BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]., [redacted]., and [redacted].,

Plaintiffs,

v.

CLARKE COUNTY SCHOOL DISTRICT,

Defendant.

09-103990

Docket No.:
OSAH-DOE-SE-0902042-29-HOWELLS

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FINAL DECISION
ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DETERMINATION

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Plaintiff [redacted]. is a disabled student who lives with his parents, Plaintiffs [redacted]. and [redacted]., within the Defendant Clarke County School District ("Defendant" or "District"). [redacted]. is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA"). On July 21, 2008, Plaintiffs filed a Due Process Hearing Request ("Complaint") contending that Defendant violated his rights under IDEA. The matter is now pending before the undersigned administrative law judge of the Office of State Administrative Hearings ("OSAH").

On July 31, 2008, Plaintiffs filed a Motion for Summary Determination. On September 5, 2008, Defendant filed and served its own Motion for Summary Determination. Plaintiffs filed

Volume _____ Page _____

a response to Defendant's Motion for Summary Determination on September 30, 2008.[1] On October 28, 2008, this Tribunal denied Plaintiffs' Motion for Summary Determination. After careful consideration of the arguments and submissions of the parties, Defendant's Motion for Summary Determination is **GRANTED**.

II. FINDINGS OF UNDISPUTED MATERIAL FACT[2]

Viewing the evidence in the light most favorable to Plaintiffs, the following facts are undisputed:

A. *Re-evaluation and Eligibility Meeting*

1.

[redacted]'s last tri-annual evaluation was conducted on February 2-11, 2005. (Pls.' Exs. 5-6.)

2.

Erin Stevenson was [redacted]'s special education teacher between August, 2006 and May, 2008. (Stevenson Aff., ¶ 3.)

3.

On February 4, 2008, Ms. Stevenson sent a note to [redacted]'s parents proposing that an IEP meeting be held on February 14, 2008 to discuss [redacted]'s continuing eligibility for special education services and to consider the need for a re-evaluation. With the note, Ms. Stevenson included the formal Notice of the meeting to be held on February 14, 2008. (Stevenson Aff., ¶ 9.)

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[1] Plaintiffs' response was untimely. In accordance with OSAH Rules 5 and 15, the deadline for Plaintiffs' Response to Defendant's Motion was September 25, 2008. GA. COMP. R. & REGS. rr. 616-1-2-.05(1), 616-1-2-.15(2). On September 26, 2008, Plaintiffs filed a motion requesting an extension of time to file a response to Defendant's Motion for Summary Determination. Plaintiffs' motion was filed by mail, *after* the deadline for Plaintiffs' response, and was not received by this Tribunal until September 29, 2008. This Tribunal did not grant Plaintiffs' motion for an extension of time.

[2] Although Plaintiffs filed a response in which they "dispute" many of the facts contained in Defendant's Statement of Material Undisputed Facts, their response was untimely. Furthermore, even if their response was considered

4.

On February 6, 2008, the parents rejected February 14, but did not suggest any alternative dates. They also noted that they would be accompanied by counsel at the re-evaluation and eligibility meeting once it was scheduled. (Stevenson Aff., ¶ 10.)

5.

On February 7, 2008, Ms. Stevenson asked the parents to proposed alternative dates for the meeting. (Stevenson Aff., ¶ 11.)

6.

Having received no response by February 14, Ms. Stevenson wrote the parents again, explaining that the purpose of the meeting was to discuss re-evaluation and that she intended to propose a complete re-evaluation. With her correspondence, Ms. Stevenson included consent forms for the evaluation and a description of the types of evaluations that could be used. She also proposed that the parents could consent to the re-evaluation without a meeting and that the testing could begin immediately. (Stevenson Aff., ¶ 11, Ex. 8.)

7.

[redacted] responded that same day (i.e., February 14, 2008), objecting to the sufficiency of the information provided about the re-evaluation. (Stevenson Aff., ¶ 12.)

8.

On February 19, 2008, Ms. Stevenson provided the parents with an explanation of the reasons for the re-evaluation, which included [redacted]'s significant educational progress over three years and the expiration of his eligibility on March 2, 2008. Ms. Stevenson also listed proposed evaluators and the areas in which she believed testing would be appropriate. Ms. Stevenson did

timely, Plaintiffs failed to present any evidence disputing the substance of Defendant's Statement of Material Undisputed Facts.

not receive a response from the parents to her February 19, 2008 correspondence. (Stevenson Aff., ¶ 13.)

9.

