BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FULTON COUNTY SCHOOL DISTRICT, **Petitioner,**	:	
v.	:	**Docket No.** **OSAH-DOE-SED-[redacted]-60-KENNEDY**
[redacted] and [redacted] parents of [redacted] **Respondents.**	:	15-307432

MEMORANDUM ORDER AND DECISION
GRANTING PETITIONER'S MOTION FOR SUMMARY DETERMINATION
And
DENYING RESPONDENTS' MOTION FOR DISMISSAL WITH PREJUDICE

I. INTRODUCTION

[redacted] and [redacted] are the parents [redacted] a student in the Fulton County School District who has received services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

On April 23, 2015, the Fulton County School District (hereinafter Petitioner or District), filed a Due Process Hearing Request (Complaint) contending that [redacted] and [redacted] (hereinafter the Respondents, the Parents, or [redacted] and [redacted] were being uncooperative in giving parental consent for a triannual reevaluation. The parties subsequently reached a tentative settlement based on the Respondents' representation that they consented to the triannual reevaluation sought by Petitioner, and that their consent was unconditional. Based on the tentative settlement, the Court entered an Order Granting Petitioner's Motion for Stay of Proceedings on July 2, 2015,[1] to allow the parties an opportunity to work in good faith toward completing the reevaluation and holding an Indvidual Education Program (IEP) meeting by no later than September 20, 2015, but also

[1] The undersigned Administrative Law Judge signed the Order on June 30, 2015. However, it was not filed and entered by the Clerks office until July 2, 2015.

allowing for the submission of a dispositive motion if the evaluation was not completed in a timely manner.

On September 17, 2015, the Petitioner filed a Motion for Summary Determination alleging that the Speech and Language evaluation had not yet been completed solely due to the Respondents' lack of cooperation. In its Motion, the Petitioner requested that the Court order the Respondents' to produce [redacted] at a date, time and location chosen by the Petitioner so the evaluation could be completed; that Respondents' failure to produce [redacted] will act as a waiver of any rights for themselves or [redacted] to receive special education services or any other rights under IDEA; and that should the evaluation be completed, Petitioner may unilaterally schedule a date, time and location for an eligibility/IEP meeting to discuss the results of the completed evaluations and amend [redacted]s IEP and eligibility as appropriate, with the Petitioner retaining all rights to determine the participants and attendees on behalf of the District at such meeting, as well as any and all rights to amend [redacted]s IEP and eligibility as appropriate, irrespective of whether the Respondents choose to attend and participate in the meeting.

The Respondents' filed a response to the Petitioner's Motion for Summary Determination on September 22, 2015, and, simultaneously filed a Motion for Dismissal with Prejudice.

The Petitioner filed a reply to the Respondents' response on September 29, 2015.

Having considered the pleadings and arguments set forth before the Court, and based on the undisputed material facts set forth below, the Court **GRANTS** the Petitioner's Motion for Summary Determination and **DENIES** the Respondents' Motion for Dismissal with Prejudice.

II. FINDINGS OF UNDISPUTED MATERIAL FACT

1.

[redacted] is a student within the Fulton County School District, who was most recently determined to be eligible for services under IDEA on September 21, 2012. At that time, he was determined to be eligible under the categories of Autism and Speech Language Impairment. (Affidavit of Frances Holt, ¶ 3; Exhibit 1).

2.

The most recent evaluation conducted by the District for [redacted] occurred in August, 2012. (Holt Affidavit, ¶ 3; Exhibit 1).

3.

On or about September 25, 2014, the District convened an annual review IEP meeting for [redacted] which his parents attended. At this IEP meeting, the parties discussed conducting a comprehensive reevaluation of [redacted] in the areas of Autism and Speech Language, at the recommendation of the IEP team, to determine continued eligibility. It appears that the District's staff determined that a reevaluation would be appropriate, in part, because it appeared to the District's staff that [redacted] despite his documented disabilities, has "no current areas of need that require direct service and goals and objectives."[2] (Holt Affidavit, ¶¶ 4,5, Exhibit 2, pp. 3, 18; Affidavit of [redacted] ¶¶ 3, 4).

[2] This stance differs from the last evaluation time in September 2012, when the District staff indicated that [redacted] was doing well with supports, and required the supports that were currently in place. The staff member further indicated that she was concerned that without the current supports in high school, it would be difficult for [redacted] to maintain his level of success. (Holt Affidavit, Exhibit 1, p. 18).

4.

At the conclusion of the discussion on September 25, 2014, the parties completed a Reevaluation/Redetermination Checklist, which Respondent [redacted] signed indicating she agreed with the recommendation. (Holt Affidavit, ¶ 5, Exhibit 3; [redacted] Affidavit, ¶ 4).

5.

The Reevalutaiton/Redetermination Checklist used on September 25, 2014, was an older version of the form that K[redacted] [redacted] Instructional Support Teacher for [redacted] High School, had readily on hand to use at that time, and was an approved form by the Georgia Department of Education. Ms. [redacted] chose to use the older version of the form because the District's computer system was non-functional at the time, which prevented Ms. [redacted] from being able to go on-line and print a newer version of the form. (Holt Affidavit, ¶ 5; [redacted] Affidavit, ¶ 4; Exhibit 3).

6.

On September 25, 2014, the Respondents signed and completed the District's standard Consent for Evaluation form, which indicated their agreement and consent for the evaluations to take place. This form is an approved form by the Georgia Department of Education. (Holt Affidavit, ¶ 6; [redacted] Affidavit, ¶ 5; Exhibit 4).

7.

On October 1, 2014, before the District commenced the evaluation, the Respondents sent an email indicating that they believed the consent form was invalid because the student id on the consent form was purportedly in error. Additionally, the Respondents returned a revised Consent for Evaluation form revoking their prior consent. On the form, the Respondents alleged as the sole reasons for the revocation of consent:

> Reevaluation is biased including a review of a previous psychological evaluation that is invalid, inaccurate and unprofessional.[3] Additionally, the student id is in error. The use of a student id that is not our child's. This is not the correct student id to use and is inconsistent with parental consent for reevaluation/redetermination.

(Holt Affidavit, ¶ 7, Exhibits 5, 6 (page 2); [redacted] Affidavit, ¶ 6).

8.

