the following documents in support of its Motion:

MCPS 1 – Parent's Request for Mediation and Due Process Complaint, received October 14, 2015, with attachments

MCPS 2 – September 15, 2015 Individualized Education Plan (IEP)

The Parent did not submit any documents for consideration.

Merits

I admitted the following exhibits into evidence on behalf of MCPS:

MCPS. Ex. 1 September 15, 2015 IEP

MCPS. Ex. 2 May 4, 2015 IEP

MCPS. Ex. 3 Baltimore County Public Schools Psychological Report regarding Student, dated November 10, 2014

MCPS. Ex. 4 Resume' of XXXX XXXX, Coordinator, Placement and assessment Services Unit, MCPS

The Parent did not submit any documents for consideration.

Testimony

MCPS presented the expert testimony of XXXX XXXX, Coordinator of Placement and Assessment Services, MCPS. Mr. XXXX testified as an expert in special education placement decisions in non-public schools.

The Parent testified on her own behalf but did not present any other witness testimony.

FINDINGS OF FACT

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

1. The Student is sixteen years old and is in tenth grade. She was attending a MCPS high school at all times relevant.

2. The Student has a primary disability coded as Emotional Disability. She suffers from anxiety, which affects her areas of learning related to reading, mathematics, written language and social/emotional behavior.

3. On May 4, 2015, the IEP team met and developed an IEP for the Student for school year 2015-2016.

4. The Parent could not attend the meeting but gave her approval for the team to proceed in her absence with the development of the IEP.

5. The IEP team determined that the Student be placed at [School 1] with five forty-five minute sessions per week in a self-contained special education resource room where she could receive direct services from a special educator in the areas of learning and social/emotional skills. The remainder of her special education services was to be delivered in a co-taught general education setting.

6. The Parent assented to this IEP.

7. At the end of June 2015, the Student's therapist felt that the Student, based on behavioral concerns, required placement at [School 2] Residential Treatment Center (RTC) because of non-educational reasons.

8. The placement was ultimately made and funded by the Montgomery County Department of Health and Human Services (local department) pursuant to a "children with disabilities voluntary placement" under COMAR 07.02.11.06.

9. Under this voluntary agreement, the Department of Human Resources (DHR), through the local department, assumed responsibility for the Student and all of her educational expenses but the Parent is required to contribute to child support for the Student in the amount of $329.00 per month.

10. The child support payments are not specifically earmarked for educational expenses but are for the Student's general support.

11. In September 2015, the IEP team, including the Parent, met again to consider any additional information in light of the Student's changed circumstances and her referral to the RTC and to make any needed adjustments to the Student's IEP for 2015-2016.

12. During that meeting, no new information was provided to the IEP team by the Parent other than the fact that the Student was in the RTC pursuant to the agreement with the local department and that the local department was paying the Student's educational expenses.

DISCUSSION

The General Legal Framework

The identification, assessment, and placement of students in special education is governed by the IDEA, 20 U.S.C.A. §§ 1400-1482 (2010), 34 C.F.R. Part 300 (2014), Md. Code Ann., Educ. §§ 8-401 through 8-417 (2014), and COMAR 13A.05.01. The IDEA provides that all children with disabilities have the right to a free appropriate public education (FAPE). 20 U.S.C.A. §1412(a)(1)(A) (2010).

In *Board of Education of the Hendrick Hudson Central School District. v. Rowley,* 458 U.S. 176 (1982), the United States Supreme Court described 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.

458 U.S. at 200-01. *See also In Re Conklin*, 946 F.2d 306, 313 (4th Cir. 1991). The IDEA contains the following similar definition of FAPE:

> special education and related services that . . . have been provided at public expense, under public supervision and direction, and without charge…[and that have been] provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C.A. § 1401(9) (2010). *See also* Md. Code Ann., Educ. § 8-401(a)(3) (2014); COMAR 13A.05.01.03B(27).