As of February 26, 2008, [redacted]'s parents had not proposed any alternative dates for the IEP meeting to address [redacted]'s eligibility and re-evaluation. Nor had they consented to the re-evaluation. On that day, Ms. Stevenson sent another letter to the parents with a notice of an IEP meeting scheduled for February 28, 2008. She sent the letter home with [redacted]. In the letter, Ms. Stevenson suggested that, in lieu of the February 28, 2008 meeting, the parents could consent to extend [redacted]'s eligibility for 30 days, so that a meeting could be scheduled at a mutually agreed upon time. Ms. Stevenson followed up on February 27, 2008 with an email message and phone calls to ensure that the parents had received the notice. (Stevenson Aff., ¶ 14, Ex. 11.)

10.

On February 27, 2008, [redacted] responded to Ms. Stevenson's email by objecting to the meeting, refusing to sign any form for re-evaluation, and stating that she saw "no real need for an evaluation." In her response, [redacted] did not propose any alternative dates for the meeting, nor did she agree to extend [redacted]'s eligibility so that a meeting could be scheduled. (Stevenson Aff., ¶ 14, Ex. 13.)

11.

On February 28, 2008, the District convened a re-evaluation and eligibility meeting without [redacted]'s parents or their attorney. (Stevenson Aff., ¶ 15.)

12.

At the February 28 meeting, the IEP team extended [redacted]'s eligibility and recommended a comprehensive reevaluation of [redacted] in multiple areas of disability. Minutes of the February 28

meeting were sent to [redacted].'s parents on February 29, 2008. The minutes of the meeting explained in more detail the reasons for the reevaluation, the various evaluations sought and the specific assessment instruments that would be used for the psychological evaluation. (Stevenson Aff., ¶ 15, Ex. 14.) Thereafter, [redacted].'s parents never consented to the re-evaluation.

B. ***Individualized Education Program ("IEP") Annual Review Meeting and Extended School Year ("ESY") Services***

13.

On March 4, 2008, the District sent [redacted].'s parents an IEP meeting notice that proposed three dates for the IEP annual review meeting: March 17, 18, or 19. After a follow-up inquiry about the parents' choice of dates, [redacted]. responded that none of the dates were acceptable because they conflicted with [redacted].'s professional responsibilities. [redacted]. did not propose any alternative dates. (Stevenson Aff., ¶¶ 15-16, Exs. 16-17.)

14.

On March 7, 2008, Ms. Stevenson proposed that [redacted]. attend the March meeting and [redacted]. participate by telephone or, alternatively, that the parents agree to a 30-day extension of [redacted].'s IEP. If the parents agreed to a 30-day extension, Ms. Stevenson asked that they propose dates that were convenient for the meeting within the 30-day period, but as soon as possible after March 19. During spring break, [redacted]. responded that the parents agreed to the 30-day extension; however, he did not propose any dates for the meeting. (Stevenson Aff., ¶ 17, Exs. 18-19.)

15.

Having received no information from the parents about their schedules, on March 21, 2008, Ms. Stevenson sent [redacted].'s parents an IEP meeting notice that proposed two dates for the IEP annual review meeting: March 31 or April 1. Initially the parents indicated that either date

was acceptable, but then rejected both dates because their counsel could not attend. (Stevenson Aff., ¶ 18, Exs. 21, 22, & 23.)

16.

On April 4, 2008, [redacted].'s parents made their first proposal to meet on April 11. That same day, Ms. Stevenson responded that counsel for the school district could not attend the meeting on April 11. She stated that if the parents would agree to meet without counsel the meeting could go forward on April 11. Otherwise, she proposed April 16, 17, or 18 as alternative dates for the meeting. Ms. Stevenson also sent [redacted].'s parents an IEP meeting notice that proposed these three dates for the IEP annual review meeting. In addition, Ms. Stevenson sent [redacted].'s parents a proposal of placement options for the remainder of the school year, ESY services, and the following school year. For each time period, the proposal contained three options from which the parents could choose. (Stevenson Aff., ¶ 20, Ex. 24.)

17.

Ms. Stevenson proposed three options for ESY services: (1) Project START, a camp-like setting at Clarke Middle School where [redacted] and S-1 would be placed in classrooms on different wings and would have no activities together except "whole camp activities," during which [redacted] could remain in his classroom or remain at home; (2) one-on-one instruction at another site in the District with a teacher and paraprofessional but no other students; or (3) services at home provided at District expense. (Stevenson Aff., ¶ 20, Ex. 24.) [redacted].'s parents never responded to Ms. Stevenson's placement proposals. (Stevenson Aff., ¶ 22.)

18.