Although the Respondents claimed that the student id listed on the form was not [redacted]s, Ms. [redacted] was able to confirm, on October 2, 2014, that the student identification number listed on the Consent for Evaluation form was, in fact, [redacted]'s correct state-issued student identification number. (Holt Affidavit, ¶ 9, Exhibit 6; [redacted] Affidavit, ¶ 7).

9.

After the District informed the Respondents that the student identification number on the Consent for Evaluation form was correct, the Respondents nevertheless maintained that the use of a student identification number somehow invalidated the consent form and they would not provide their consent for a reevaluation without certain conditions being met. (Holt Affidavit, ¶ 10, Exhibits 5, 6; [redacted] Affidavit, ¶ 8).

10.

Ms. Frances Holt, then the District's Coordinator of Compliance, contacted the Respondents on October 7, 2014, to address their concerns. Ms. Holt explained that the use of a state-issued identification number would not invalidate the consent form signed by the Respondents on

[3] The allegedly "invalid, inaccurate and unprofessional" evaluation referred to by the Respondents is an Independent Educational Evaluation (IEE) conducted in 2013, by an evaluator chosen by [redacted].'s parents. More specifically, in 2013, Parents requested an IEE at public expense, in response to the District's 2012 evaluation. While the District maintained the appropriateness of its own evaluation, the District agreed to provide the IEE at public expense, which was conducted by an evaluator selected by [redacted]'s parents. Later, [redacted].'s parents determined that they disagreed with the IEE and demanded that it be purged from [redacted].'s educational records. The District declined the request. (Holt Affidavit, ¶ 8).

September 25, 2014.[4] (Holt Affidavit, ¶¶ 2, 11,12, Exhibit 7). However, the evaluation could not proceed given that the Respondents had revoked their prior consent on October 1, 2014. (Holt Affidavit, ¶ 7, Exhibits 5, 6 (page 2); [redacted] Affidavit, ¶ 6).

11.

On October 16, 2014, Ms. Holt sent the Respondents a prior written notice reiterating the District's request for the evaluations and the reasons for it. Ms. Holt also explained the use of a state-issued student identification number. Ms. Holt enclosed another Consent for Evaluation form (without the student identification number to which [redacted] and [redacted] had objected), a list of low-cost/no-cost legal providers, and another copy of their parental rights under IDEA.[5] (Holt Affidavit, ¶ 13, Exhibit 8).

12.

On October 29, 2014, the Respondents returned the second Consent for Evaluation form that was provided to them on October 16, 2014, and once again refused to provide consent without certain conditions being met. Additionally, the Respondents alleged that the second form was the "incorrect form for reevaluation," even though it was identical to the form that they had already received and signed previously on September 25, 2014, with the exception of [redacted]s student identification number being removed. The Respondents also advised the District that they could not provide consent until they had received a correct reevaluation parent consent form, a reevaluation/redetermination parent consent form, and a complete copy of their parental rights under IDEA. (Holt Affidavit, ¶ 14, Exhibit 9; [redacted] Affidavit, ¶ 9).

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[4] The District uses a state-issued student identification number for consent forms, and uses a District-issued student identification number for internal documents, such as IEPs. Both numbers are unique to a student and accurately identifies the student at the state and/or local level. (Holt Affidavit, ¶¶ 2, 11,12, Exhibit 7).

[5] Due to a scanning error, the document was incomplete. However, [redacted] and [redacted] have received complete copies of their parent rights numerous times over the years, including at the September 25, 2014 IEP meeting. Further, the prior written notice and all attachments (including a complete copy of the parental rights document) were mailed to Respondents' home. (Holt Affidavit, ¶ 13).

13.

On November 4, 2014, Ms. Holt responded via email to [redacted] and [redacted]s refusal to provide unconditional consent for an evaluation to be conducted. In her email, Ms. Holt apologized for omitting the even-numbered pages from the parental rights document that she had sent on October 16, 2014, but noted that a complete set had been mailed home. Ms. Holt also attached a complete electronic copy of parental rights to her email, along with another copy of the Consent for Evaluation form and Reevaluation/Redetermination Checklist. Ms. Holt informed the Respondents that the attached form was the District's current version of the consent form to conduct an evaluation. (Holt Affidavit, ¶ 15, Exhibit 10).

14.

The Respondents did not reply to Ms. Holt's November 4, 2014, email. (Holt Affidavit, ¶¶ 15, 17)

15.

On November 7, 2014, Ms. Holt contacted the Respondents to reiterate the appropriateness of the Consent for Evaluation form, and to again request their consent to conduct the recommended reevaluation for [redacted] (Holt Affidavit. ¶ 16, Exhibit 11).

16.

The Respondents did not reply to Ms. Holt's November 7, 2014, communication. (Holt Affidavit ¶¶ 16, 17).

17.

On December 1, 2014, Ms. Holt again reached out to the Respondents requesting their consent to conduct the recommended reevaluation for [redacted] (Holt Affidavit, ¶ 17, Exhibit 12).

18.

On December 2, 2014, the Respondents returned the Consent for Evaluation form and indicated, as before, that they did not agree. The Respondents provided the following reasons for their refusal to consent to the evaluation:

> Again this is the incorrect form for reevaluation. Before we can provide a response for a reevaluation we need: correct reevaluation parent consent form & reevaluation/redetermination parent consent form, and pages 2, 4, 6, & 8 of parent rights were missing & needed. We are not certain why SEC compliance, Ms. Holt, continues to send us incomplete and inconsistent copies of parent rights. We, as stated earlier, would appreciate legal and appropriate handling of our child's IEP.

In addition, the Respondents noted on the form that Ms. [redacted] title and phone number were "missing." (Holt Affidavit, ¶ 18, Exhibit 13; [redacted] Affidavit, ¶ 10).

19.

On December 15, 2014, responding to [redacted] and [redacted]s specific request for another Consent for Evaluation form and parental rights, Ms. Holt sent them a Consent for Evaluation form and a complete copy of their parental rights. Ms. Holt also included another copy of the Reevaluation/Redetermination checklist for their reference. (Holt Affidavit, ¶ 19, Exhibit 14).

20.

By January 22, 2015, the Respondents had not returned the Consent for Evaluation form that was sent to them on December 15, 2014. Therefore, Ms. Holt once again sent the same information to them to try again to obtain their consent for [redacted]s recommended reevaluation. (Holt Affidavit, ¶ 20, Exhibit 15).

21.