Providing a student with access to specialized instruction and related services does not mean that a student is 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. Of Maryland*, 700 F.2d 134, 139 (4th Cir. 1983), *citing Rowley*. Instead, free appropriate public education entitles a student to an IEP that is "reasonably calculated to enable the child to receive educational benefits." *Id*. at 177.

"Educational benefit" requires that "the education to which access is provided be sufficient to confer some educational benefit upon the handicapped child." *Rowley*, 458 U.S. at 200. *See also MM ex rel. DM v. School Dist. of Greenville Cty.*, 303 F.3d 523, 526 (4th Cir. 2002), *citing Rowley*, 458 U.S. at 192; *A.B. v. Lawson*, 354 F.3d 315 (4th Cir. 2004); *Board of Educ. of Montgomery Cty. v. S.G.*, 2006 WL 544529 (D. Md. March 6, 2006). Thus, the IDEA requires an IEP to provide a "basic floor of opportunity that access to special education and related services provides." *Tice v. Botetourt*, 908 F.2d 1200, 1207 (4th Cir. 1990).

Nevertheless, the benefit conferred by an IEP and placement must be "meaningful" and not merely "trivial" or "de minimis." *Polk v. Central Susquehanna*, 853 F.2d 171, 182 (3rd Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). To provide a free appropriate public education, the

educational program offered to a student must be tailored to the particular needs of the disabled child by 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 depicts a student's current educational 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 objectives, and indicates the extent to which the child will be able to participate in regular educational programs. 20 U.S.C.A. § 1414(d)(1)(A). IEP teams must consider students' evolving needs when developing their educational programs. *Schaffer v. Weast*, 554 F.3d 470 (4th Cir. 2009).

In addition to the IDEA's requirement that a disabled child receive some educational benefit, the child must be placed in the "least restrictive environment" to achieve a FAPE, meaning that, ordinarily, disabled and non-disabled students should be educated in the same classroom. 20 U.S.C.A. § 1412(a)(5) (2010); 34 C.F.R. 300.114(a)(2)(i) & 300.117 (2014). However, mainstreaming disabled children into regular school programs may not be appropriate for every disabled child. Consequently, removal of a child from a regular educational environment may be necessary when the nature or severity of a child's disability is such that education in a regular classroom cannot be achieved. *Id*. Accordingly, in such a case, a FAPE might require placement of a child in a private school setting that would be fully funded by the child's public school district.

In this case, the Student was placed in a RTC for non-educational reasons on or about June 30, 2015. The Parent is seeking to have MCPS pay for the Student's educational services.

There is no disagreement that the Student is enrolled in a RTC and that this placement was not made by MCPS; therefore, section 1412(C) of the IDEA becomes relevant, which provides, in pertinent part, as follows:

> (C) Payment for education of children enrolled in private schools without consent of or referral by the public agency
>
> (i) In general
>
> Subject to subparagraph (A), this subchapter does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.
>
> (ii) Reimbursement for private school placement
>
> If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

20 U.S.C.A. § 1412(C) (2010).

The above language sets forth a fairly simple concept: if the school system made a FAPE available to the Student, and the Parent rejected that offer and instead placed the Student in a private school, then MCPS is not liable for reimbursement. If the school system did not offer a FAPE, it must pay the Student's costs at the private placement, if that placement is appropriate under the IDEA.

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). Accordingly, the Parent bears the burden of proving that the IEPs developed for the Student's 2015-2016 school year, as finalized on June 4, 2015 and September 15, 2015, respectively, were not reasonably calculated to provide the Student a FAPE in the least restrictive environment.

