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XXXX XXXX	*	BEFORE MARY SEELEY KLAIR,
v.	*	AN ADMINISTRATIVE LAW JUDGE
BALTIMORE CITY	*	OF THE MARYLAND OFFICE
PUBLIC SCHOOLS	*	OF ADMINISTRATIVE HEARINGS
	*	OAH NO.: MSDE-CITY-OT-200200192

* * * * * * * * * * *

RULING ON MOTION

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STATEMENT OF THE CASE

This case arose from a May 14, 2002 request for a due process hearing filed by XXXX XXXX, the Sister and Guardian of XXXX XXXX ("Child"). The Guardian seeks appropriate placement in Baltimore City Public Schools ("BCPS") and training in daily living skills for the Child.

The BCPS made an oral Motion for Summary Decision at the conclusion of the Guardian's case. In its Motion the BCPS alleged that the Guardian presented no genuine issue as to any material fact and that BCPS is entitled to prevail as a matter of law. The hearing was held on June 17, 2002 before Mary Seeley Klair, Administrative Law Judge, at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland.

This matter is governed by the Reauthorization of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1415 (2000), 34 C.F.R. § 300.510 (1998), and Md. Code

Ann., Educ. § 8-413 (Supp. 2001) and the Maryland State Department of Education Guidelines for Maryland Special Education Mediation/Due Process Hearings.

Tim Dixon, Esquire, represented BCPS. The Guardian appeared on behalf of the Child.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, Md. Code Ann., State Gov't. §§ 10-201 through 10-226 (1999 & Supp. 2001) and the Rules of Procedure of the Office of Administrative Hearings (OAH), Code of Maryland Regulations ("COMAR") 28.02.01.

ISSUE

The issue on appeal is whether the BCPS is entitled to summary decision as a matter of law.

SUMMARY OF THE EVIDENCE

Testimony

The Guardian testified and presented the testimony of the Child.

The BCPS presented no witnesses.

Exhibits

The Guardian presented documents #1-9 none of which was admitted into evidence since, upon BCPS's objections, they were ruled irrelevant and immaterial due to incompleteness (there were pages from undated, unidentified summaries/reports), or the documents pre-dated the complaint by 7-10 years.

The BCPS presented no documents.

DISCUSSION

The Rules of Procedure applicable to the Office of Administrative Hearings permit an administrative law judge to grant summary decision if "there is no genuine issue as to any

material fact and that the moving party is entitled to prevail as a matter of law." COMAR 28.02.01.16C(2). This regulation is substantially similar to both Maryland Rule of Procedure 2-501 and Rule 56 of the Federal Rules of Civil Procedure. Therefore, it is appropriate to refer to interpretations of each for guidance in the application of the proper standard.

Summary judgment is appropriate where there is no genuine issue of material fact *and* the moving party is entitled to judgment as a matter of law. *Commodity Futures Trading Commission v. Noble Wealth Data Information Services, Inc.*, 90 F. Supp. 2d 676, 684 (D. Md. 2000) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 106 S. Ct. 2505 (1986). The nonmoving party "may not rest upon the mere allegations or denials of the adverse party's pleading," Fed. R. Civ. P. 56(e), but must come forward with "specific facts showing that there is a genuine issue for trial. *Commodity Futures Trading at 684, (citing Matsushita Electronic Indus. v. Zenith Radio Co., 475 U. S. 574, 89 L. Ed. 574, 106 S. Ct. 1348 (1986)).* "Mere unsupported speculation . . . is not enough to defeat a summary judgment motion." *Ennis v. Nat'l Assn. of Bus. & Educ. Radio, Inc. 53 F. 3d. 55, 62 (4th Cir. 1995).*

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 [factfinder] . . . to return a verdict for the nonmoving party." *Anderson*, 477 U. S. at 248. A mere scintilla of evidence in favor of a nonmoving party is insufficient to defeat a summary judgment motion. *Id.* at 251. In deciding a motion for summary judgement, or summary decision, the evidence, including all inferences therefrom, is viewed in the light most favorable to the non-moving party. *Natural Design, Inc. v. Rouse Co*, 302 Md. 47, 485 A. 2d 663, 671 (1984) (citations omitted).

The BCPS has moved for summary decision alleging that there is no genuine dispute of

material fact regarding any procedural violations caused by BCPS which have resulted in the denial of a free appropriate public education ("FAPE"). Consequently, the BCPS argued that it is entitled to a decision in its favor as a matter of law. The Guardian did not to respond to the BCPS's Motion and asserted that she had nothing more to present.

In *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982), the Supreme Court set forth a two-part analysis to determine whether a child is being accorded a free appropriate public education under IDEA. First, a determination must be made as to whether there has been compliance with the procedures set forth in the Act, and second, as to whether the IEP, as developed through the required procedures, is reasonably calculated to enable the child to receive educational benefits.

The Supreme Court has recognized that procedural compliance with the provisions of IDEA is critical to the efficient operation of the law. Serious procedural noncompliance can support a finding that the child was not provided with FAPE. *Rowley*, 458 U.S. at 204, 102 S. Ct. at 3050. In *Justin G. v. Board of Education of Montgomery County*, 148 F. Supp. 2d. 576 (D. MD. 2001), the United States District Court for the District of Maryland stated that "the complete failure to develop an IEP for a disabled child prior to the beginning of the school year constitutes a serious violation of the IDEA."