On or about January 30, 2015, the Respondents returned the Reevaluation/Redetermination checklist to Ms. [redacted] and, for the first time, alleged that they did not understand the checklist

itself, even though this is the form used by the District, the Respondents had signed it previously, and they had never previously alleged any lack of understanding. (Holt Affidavit, ¶ 21, Exhibit 16; [redacted] Affidavit, ¶ 11).

22.

At the same time, the Respondents returned the Consent for Evaluation form indicating that they both did and did not consent to the reevaluation. However, just a few days later, on February 2, 2015, the Respondents informed the District that they would not "provide a consent response" regarding the District's request to complete a reevaluation of [redacted] until they received the information they had requested on the form. They also requested that Ms. Holt only communicate with them via U.S. certified mail rather than via email. (Holt Affidavit, ¶ ¶ 21-22, Exhibits 16, 17; [redacted] Affidavit, ¶ 11).

23.

On February 6, 2015, Ms. Holt advised the Respondents that Ms. [redacted] could answer any questions they had about the Reevaluation/Redetermination checklist. (Holt Affidavit ¶ 23, Exhibit 18). In fact, Ms. [redacted] had already, on February 5, 2015, provided the Respondents information regarding areas they had indicated required clarification. Ms. [redacted] also requested a written response from the Respondents confirming that they had received the clarification so that the reevaluation could begin. (Holt Affidavit, ¶ 24, Exhibit 19; [redacted] Affidavit, ¶ 12).

24.

On February 26, 2015, Ms. Holt reminded the Respondents that the reevaluation would begin, given that they had received a correct reevaluation parent consent form, a complete copy of their parental rights, and Ms. [redacted] had responded to their questions regarding the reevaluation/redetermination checklist. Ms. Holt advised the Respondents that the reevaluation

would begin on March 9, 2015, unless they once again revoked their consent. (Holt Affidavit, ¶ 25, Exhibit 20).

25.

The next day, February 27, 2015, the Respondents notified the District that they still had unresolved concerns such that the reevaluation could not proceed. They also requested an "emergency IEP meeting." (Holt Affidavit, ¶ 26, Exhibit 21).

26.

On March 2, 2015, Ms. [redacted] offered March 17, 2015, as a proposed date to hold the requested "emergency IEP meeting."[6] She also offered to answer any additional questions the Respondents had regarding the "re-evaluation process and [the District's] request for a comprehensive evaluation to aid in the educational planning for" [redacted] (Holt Affidavit, ¶ 27, Exhibit 22; [redacted] Affidavit, ¶ 13).

27.

On March 6, 2015, the Respondents returned a Consent for Evaluation form in which they made it clear that they would not consent to any evaluation because they felt that their questions and concerns regarding the reevaluation had not been addressed and that they had not been provided the information they had requested. On the form they stated: "we revoke our consent to evaluate our child at this time. Among other items, we will address these at the March 17th IEP meeting." (Holt Affidavit, ¶ 28, Exhibit 23; [redacted] Affidavit, ¶ 14).

28.

An IEP meeting was held on March 17, 2015. The Respondents attended, along with several other individuals from [redacted] High School and the District's Special Education Department

[6] At the IEP meeting held March 17, 2015, the Respondents explained that they had requested a meeting "to address the decline in their son's grades, they believe this is a direct correlation to his decrease in IEP services." (Holt Affidavit Exhibit 25).

(specifically, Ms. K[redacted] Special Education Coordinator). During that meeting, Ms. [redacted] again discussed the need to conduct a reevaluation for [redacted] Afterwards, the Respondents stated "we've gotten the clarification we've been seeking." (Holt Affidavit, ¶ 30, Exhibit 29; [redacted] Affidavit, ¶ 16). However, they did not sign the Consent for Evaluation form at the meeting and, instead, chose to take it with them. (Holt Affidavit, Exhibit 25; [redacted] Affidavit, ¶ 17).

29.

In late March 2015, Ms. [redacted] and Ms. [redacted] called the Respondents to inquire as to the status of their decision to sign the Consent for Evaluation form. The Respondents informed Ms. [redacted] and Ms. [redacted] that they still had questions, but did not want to share them. They also stated that the forms "looked different," but did not explain further and ended the telephone call. ([redacted] Affidavit, ¶ 18).

30.

On April 13, 2015, Ms. [redacted] and Ms. [redacted] again called the Respondents to inquire as to the status of their decision to sign the Consent for Evaluation form. The Respondents stated that the Reevaluation/Redetermination form "looked different" and this time clarified that it was not identical to the Georgia Department of Education sample form. ([redacted] Affidavit, ¶ 19).

31.

While remaining on the phone with [redacted] and [redacted] Ms. [redacted] pulled up the Georgia Department of Education sample form online and explained to them that this form was a sample only and that school districts are authorized to develop their own forms. Ms. [redacted] further clarified that the Georgia Department of Education provides sample forms for school districts to

use as a tool and to let families know the information that these forms generally contain. ([redacted] Affidavit, ¶ 20).

32.

The Georgia Department of Education's sample Reevaluation/Redetermination form is virtually identical in content to the District's form provided to the Respondents. (Holt Affidavit, ¶¶ 5 and 31, Exhibits 3 and 26). Likewise, the Georgia Department of Education's sample Consent for Evaluation form is virtually identical in content to the District's form provided to the Respondents. (Holt Affidavit, ¶¶ 6 and 32, Exhibits 4 and 27).

33.

[redacted] and [redacted] ended the April 13, 2015, telephone call with Ms. [redacted] without providing consent for the reevaluation. They subsequently sent an email in which they alleged that Ms. [redacted] had engaged in "bullying and harassment" by calling them "with district administration on the call." They requested that any further communications between Ms. [redacted] and themselves be via email only. (Holt Affidavit, ¶ 33, Exhibit 28; [redacted] Affidavit, ¶ 21).

34.

On April 15, 2015, Ms. [redacted] responded to the Respondent's April 13, 2015, email, and stated she did not intend to bully or harass them, but was only trying to follow-up about the Consent for Evaluation Form. She also offered various dates she could meet with [redacted] and [redacted] to again discuss the reevaluation. (Holt Affidavit, ¶ 34, Exhibit 28; [redacted] Affidavit, ¶ 22).

35.