On April 8, [redacted]. responded via e-mail that the proposed meeting dates of April 16, 17, or 18 were not acceptable because [redacted]. was going to be out of town during that week and that the

school should accept the April 11 date proposed by [redacted]'s parents. (Stevenson Aff., ¶ 21, Ex. 25.)

19.

On April 9, Dr. Blake wrote a letter to the parents, in which he agreed to meet on April 11, as the parents proposed, as long as neither party was accompanied by counsel. The letter included a draft IEP and proposed that the parents and school staff communicate in writing to reach an agreement on the IEP before it expired on April 19. The letter also suggested that another 30-day extension should be executed if a meeting could not be scheduled and an IEP agreed upon before April 19. Finally, the letter reminded the parents of the placement options that the school had previously offered. (Blake Aff., ¶ 10, Ex. 2.)

20.

Because the parents did not respond to his April 9 letter, Dr. Blake wrote again on April 15 urging the parents to select from the placement options offered and asking them to consent to an extension of the IEP that was going to expire in four days. Dr. Blake further indicated that in the absence of consent to extend the IEP, the District would have no choice but to meet on April 18. (Blake Aff., ¶ 11, Ex. 3.)

21.

[redacted]. responded to Dr. Blake's April 15 letter via email. She refused to agree to extend the IEP and objected to the District holding the meeting on April 18 in their absence. She further stated that April 18 was not an acceptable date, and that the school was not a "mutually convenient location." (Blake Aff., ¶ 12, Ex. 4.)

22.

On April 16, Dr. Blake wrote the parents to notify them that the meeting would take place on April 18, but he offered a "follow-up" meeting on April 24 to review and amend the IEP. (Blake Aff., ¶ 13, Ex. 5.)

23.

On April 17, the parents rejected the "follow-up" meeting proposal. [redacted] stated that that Clarke Middle School was not a "mutually agreed-upon location" due to the conduct of the District's counsel at a prior resolution session. [redacted]. further stated that "you may not proceed with a meeting tomorrow." (Blake Aff., ¶ 13, Ex. 6.)

24.

Instead of holding the IEP meeting on April 18, Dr. Blake notified the parents on April 18 that since they were not able to meet before the expiration of the IEP, the District would continue [redacted]'s services and placement under the existing IEP. He also requested that the parents provide at least three dates on which they would be available for a meeting. (Blake Aff., ¶ 14, Ex. 7.)

25.

Ten days later, on April 28, [redacted] proposed either May 20 or 21 as dates for the meeting. However, she rejected having the meeting at the school or in any school building. She also objected to the presence of Mr. Eddy, the District's counsel, at the meeting. (Blake Aff., ¶ 15, Ex. 8.)

26.

On May 13, Dr. Blake notified the parents that May 20 and 21 were acceptable, but because those dates were the last two days of school, the District could not agree to meet away from Clarke Middle School on either date. (Blake Aff., ¶ 16, Ex. 9.)

27.

On May 13, [redacted]. informed Dr. Blake that "[d]ue to past events" no Clarke County School District property would be "convenient or appropriate" or a "mutually agreeable location" for the IEP meeting which he suggested should be held on May 20. (Blake Aff., ¶ 16, Ex. 10.)

28.

May 20, 2008 was the next to last day of school. An IEP meeting located off school property would pose considerable logistical and practical problems for Defendant because teachers were required to attend multiple end-of-year activities scheduled at the school throughout that day. An offsite meeting would require teachers to be away from these job duties for longer periods of time due to travel time. (Stevenson Aff., ¶ 23; Blake Aff., ¶ 19.)

29.

Dr. Blake responded to [redacted].'s email on May 14, accepting the May 20 date, but explaining again that a meeting on the day before school concluded for the year would need to occur at the school, because the staff attending the meeting would need to remain on campus due to increased end of school responsibilities. He suggested that the parents participate by telephone if they were unwilling to come to the school. (Blake Aff., ¶ 17, Ex. 10.)

30.

Plaintiffs did not accept Dr. Blake's offer to participate in the annual review meeting by telephone, in lieu of attending the meeting on school property. (Blake Aff., ¶¶ 17-18, Ex. 11.)

31.

Plaintiffs' pleadings provide no specific reason for why the IEP Team meeting could not be held on school property. However, in an email to Ms. Stevenson on April 8, 2008, [redacted]. stated "I suggest that [the meeting] should not take place on CCSD property. At the resolution meeting, Mr. Eddy behaved in a belligerent manner. . . . Perhaps on neutral ground, all parties can conduct themselves respectfully." (Stevenson Aff., ¶ 21, Ex. 25.) Plaintiffs cite no reason for refusing to attend the IEP meeting on school property, other than the past behavior of the District's counsel at one previous resolution session.