As a preliminary matter, MCPS moved to dismiss this matter or, in the alternative, moved for summary decision (Motion) and argued that the complaint of the Parent is not yet ripe because the Student is currently receiving educational services funded by the local department at the RTC where she has been since the end of June 2015 and will continue to receive services there until her discharge, the date of which has not yet been determined. MCPS contended that the Parent has requested reimbursement for educational expenses for the 2015-2016 school year but the Student's educational expenses are being paid by the local department pursuant to a voluntary agreement with the Parent. MCPS further asserted that the Student was placed at the RTC pursuant to a voluntary agreement between the local department and the Parent under COMAR 07.02.11.06 and that the Student is receiving educational services funded by the local department while she is at the RTC. As such, the IEP developed for the Student has not yet been implemented for School year 2015-2016. MCPS argued that because the Parent requested that MCPS fund the educational services received by the Student at the RTC, which are already being funded by the local department, there is no justiciable issue presented for which relief can be granted.

MCPS Motion to Dismiss or, in the Alternative, Motion for Summary Decision

Standards for Motion to Dismiss and Summary Decision

The 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 affidavit.
>
> (2) 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 as to the matters stated in the affidavit.
>
> (3) 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 contrast to a motion to dismiss, where an administrative law judge (ALJ) 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," when ruling on a motion for summary decision, an ALJ 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 (1999).

In this case, the Motion was accompanied by exhibits MCPS urged me to consider when rendering the decision, including the Parent's Request for Mediation and Due Process Complaint, and the Student's IEP from September 15, 2015. As the Motion met the requirements of COMAR 28.02.01.12D(1) and (2) and it included documents beyond the initial pleading, the Motion is being treated as one for summary decision.

In reviewing a motion for summary decision, an ALJ may be guided by case law that explains the nature of a summary judgment in court proceedings, such as the following: "Summary judgment is appropriate if there is no "*genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (emphasis in original). Facts are material if they

would affect the outcome of a case; there is a genuine issue of fact if the evidence would allow a "reasonable [fact-finder] . . . to return a verdict for the nonmoving party." *Id.* Material facts in dispute are those facts satisfying elements of the claim or defense or otherwise affecting the outcome of the case. *King v. Bankerd*, 303 Md. 98, 111 (1985). A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion. *Anderson*, 477 U.S. at 251. A judge must draw all justifiable inferences in favor of the non-moving party. *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 520 (1991).

In considering a motion for summary decision, it is not my responsibility to decide any issue of fact or credibility but only to determine whether such issues exist. *See Engineering Mgt. Serv., Inc. v. Maryland*, 375 Md. 211, 226 (2003). "[T]he purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried." *See Goodwich v. Sinai Hosp. of Baltimore, Inc.*, 343 Md. 185, 205-06 (1996); *Coffey v. Derby Steel Co.*, 291 Md. 241, 247 (1981); *Berkey v. Delia*, 287 Md. 302, 304 (1980). Only where the material facts are conceded, undisputed, or uncontroverted, and the inferences to be drawn from those facts are plain, definite and undisputed, does their legal significance become a matter of law for summary determination. *Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 139 (1970).

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

Summary of Undisputed Facts

In the Complaint filed by the Parent on October 14, 2015, she contended that the Student's IEP did not reflect placement at the RTC, that MCPS was not covering any educational expenses while the Student was at the RTC and that the MCPS was not providing a FAPE because the Parent was not being reimbursed for any of the Student's educational expenses while at the RTC.

It is undisputed that on May 4, 2015, the IEP team met and developed an IEP for the Student for school year 2015-2016. The Parent could not attend the meeting but gave her approval for the team to proceed in her absence with the development of the IEP. The IEP team determined that the Student be placed at [School 1] with five forty-five minute sessions per week in a self-contained special education classroom with the rest of her special education services to be delivered in a co-taught general education setting. The Parent assented to this IEP.

At the end of June 2015, the Student's therapist felt that the Student, based on behavioral concerns, required placement at the [School 2] RTC because of non-educational reasons. The placement was ultimately made by the local department pursuant to a "children with disabilities voluntary placement" under COMAR 07.02.11.06. Under this voluntary agreement, the local department assumed responsibility for the Student and all of her educational expenses but the Parent was required to contribute to child support for the Student in the amount of $329.00 per month. In September 2015, the IEP team, including the Parent, met again to consider the additional information in light of the Student's changed circumstances and her referral to the RTC and to make any needed adjustments to the Student's IEP for 2015-2016. During that meeting, no new information was provided to the IEP team by the Parent other than the fact that the Student was in a RTC pursuant to the agreement with the local department and that the local department was paying the Student's educational expenses.