After spending six months attempting to secure [redacted] and [redacted]s consent for evaluation, the District filed the instant due process hearing on April 23, 2015, seeking "an order from the Court declaring that the family has waived their and their student's rights under IDEA by their

affirmative refusal to consent to the needed reevaluations [or, alternatively] an order overriding the family's refusal to consent and directing the family to cooperate fully with the needed reevaluations and, should they not so fully cooperate, an order that the family was [sic] waived their and their student's rights udner [sic] IDEA." (Holt Affidavit, ¶ 35; [redacted] Affidavit, ¶ 23; ALJ Exhibit 1- Due Process Hearing Request).

36.

On June 15, 2015, while the Petitioner's Complaint was pending before this court, [redacted] and [redacted] consented to the psycho-educational and speech language evaluations requested by the District in its Complaint. (Respondents' submission to the Court dated June 19, 2015; Respondents' Response to Petitioner's Motion for Summary Determination and Respondents' Motion for Dismissal with Prejudice, p. 1).

37.

[redacted] and [redacted] represented that their consent was unconditional and that the requested evaluations could proceed. Rather than issue a dismissal of the Petitioner's Complaint based on the Respondents having represented that they unconditionally consented to the Petitioner completing an evaluation, the court entered an Order Granting Petitioner's Motion for Stay of Proceedings. The court did so to ensure that the underlying issue raised in the Petitioner's Due Process Hearing Request would, in fact, be fully resolved by the parties agreement to complete the evaluation. This Court ordered that the parties work in good faith to ensure that the evaluations were completed in a timely manner such that a report could be issued and an IEP meeting scheduled to discuss the results of the evaluations no later than September 20, 2015. The Court further ordered that if the evaluation was completed, that the Petitioner was to notify

the Court within 5 business days and withdraw its hearing request only "if the sole issue before this court is fully resolved." (Order, July 2, 2015).

38.

After receiving, the Respondents June 15, 2015, consent to conduct the evaluations requested by the District in its due process hearing request and the Respondents' assurance that the consent was not conditional, Ms. Cristy Smith (the District's Executive Director of Services for Exception Children) asked Ms. Holt to contact the Respondents to begin the evaluation process. (Affidavit of Cristy Smith, ¶ 3).

39.

Ms. Holt contacted the Respondents on July 8, 2015, to coordinate the reevaluation process. Ms. Holt informed the Respondents of the need to do a preliminary vision/hearing screening and she asked that they suggest some dates and times to schedule the screening. Ms. Holt also informed the Respondents that she would mail rating scales for them to complete and that the responses would be taken into consideration as part of the evaluation process. (Smith Affidavit, ¶ 4, Exhibit 1, p. 2).

40.

[redacted] and [redacted] informed the District on July 9, 2015, that [redacted] would not be available to participate in the evaluation until after the start of the school year on August 10, 2015. (Smith Affidavit, ¶ 5, Exhibit 1, p. 1).

41.

On July 14, 2015, Ms. Holt sent to [redacted] and [redacted] via certified mail, the rating scales for them to complete. She asked that the completed forms be returned by August 14, 2015. (Smith Affidavit, ¶ 6, Exhibit 2).

42.

As of August 19, 2015, [redacted] and [redacted] had not returned some of the rating scales to the District. Accordingly, on that same date, Ms. Smith emailed [redacted] and [redacted] to follow up on the status of those rating scales and the need to have them completed as part of the evaluation process. Ms. Smith extended the time to return the completed rating scales to August 21, 2015. (Smith Affidavit, ¶ 7, Exhibit 3).

43.

By August 25, 2015, the Respondents still had not returned the completed rating scales. Accordingly, Ms. Smith contacted the Respondents and told them that, in light of their failure to timely return the rating scales and the need to complete evaluations and hold an eligibility/IEP meeting by September 20, 2015, per this Court's Order, that the District would have no choice but to proceed without the completed scales. On that same date, Ms. Smith asked the Respondents to provide dates and times they would be available to meet for the eligibility/IEP meeting that was required to be held no later than September 20, 2015. (Smith Affidavit, ¶ 8, Exhibit 4).

44.

Later that evening, the Respondents emailed Ms. Smith and, for unclear reasons, implied that she had requested that the eligibility/IEP meeting be conducted entirely by email and indicated their preference to have the typical face-to-face meeting. They did not, however, provide any information about their availability as requested. Instead, they stated that they "anticipate hearing from Ms. [redacted][7] regarding possible dates for the eligibility & IEP meeting." (Smith Affidavit, ¶ 9, Exhibit 5).

[7] Ms. [redacted] is the Instructional Support Teacher for [redacted] High School, where [redacted] is enrolled, and helps oversee special education programming there. (Smith Affidavit, ¶ 10, Exhibit 5).

45.

In response to [redacted] and [redacted]s August 25, 2015 email, Ms. Smith reiterated on August 27, 2015, that she had requested their availability for the IEP meeting, had never requested an email discussion regarding [redacted]'s reevaluation, and assured them that the District also preferred a face-to-face meeting for the IEP. She also let them know that she had asked Ms. [redacted] to provide dates that the District's staff could be available to meet for the IEP. (Smith Affidavit, ¶ 10, Exhibit 5).

46.

On August 27, 2015, at Ms. Smith's request, Ms. [redacted] emailed the Respondents to set up a date for the eligibility/IEP meeting. Ms. [redacted] offered three separate dates and times for the meeting to occur, all before September 20, 2015. (Smith Affidavit, ¶ 11, Exhibit 6, p. 2).

47.

On August 28, 2015, [redacted] and [redacted] responded to Ms. [redacted] In their email, the Respondents asked Ms. [redacted] if the reevaluation had been completed. They also informed Ms. [redacted] that [redacted] "is a bit overwhelmed having been pulled from class quite a bit for testing, getting adjusted to class schedule changes and rying [sic] to catch up on school work." The Respondents also inquired about the proposed dates that Ms. [redacted] had provided – specifically the Respondents inquired as to what type of meeting she wanted to schedule. They stated in their email reply: "the information you provided regarding scheduling a meeting is vague – will you please clarify the type of meeting for which you have provided dates and what team you are referring to? We are assuming this is IEP related, but would like clarification." However, just a few days earlier, on August 25, 2015, [redacted] and [redacted] had written to Ms. Smith and had indicated they understood that the eligibility/IEP meeting had to occur prior to September 20, and that they anticipated

hearing from Ms. [redacted] regarding possible dates for the eligibility/IEP meeting. (Smith Affidavit, ¶ 12, Exhibits 5, 6, p. 2).