Not every procedural violation, however, constitutes a failure to provide the child with FAPE. A case by case assessment of the violation must be performed, and a determination made as to the seriousness of the noncompliance. If, as a result of the procedural failure, the child has lost any educational opportunity, there has been a denial of FAPE. *Burke County Bd. Of Educ. V. Denton*, 895 F. 2d 973, 982 (4th Cir. 1990); *see also Hampton School Dist. v. Dombrowski*, 976 F. 2d 48, 54 (1st Cir. 1992). More recently, the Fourth Circuit has stated that, "to the extent

that the procedural violations did not actually interfere with the provision of a free appropriate public education, the violations are not sufficient to support a finding that a school district failed to provide a free appropriate public education." *Gadsby v. Grasmick*, 109 F. 3d 940, 956 (4th Cir. 1997).

COMAR 13A.05.01.08A provides:

> *08. Individualized Education Program (IEP) Team Responsibilities.*
>
> *A. IEP Development*
>
> *(1) A public agency shall ensure that an IEP team meets to develop an IEP for a student with a disability within 30 days of the evaluation.*

The Request for Due Process Hearing filed in this case states the following:

> XXXX has been attending XXXX High School since the year 2000. In February 2001 he was put out of school for attendance. In July & August of 2001, I requested ARD or IEP meetings. One of the appropriators (sic) at the meeting recommended XXXX repeat eleventh grade due to errors on the schools (sic) part. I agreed. When the school year started, XXXX was once again, not in correct classes or academy, he was not receiving any type of remedial classes, such as Reading. XXXX is Level 4 and has Learning Disabled documents (sic) from XXXX. (School has copies) None of his teachers knew that he was "special-ed." (sic)

The Guardian chose to present her case herself. At the outset of the hearing I asked her to state what her complaint was and what relief she was seeking. She responded that her complaint was the "inappropriate placement of XXXX for 2001-2002, and no promises kept." As a remedy she stated that she was seeking appropriate placement and that XXXX needs daily living skills. The Guardian testified that she believes that XXXX needs classes to improve reading skills and comprehension skills and to learn how to count money and fill out job applications. Although she asserted that the student has a current IEP and that she signed it, she did not present it for admission into the record. Further, she did not allege that there were any

special education services required under the IEP that are not being provided to the student. She did not present any assessments or evaluations to show what special education services, if any, the student should be receiving. Her allegations that XXXX is not in the correct classes is completely unsupported by any evidence. She presented no factual evidence, but instead spoke only in the most general of terms. (he's not getting remedial classes; he needs reading/comprehension skills, needs to learn how to count money and fill out job applications).

It was clear that the Guardian, although well-intentioned, did not know how to go about presenting evidence to support her complaint. However, in addition to the Maryland Special Education Mediation/Due Process Guidelines and the Procedural Safeguards Parental Rights booklet enclosed to her with the May 14, 2002 letter from BCPS, her Notice of Hearing from the OAH, dated June 6, 2002, advised that, "If you have not done so already, you may engage legal counsel who should promptly enter an appearance on your behalf."

It is a well established principle of Maryland law that *pro se*[1] parties must adhere to procedural rules in the same manner as those represented by counsel. The Maryland Court of Special Appeals has stated that the principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self evident. *Tretick v. Layman,* 95 Md. App. 62,68, 619 A. 2d 210, 204 (1993). The same court subsequently held in *Pickett v. Noba, Inc.*, 122 Md. App. 566, 568, 714 A. 2d 212, 213 (1998) that,

> While we recognize and sympathize with those whose economic means require self-representation, we also need to adhere to procedural rules in order to maintain consistency in the judicial system.

As the trier of fact I am prohibited from assisting any party in the presentation of his/her

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[1] ***Pro se*** parties are those who choose to not retain legal counsel but to represent themselves at hearings.

case, or from extending procedural leeway in proving his/her case. In this instance, I explained the hearing procedure, and the order of presentation, and asked the Guardian if she understood, and she replied in the affirmative. But she presented no specific facts or any competent, relevant, or material evidence in support of her claim.

In applying the standard for summary decision to this case, there are no material facts in dispute. As a result, the issue of failure to provide FAPE may be decided, as a matter of law, on this motion. For the foregoing reasons, I am granting the BCPSs' Motion for Summary Decision, holding that there has been no denial of a free and appropriate education.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the BCPS's Motion for Summary Decision should be granted because there are no genuine issues of material fact with respect to its failure to provide FAPE, BCPS is entitled to summary decision as a matter of law on that issue. 20 U.S.C. 1412, 1415; Md. Code Ann., Educ., § 8-413; COMAR 28.02.01.16D; COMAR 13A.05.01.06 & 08; School *Committee of the Town of Burlington, Massachusetts, et. Al. v. Department of Education,* 471 U.S. 359; 105 S.Ct. 1996 (1985); *Gadsby by Gadsby v. Grasmick,* 109 F.3d. 940 (1997).

ORDER

I ORDER that the BCPS's Motion for Summary Decision hereby is **GRANTED**.

June 26, 2002
Date

_____
Mary Seeley Klair
Administrative Law Judge

MSK/mk

APPEAL RIGHTS

Within 180 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final review 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(h) (Supp. 2001).

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 OAH 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.

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