MCPS determined that because the Student was referred by another State agency to the RTC, and that this other agency was covering the costs of the Student's education, the IEP was not yet in force and the Student's education was being handled through the DHR and not the MSDE.

Analysis

MCPS contends that there is no controversy regarding FAPE under the IDEA which is administered by MSDE. The Parent in her Due Process Complaint, filed on October 14, 2015, raised the issue of whether the IEP proposed by MCPS for the Student for the 2015-2016 school year provided a FAPE. Because the Student was not actively attending or even enrolled in MCPS during this school year, there is no issue under the IDEA regarding the implementation of the IEPs dated July 2015 and September 2015. For the Parent to survive MCPS's Motion, she must have offered some competent and probative evidence to establish that the IDEA was invoked and to establish the inadequacy of the IEP to provide special education and related services that were reasonably calculated to provide some educational benefit to the Student.

The Parent did not do so. She did not produce any competent evidence to show that the provisions of the IDEA were invoked here. She did not refute the fact that the Student's educational instruction and expenses were already being handled by DHR through the local department, that the IDEA was not invoked, that MCPS's identification of the Student in 2015 as emotionally disturbed was incorrect, or that the IEP would not provide FAPE. Her case consisted essentially of her contention that MCPS should pay at least some of the costs associated the Student's placement at the RTC or that MCPS's failure to recommend a residential treatment center as part of the Student's IEP was incorrect. Her only response to MCPS's Motion was that she felt that the Student has a right to a FAPE and that MCPS, by not funding the Student's educational component of the RTC, is denying her a FAPE.

The Parent did not dispute that several IEP meetings took place in 2015, and that IEPs were developed for school year 2015-2016 in June and September 2015. She also did not dispute or contest the contents or parameters of the IEP, which provided for only five hours per week of special education and related services in a public separate day school, with the rest of her education to be provided in a general education setting with non-disabled peers.

In addition to the absence of probative affirmative evidence that the IEP developed for 2015-2016 was not appropriate, the Parent did not dispute that she wanted the Student to stay at her home school and that the Student was withdrawn from MCPS in July 2015 and placed in the RTC for medical and psychiatric reasons. No information was provided to address the educational component of the Student's treatment plan at the RTC.

I do not doubt that the Student has multiple behavioral and academic problems, or that she has had more than one acute inpatient psychiatric hospitalization. I also accept the Parent's testimony that in June 2015, a treating psychiatrist recommended a residential treatment program, with an educational component, to address the Student's psychiatric and behavioral problems for an unspecified period of time. This recommendation does not establish, however, that the IEPs proposed in July 2015 and September 2015 were not appropriate based on all of the information provided at those times and would not have provided FAPE if the Parent had allowed MCPS to implement them.

The Parent entered a voluntary agreement with the local department giving it the responsibility for placement and care decisions related to the Student. COMAR 07.02.11.06 regarding voluntary placement provides, in pertinent part as follows:

B. Children with Disabilities Voluntary Placement.

(1) The following may request a Voluntary Placement Agreement:

(a) **A parent**;

(b) A legal guardian; or

(c) The Court.

(2) A Voluntary Placement Agreement may not be initiated by a third party.

(3) The local department shall make reasonable efforts to prevent placement in accordance with Md. Code Ann., Family Law Article, §5-525(e), Annotated Code of Maryland.

(4) The local department shall conduct an assessment.