48.

Ms. [redacted] replied to [redacted] and [redacted]s August 28, 2015 email that same evening, clarifying the purpose of the meeting that the District was attempting to schedule. She also advised the Respondents that the reevaluation had not been completed, but that the District hoped that it would be completed by September 4, 2015. Finally, she informed the parents that the District understood the Respondents' concerns about [redacted] missing class, but indicated that all of his teachers had been "very supportive and have arranged for [redacted] to get the missed work." The Petitioner did not address any way that the school would support [redacted] in completing the work and keeping up with his on-going work, only that his teachers had ensured he had received the work he missed. (Smith Affidavit, ¶ 13, Exhibit 7).

49.

On August 30, 2015, [redacted] and [redacted] responded to Ms. [redacted] and stated that they were unable to meet on any of the three dates offered by the District, but did not propose any alternative dates and did not provide any information regarding their availability. (Smith Affidavit, ¶ 14, Exhibit 6, p. 1).

50.

On August 31, 2015, the Respondents emailed Ms. [redacted] and Ms. Smith to reiterate that they had "sent prior response that [they] are not able to attend any of the dates offered for our child's IEP meeting." They further informed the Petitioner that they "will be in attendance of the meeting on a mutually agreed upon date," but again provided no proposed meeting dates/times,

or information regarding their availability. (Smith Affidavit Exhibit 9, p. 3 and Exhibit 10, p. 3 and Exhibit 11, p. 4 and Exhibit 12, p. 4).

51.

In the meantime, the District commenced the reevaluation process for [redacted] in order to have it timely completed per this Court's Order. The District assigned A[redacted] [redacted] a qualified school psychologist, to conduct the psycho-educational evaluation portion of the reevaluation. The District assigned N[redacted] [redacted] a qualified speech language pathologist, to conduct the needed speech language evaluation portion of the reevaluation. (Smith Affidavit, ¶ 15).

52.

Ms. [redacted] is a licensed speech language pathologist with a current and valid certificate of clinical competence. She is qualified to conduct speech language evaluations, make recommendations regarding speech language therapy services, and deliver, implement, oversee, and supervise such speech language therapy services. As part of her professional duties and responsibilities, she conducts all the aforementioned activities on behalf of the District. ([redacted] Affidavit, ¶ 2).

53.

On Friday, August 28, 2015, Ms. [redacted] began to conduct the speech language evaluation of [redacted] She conducted one evaluation session with him during his Orchestra class. The speech language evaluation could not be completed in one session because [redacted] preferred to finish at another time. Not wanting to push [redacted] beyond his comfort level and risk invalidating results, she told him it was fine to stop and that she would be back within the next few days to complete the speech language evaluation. ([redacted] Affidavit, ¶ 3; Smith Affidavit, ¶ 16).

54.

On August 31, 2015, at 5:03 a.m., [redacted] and [redacted] emailed Ms. [redacted] and Ms. Smith objecting to Ms. [redacted] conducting the evaluation or having "any involvement" in [redacted]s educational planning. [redacted] and [redacted] stated that their former legal counsel had informed the District that Ms. [redacted] was not to have any involvement with [redacted]s "educational planning because of her unprofessional behavior" during a 2013 IEP meeting. (Smith Affidavit, ¶ 17, Exhibit 8).

55.

That same afternoon, Ms. Smith responded to [redacted] and [redacted]s August 31, 2015, emails sent to her. She confirmed that the District had selected Ms. [redacted] to conduct the speech language evaluation. She also once again asked them to advise the District of their availability to attend the eligibility/IEP meeting so it could be timely held, in light of the multiple participants and their respective schedules involved. She specifically asked that they advise the District of their availability by the close of business on September 1, 2015. (Smith Affidavit, ¶ 19, Exhibit 9, p. 2).

56.

Ms. [redacted] attempted to complete the second session of the speech language evaluation on September 1, 2015. When [redacted] came to the testing room, he said "I don't think I should be doing this." Ms. [redacted] reminded him that they had tested together the previous Friday and that she had told him she would be back so they could finish. [redacted] asked to call his mother, which Ms. [redacted] allowed. Ms. [redacted] heard [redacted] tell his mother that he was being "pulled for testing." After ending the call, [redacted] said to Ms. [redacted] "my mother has already talked to Cristy Smith and this is a legal issue and if you have any questions you need to call my parents," referring to the email that the Respondents' had sent Ms. Smith informing her that their former legal counsel

had advised the District that Ms. [redacted] is not to have any involvement in [redacted]'s educational planning. Ms. [redacted] told [redacted] that they only had 30 minutes of testing left and whether he preferred that she come at a different time, like lunch or before/after school. [redacted] responded "no, I don't think I should do it anymore." Ms. [redacted] responded that she would not ask him to disobey his parents by testing with her. [redacted] thanked her and then left. ([redacted] Affidavit, ¶ 4; Smith Affidavit Exhibit 8).

57.

Ms. [redacted] subsequently learned that [redacted] and [redacted] objected to [redacted] missing any class time for evaluations. Accordingly, Ms. [redacted] arranged her schedule to be available during lunch and after school on September 8, and before/after school and during lunch on September 10, to complete the speech language evaluation. ([redacted] Affidavit, ¶ 5).

58.

Ms. Smith learned of [redacted]s refusal to participate in the completion of the speech language evaluation at his parent's direction. Accordingly, Ms. Smith emailed [redacted] and [redacted] on the evening of September 1, 2015, apprising them of the situation and asking them to cooperate in the evaluation process, in part, by providing information regarding their availability to meet before the September 20, 2015, deadline set out in the undersigned's July 2, 2015, Order. She also informed them that Ms. [redacted] had offered to make herself available on September 8 and 10, outside of normal school hours, to complete the evaluation so that [redacted] would not miss any class time. (Smith Affidavit, ¶ 20, Exhibit 9, p. 1).

59.

Despite the District's numerous requests for [redacted] and [redacted] to provide dates they would be available to participate in an IEP meeting, [redacted] and [redacted] never provided any dates that they

would be available to meet. Instead, on September 1, 2015, [redacted] and [redacted] emailed Ms. Smith again demanding that Ms. [redacted] have no involvement in [redacted]s evaluation. They also informed the Petitioner that they would "not be able to determine dates for the IEP meeting until we have acquired/determined dates that legal representation can attend the IEP meeting with us." However, as of the filing of the District's Motion for Summary Determination on September 17, 2015, [redacted] and [redacted] have never provided information about legal representation or dates or times when they would be available to meet to conduct the IEP meeting. (Smith Affidavit, ¶¶ 20, 21, 22, Exhibits 9 (page 1), 10 (page 2), 11 p. 3).

60.

When Ms. [redacted] learned that the Respondents strongly objected to her conducting the speech language evaluation [redacted] she assigned S[redacted] [redacted] to conduct the remainder of the speech language evaluation. Ms. [redacted] is a licensed speech language pathologist with a current and valid certificate of clinical competence who is qualified to conduct speech language evaluations, make recommendations regarding speech language therapy services, and deliver, implement, oversee, and supervise such speech language therapy services. Ms. [redacted] did, however, request to be present during the remainder of the speech language evaluation, but outside of [redacted].'s line of sight, because she and Ms. [redacted] would need to collaborate to write the report since Ms. [redacted] completed the first portion of the evaluation and Ms. [redacted] would be completing the second portion of the evaluation. ([redacted] Affidavit, ¶ 6; [redacted] Affidavit, ¶ 2; Smith Affidavit Exhibit 10, p. 2).

61.

On September 2, 2015, Ms. Smith informed the Respondents that the District's sole objective was to complete the reevaluation to which they had unconditionally consented to on June 15,

2015. In an effort to complete the reevaluation, she communicated that the District would agree to meet the Respondent's demand that Ms. [redacted] not complete the remainder of the speech language evaluation and that another qualified evaluator would do so. However, she further notified the Respondents that Ms. [redacted] would be present during the completion of the evaluation, but outside [redacted]s line of sight, because collaboration would be necessary between the two evaluators to generate an evaluation report. Ms. Smith also reiterated the dates and times that the evaluator would be available to complete the evaluation so that [redacted] would not miss any class time, per the Respondents' request. Ms. Smith also asked that the Respondents confirm their consent to the evaluation and confirm the date/time they selected for [redacted] to complete the evaluation. She requested their response by the close of business that day. Finally, she informed the Respondents that if they were not in agreement with either of the options presented, the Petitioner would interpret the Respondents' August 31 and September 1, 2015, emails as refusal to allow the evaluation to go forward. (Smith Affidavit, ¶ 23, Exhibit 10 (pages 1-2) and Exhibit 11 p. 2 and Exhibit 12 pp. 2-3).

62.

[redacted] and [redacted]s only response to Ms. Smith's September 2, 2015, email was to again object to Ms. [redacted] involvement in any aspect [redacted]s evaluation or educational planning. (Smith Affidavit, ¶ 24, Exhibit 10 (page 1) and Exhibit 11 p. 2 and Exhibit 12 p. 2).

63.

Due to the Respondents continued objection to Ms. [redacted] having any involvement in the speech language evaluation, and in an effort to get the reevaluation completed, Ms. [redacted] volunteered that she would not be present for the evaluation session conducted by Ms. [redacted] ([redacted] Affidavit, ¶ 7).

64.

Ms. Smith emailed the Respondents on September 7, 2015, regarding the completion of the reevaluation and scheduling of the eligibility/IEP meeting. She notified them that Ms. [redacted] would not be present for the remainder of [redacted]s speech language evaluation, per their specific demand. Ms. Smith reiterated the dates and times that Ms. [redacted] would be available to complete the evaluation so that [redacted] would not miss any class time, as [redacted] and [redacted] had also demanded. She asked them again for their availability for the eligibility/IEP meeting, given the impending September 20, 2015, deadline. Additionally, given the hope to schedule the evaluation for the following day, September 8, 2015, she requested a response by 11:00 a.m. on that date. She received no response from [redacted] or [redacted] by the requested time. (Smith Affidavit, ¶ 25, Exhibit 11, pp. 1-2 and Exhibit 12 pp. 1-2).

65.

Ms. [redacted] instructed Ms. [redacted] to be at [redacted] High School on September 8, 2015, to await word from the Respondents about [redacted]s availability for testing. Ms. [redacted] arranged her calendar to do so. When the Respondents had failed to respond to Ms. Smith's email by 11:00 a.m. on the morning of September 8, as requested, Ms. [redacted] allowed Ms. [redacted] to leave [redacted] High School to attend to her other professional duties and responsibilities. ([redacted] Affidavit, ¶ 8; [redacted] Affidavit, ¶ 3).

66.

On the evening of September 8, 2015, at 5:24 p.m., the Respondents emailed Ms. Smith. In their email the Respondents informed Ms. Smith that they "are very uncomfortable with this situation" and that they "will not be able to determine dates for an IEP meeting until we have acquired/determined dates that legal representation can attend the IEP meeting." The

Respondents did not respond to Ms. Smith's request regarding when, or whether, they would make [redacted] available to complete the speech language evaluation. (Smith Affidavit ¶ 26, Exhibit 12, p. 1).

67.

The next day, on September 9, 2015, at 6:35 a.m., Ms. Smith responded to [redacted] and [redacted]s September 8, 2015, email and asked them again to advise when, or whether, they would make [redacted] available to complete the evaluation. She asked that they provide this information by close of business that day, as the only remaining dates/times available to complete the speech language evaluation was on September 10, 2015, the following day. Finally, Ms. Smith informed the Respondents that if they did not respond as to when they would make [redacted] available to complete the evaluation their lack of response would be considered a refusal to allow the District to complete [redacted]s evaluation. She asked that if her assumption was incorrect to let her know. (Smith Affidavit, ¶ 27, Exhibit 12).

68.

Ms. [redacted] asked Ms. [redacted] to be available all day on September, 10, 2015, the final date available for the speech language evaluation to be completed so that a report could be generated and an eligibility/IEP meeting could be held by September 20, 2015, as ordered by the Court. Ms. [redacted] remained available before and after school that day, as well as during lunch. Ms. [redacted] arranged her schedule to do so and remained in the speech therapy room/testing suite with which [redacted] is familiar, as this is where he receives his speech therapy services. [redacted] attended school on September 10. However, he never came to the speech therapy room/testing suite for the purpose of completing the speech language evaluation. ([redacted] Affidavit, ¶ 9; [redacted] Affidavit, ¶¶ 4, 5).