(5) **In order for the local department to sign a voluntary placement agreement, the following conditions must be met:**

(a) The child has a documented developmental disability or mental illness;

(b) A treatment provider such as a medical doctor, psychiatrist, or psychologist has provided a written recommendation which details the need for out-of-home placement;

(c) The child requires an out-of-home placement in order to obtain treatment directly related to the documented disability;

(d) The parent is unable to provide treatment or care;

(e) The goal is reunification with the family at conclusion of treatment;

(f) Local Care Team (LCT) meeting has been held to determine whether any alternative or interim services for the child and family may be provided by any State agency;

(g) An appropriate placement and placement date has been determined as follows:

(i) The placement must be in the least restrictive setting; and

(ii) A psychiatric hospital is not considered a placement;

(h) The Administration must approve the voluntary placement by signing the Children with Disabilities Placement Checklist;

(i) **The parent and the Child Support Enforcement Agency must finalize a binding child support agreement detailing the amount and manner for child support payments**;

(j) Both parents, **a parent with sole legal custody**, or a legal guardian **has signed a voluntary placement agreement which gives the local department the responsibility for placement and care decisions related to the child**; and

(k) The local department shall make reasonable efforts to prevent placement.

(6) **A voluntary placement cannot be made if the parent refuses to pay child support or enter into a written agreement**.

(7) A voluntary placement agreement cannot be signed prior to a placement date.

(8) A child may remain in a Children with Disabilities Voluntary Placement beyond 180 calendar days or after the child's 18th birthday if:

(a) A treatment provider such as a medical doctor, psychiatrist, or psychologist has submitted written documentation supporting the need to continue the voluntary placement due to the child's developmental disability or mental illness; and

(b) Before the 180th calendar day in placement or prior to a child's 18th birthday, a juvenile court determines that continuation of the voluntary placement agreement is in the child's best interest.

(Emphasis added)

The Parent admitted that the Student was not enrolled in MCPS for school year 2015-2016 because the Student was in a RTC and that the IEP has not yet been implemented as a result. She admitted that the Student is funded in the RTC by the local department pursuant to a signed agreement but contended that she is required to pay $329.00 per month towards the Student's education, which she feels that the MCPS should be required to pay as part of the provision of a FAPE.

In fact, the $329.00 that the Parent pays per month is for child support pursuant to the binding written agreement between the local department and the Parent that assigned the local department responsibility for temporary care of the Student. The Parent, thus, accepted a voluntary placement of the Student with the local department and thereby relinquished responsibility for the Student's care to the local department. However, in doing so, the Parent is still required to pay some child support while the Student is in the care of the local department. As such, the child support payments are not specifically earmarked for educational costs as the Parent contends, but are for the general day to day costs associated with the care of the Student.

I do not doubt that the Parent's concerns for her daughter are sincere. According to her testimony, she has sought to obtain services for her daughter from a myriad of State agencies. The Parent, however, failed to show that there is a genuine dispute of a material fact. She has

produced no evidence other than her own unsupported opinion that MCPS has not complied with applicable law. Based on the lack of evidence from which I could reasonably find material facts to support the Parent's allegation that MCPS failed to provide FAPE during the 2015-2016 school year, I conclude that the Parent failed to establish that there is a dispute of a material fact. 20 U.S.C.A. § 1412 (2010); *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Accordingly, MCPS's Motion for Summary Decision should be granted because there is no genuine dispute of material fact and MCPS is entitled to judgment as a matter of law. Because the Motion for Summary Decision is granted, it will not be necessary to address the merits of this case.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that:

A. The Parent has failed to satisfy her burden to offer any evidence that creates a genuine dispute about whether MCPS has failed to provide FAPE to the Student during the 2015-2016 school year. 20 U.S.C.A. § 1412 (2010); *Schaffer v. Weast*, 546 U.S. 49 (2005).

B. MCPS is entitled to a summary decision against the Parent. COMAR 28.02.01.12D.

ORDER

I **ORDER** that MCPS's Motion for Summary Decision be, and it is hereby, **GRANTED;** and I further

ORDER that the Parent's Request for Due Process hearing be, and it is hereby, **DISMISSED**.

December 23, 2015
Date Decision Mailed

Michael J. Wallace
Administrative Law Judge

ED/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). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

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.