69.

[redacted] did come to the speech therapy room/testing suite at 12:10 p.m. on September 10, 2015, greeted Ms. [redacted] and asked his regular speech language therapist whether she would be available for his speech session that day. His speech sessions are from 12:30 to 1:00 p.m. His speech therapist said she would, and [redacted] assured her he would be there as well. ([redacted] Affidavit, ¶ 6).

70.

[redacted] did not return to the speech therapy room/testing suite until approximately 12:57 p.m. Ms. [redacted] asked whether he was present for his speech therapy session or to complete the speech language evaluation and also told him that she would be the person completing the speech language evaluation. He said he was there for speech therapy only, and then went with his speech language therapist at that time. ([redacted] Affidavit, ¶ 7).

71.

[redacted] did not come to the speech therapy room/testing suite after school (which ends at 3:30 p.m.) that day to complete his speech language evaluation. When he had not arrived by 3:50 p.m., Ms. [redacted] left the school. ([redacted] Affidavit, ¶ 8).

72.

On September 10, 2015, at 1:20 p.m., the Respondents emailed Ms. Smith and Ms. [redacted] regarding the various communications for completing the Speech and Language evaluation on September 8 or 10. In their email they indicated that they were uncertain of the miscommunication and wanted to provide clarification. They informed the District that [redacted] "has been at school, has been pulled from his class and evaluated for the past three weeks, and

evaluations even continued last Friday, September 4th." They further stated that they had previously been "informed that the evaluation would be complete by Friday [September 4]." Accordingly, the Respondents did not understand why the District was requesting that [redacted] be available on September 8 or September 10. (Smith Affidavit, ¶ 28, Exhibit 13).

73.

Later that day, Ms. Smith replied to the Respondents to remind them that her communications had explicitly referred to the speech language evaluation portion of the reevaluation process to which they purported to provide consent, and which had not yet been completed despite the Court's Order that instructed the parties to complete the evaluation and conduct an IEP meeting no later than September 20, 2015, which was now only 10 days away. She also reminded them that they should be familiar with the Speech Language evaluation process, given that they had previously requested and received a speech language independent evaluation at public expense. (Smith Affidavit, ¶ 29, Exhibit 13).

74.

As of September 29, 2015, the Respondents have never made [redacted] available to complete the speech language evaluation portion of the recommended reevaluation process. Accordingly, the reevaluation remains unfinished. Additionally, the Respondents have never advised the District of their availability for the eligibility/IEP meeting ordered by this Court. (Smith Affidavit, ¶ 30; [redacted] Affidavit, ¶ 10; [redacted] Affidavit, ¶ 9).

Summary of Respondent's Response to Petitioner's Motion for Summary Determination
and
Respondent's Motion for Dismissal with Prejudice

The Respondents maintain that they have not revoked consent for the reevaluation. They also assert that [redacted] has been in attendance at [redacted] High School every school day from August 10 – September 18, and has been available for the reevaluation every day, but provided no explanation or evidence regarding what has transpired since they provided written consent for the evaluation on June 15, 2015, to establish that there is a genuine issue of material fact for determination. Instead of providing facts or evidence regarding what has transpired between [redacted] and the evaluators, and or between the Respondents and the Petitioner, the Respondents allege that the Petitioner has intentionally chosen to not complete the reevaluation process and to make false accusations against the Respondents

> as an act of retaliation and harassment . . . for advocating for [redacted] which is in violation of the Section 504 which references Title VI of the Civil Rights Act of 1964, stating that recipients of Federal funds, which would include school districts, 'shall not intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Act, or because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.'

(Respondents [redacted] and [redacted] Parents of [redacted] Response to Petitioner's Filing Motion for Summary Determination and Motion for Dismissal with Prejudice).

III. STANDARD ON SUMMARY DETERMINATION

Summary determination in this proceeding is governed by Office of State Administrative Hearings ("OSAH") Rule 15, which provides, in relevant part:

> Any party may move, based on supporting affidavits or other probative evidence, for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination.

GA. COMP. R. & REGS. r. 616-1-2-.15(1). On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact such that the moving party "is entitled to a judgment as a matter of law on the facts established." G.J. v. Muscogee Cnty. Sch. Dist., 2010 U.S. Dist. LEXIS 28764 (N.D. Ga. 2010); A.B. v. Clarke Cnty. Sch. Dist., 2009 U.S. Dist. LEXIS 47701 (N.D. Ga. 2009).

Further, pursuant to OSAH Rule 15:

> When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing.

GA. COMP. R. & REGS. r. 616-1-2-.15(3). See Lockhart v. Dir., Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-AE-0724829-33-RW, 2007 Ga. ENV LEXIS 15, at *3 (OSAH 2007) (citing Leonaitis v. State Farm Mutual Auto Ins. Co., 186 Ga. App. 854 (1988)). In this case, as set forth below, the Court concludes that no genuine issue of material fact remains for determination and that the Petitioner is entitled to the relief sought.

IV. CONCLUSIONS OF LAW

1.

In order for a child with a disability to receive services under IDEA, a school district must conduct an initial evaluation of the child. 20 U.S.C. § 1414(a)(1)(A). Thereafter, the school district must conduct a reevaluation of the child "at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary." 20 U.S.C. § 1414(a)(2)(B)(ii); see also 34 C.F.R. § 300.303(b)(2); GA. COMP. R. & REGS. 160-4-7-.04(3)(a), (b). However, before a school district can conduct its reevaluation, it "must provide

notice to the parents of a child with a disability . . . that describes any evaluation procedures the agency proposes to conduct." 34 C.F.R. § 300.304(a). The district "[m]ust obtain informed parental consent . . . prior to conducting any reevaluation of a child with a disability." 34 C.F.R. § 300.300(c)(i).

2.

In this matter, a tri-annual reevaluation would be required to be completed by August, 2015, unless the District and the Parents both agreed that a reevaluation was not necessary. In September 2014, the District requested that [redacted]s Parents consent to allow the District to conduct a reevaluation to determine [redacted]s current eligibility and needed services. The Respondents initially granted consent on September 25, 2014, for the District to proceed with a reevaluation of [redacted] in the areas of Autism and Speech Language. However, Respondents subsequently revoked their consent on October 1, 2014, before the District had commenced the reevaluation. The District and the Respondents then engaged in several months of discussions regarding proceeding with an evaluation until April 23, 2015, when the District determined that the only manner the issue could be resolved was through the filing of a Due Process Hearing Request. During the pendency of the hearing, on June 15, 2015, the Respondents represented that they consented to the District completing the recommended reevaluation in the areas of Autism and Speech Language. However, although both evaluations had to be completed before September 20, 2015, the Respondents informed the District that the reevaluation could not commence until school began on August 10, 2015.

3.

When the school year began on August 10, 2015, the District commenced the reevaluation, and [redacted] even missed instructional time to participate in the reevaluation. The Respondents' made a

reasonable request that [redacted] not miss any more instructional time related to the reevaluation because of the rigors of high school and the difficulty in completing classwork while simultaneously having to make-up missed work. The District agreed to finish the speech language evaluation either before or after school, or during [redacted]s lunch time. However, the Respondents ceased cooperating with the District and, instead, placed additional conditions on the completion of the evaluation. More specifically, the Respondents refused to allow the District to choose who would complete the speech and language evaluation and advised [redacted] to not participate in any evaluation conducted by Ms. [redacted]

4.

Under IDEA, school districts have the right to conduct evaluations of disabled students by individuals of their choosing. *See M.T.V. v. DeKalb County*, 446 F.3d 1153 (11th Cir. 2006). *See also Andress v. Cleveland Indep. Sch. Dist.*, 64 F.3d 176, 179 (5th Cir. 1995) ("A parent who desires for her child to receive special education must allow the school district to reevaluate the child using its own personnel"); *G.B. v. San Ramon Valley Unified Sch. Dist.*, 2008 U.S. Dist. LEXIS 70248, at *16 (N.D. Cal. 2008) (upholding an administrative law judge's findings that that a school district "has the right to evaluate . . . using its own personnel" and that the district's staff "should use their professional judgment in determining which tests to give"). Despite the Districts right to choose who would complete the evaluation, the District nevertheless agreed to assign the evaluation to a different evaluator and repeatedly requested cooperation from the Respondents to schedule the evaluation for September 8 or 10. The Respondents never made [redacted] available for the speech and language evaluation to be completed on either of the proposed dates, thus hindering the District's ability to comply with this Court's July 2, 2015, Order directing that the reevaluation be completed and an eligibility/IEP meeting be held no later than

September 20, 2015. The Respondents' actions at this point contradicted their written consent and amounted to a non-verbal refusal to allow the District to complete the reevaluation in a timely manner. *See Federal Way School Dist.*, 107 LRP 11238 (WSEA 2007) (finding that parents' refusal to provide unconditional consent to a legitimate reevaluation proposed by a school district was unreasonable, and that their restrictions – such as insisting on being present for the evaluations – constituted a refusal to consent to the reevaluation). *See also G.J. v. Muscogee County Sch. Dist.*, 668 F.3d 1258, 1264 (11th Cir. 2012) (A parent's decision to place conditions on his or her consent for a reevaluation is tantamount to no consent at all).

5.

When a parent refuses to consent to a reevaluation, school districts are no longer "considered to be in violation of the requirement to make a [free appropriate public education] available" to the child. *See M.L. ex rel A.L.*, 610 F.Supp.2d at 599. Thus, a school district is not required to provide services to a child whose parents have refused to consent to a reevaluation.

6.

The Respondents argue that this Court should deny the Petitioner's Motion for Summary Determination and should, instead, grant the Respondents' Motion for Dismissal with Prejudice because the issue before the Court was settled by the Respondents' submission of written consent on June 15, 2015, to allow the reevaluation to take place. However, the Respondents' written consent did not fully resolve the underlying issue that caused the Petitioner to file a Due Process Hearing Request. In order for the issue to be fully resolved the reevaluation must actually be completed. At this time, the reevaluation still has not been completed and, thus, the underlying issue has not been resolved such that it would be inappropriate to dismiss the Petitioner's Due Process Hearing Request as "settled."

7.

The Respondents also argue that the Petitioner issued false accusations against them in asserting that the Respondents had revoked consent for the evaluation, and that the Petitioner has wrongfully filed a Motion for Summary Determination. The Respondents assert that the Petitioner is in direct violation of the undersigned's July 2, 2015, Order which states that if the Respondents revoke their consent before the evaluation can be completed, both parties shall notify the court of the revocation of consent so that a hearing date can be scheduled. However, that provision of the Court's order presupposes that the Respondents explicitly revoke their consent. In this matter, the facts establish that the Respondents have not explicitly revoked their consent but, rather, by their actions they have implicitly revoked their consent by placing conditions on the evaluation process and in failing to act in good faith to ensure that the evaluation be completed within a timely manner. Moreover, the Respondents have been uncooperative in scheduling an eligibility/IEP meeting to take place by no later than September 20, 2015, as directed, because the Respondents never provided the District any information regarding their availability to meet other than to say they were not available for the three dates proposed by the District, and that they could not provide any dates until they secured legal counsel and determined their unidentified legal counsel's availability to attend a meeting.

V. ORDER

Based on the foregoing, the court hereby **GRANTS** the Petitioner's Motion for Summary Determination, and **DENIES** the Respondents' Motion for Dismissal with Prejudice.

The Respondents are hereby **ORDERED** to produce [redacted] at a date, time, and location of the Petitioner's sole choosing to complete the evaluation process by an evaluator of the Petitioner's

sole choosing. The Petitioner shall provide the Respondents at least ten calendar days prior notice of the date, time and location where [redacted] is to be produced to complete the reevaluation. The Petitioner shall also ensure that [redacted] does not miss any academic instructional time to complete the reevaluation (i.e. the evaluation shall not be scheduled during a core subject class time such as math, science, language arts, or social studies).

The court further **ORDERS** that should the Respondents fail to produce [redacted] to complete the evaluation, or if the Respondents in any way interfere with the completion of the evaluation, their actions shall serve as an affirmative waiver of any rights for themselves or [redacted] to receive special education services or any other rights under IDEA.

Alternatively, if the evaluation process is completed, the Petitioner shall unilaterally schedule at a date, time, and location of the Petitioner's sole choosing (with at least ten calendar days prior notice to the Respondents) an eligibility/IEP meeting to discuss the results of the evaluation.

So Ordered this 30th day of October, 2015.

Ana B Kennedy

Ana Kennedy
Administrative Law Judge