C. ***IEP Team Meeting Notices***

32.

The notice Plaintiffs received for an annual IEP Team meeting held on November 13, 2007 listed the positions of the personnel who would attend the meeting – as opposed to the actual names of those personnel. (Pls.' Ex. 2, ¶ 9; Pls.' Ex. 7.)

33.

Similarly, the notice Plaintiffs received for the February 28, 2008 re-evaluation and eligibility meeting listed the positions of the personnel who would be in attendance at the meeting rather than their individual names. (Pls.' Ex. 10.)

III. SUMMARY DETERMINATION STANDARD

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." Pirkle v. Envtl. Prot. Div., Dep't of Natural Res., OSAH-BNR-DS-0417001-58-Walker-Russell, 2004 Ga. ENV. LEXIS 73, at *6-7 (OSAH 2004) (citing Porter v. Felker, 261 Ga. 421 (1991)); see generally Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res., 282 Ga. App. 302, 304-305 (2006) (noting that a summary determination is "similar to a summary judgment" and elaborating that an administrative law judge "is not required to hold a hearing" on issues properly resolved by summary adjudication).

Further, pursuant to OSAH Rule 15(3):

> 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 Guy 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)).

IV. CONCLUSIONS OF LAW

Defendant asserts that it is entitled to summary determination because it argues that Plaintiffs' claims fail as a matter of law. Plaintiffs claim that Defendant violated IDEA when it: (1) held a re-evaluation and Eligibility Team meeting without the participation of the parents and the parents' designee; (2) changed [redacted].'s Individualized Education Program ("IEP") in that same meeting without [redacted].'s parents; (3) failed to conduct a triennial re-evaluation; (4) failed to

conduct an IEP Team meeting to provide for [redacted]'s 2008-2009 IEP and to consider the provision of Extended School Year ("ESY") services; and (5) issued defective notices of meetings that did not contain the names of the IEP team participants. (Plaintiffs' Complaint, at 4, 6, 7, 8; Plaintiffs' Brief in Support of Their Motion for Summary Judgment ("Pls.' Br."), at 13, 16, 18, 19, 21-22, 25.)

A. ***February 28, 2008 IEP Team Re-evaluation and Eligibility Meeting***

Plaintiffs assert that Defendant failed to comply with IDEA's procedural requirements when it convened an IEP Team re-evaluation and eligibility meeting on February 28, 2008 without [redacted]'s parents. (Pls.' Br., at 13-15; Pls.' Ex. 10.) Similarly, Plaintiffs assert that Defendant violated IDEA's procedural requirements when it convened the February 28, 2008 meeting without [redacted]'s parents' designee. (Pls.' Br., at 16-18.)

1. ***Parental Attendance at February 28, 2008 IEP Team Meeting***

IDEA requires an IEP Team for every child with a disability. 20 U.S.C. § 1414(d)(1)(A)-(B). The parents of a disabled child are members of the IEP Team. See 20 U.S.C. § 1414(d)(1)(B)(i). Therefore, a school district must "take steps to ensure that one or both of the parents of a [disabled child] are present at each IEP Team meeting or are afforded the opportunity to participate." 34 C.F.R. § 300.322(a). These steps include: "(1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) scheduling the meeting at a mutually agreed on time and place." 34 C.F.R. § 300.322(a)(1)-(2); see also GA. COMP. R. & REGS. r. 160-4-7-.06(11)(a). "If neither parent can attend an IEP Team meeting, the [school district] must use other methods to ensure parent participation, including individual or conference telephone calls." 34 C.F.R. § 300.322(c).

When scheduling an IEP Team meeting, "[t]he duty to take steps to find a mutually agreed upon time assumes good faith attempts on both sides." Mr. M. ex rel K.M. v. Ridgefield Bd. of Educ., No. 3:05-CV-584 (RNC), 2007 U.S. Dist. LEXIS 24691, at *18 (D. Conn. 2007) (elaborating that IDEA regulations do not require a school district "to accommodate an infinite number of parental requests for an alternative time"). Thus, "where the school district has repeatedly provided the parent with the opportunity to participate meaningfully in the IEP process, the school district has not violated its obligations under [IDEA] which requires the school district to 'take steps to ensure that one or both of the parents . . . are afforded the opportunity to participate' in IEP meetings, so long as it affords the parent a subsequent due process hearing with regard to its proposed plan when the parent and the school district are in disagreement about aspects of the proposed plan." Ms. S. ex rel. G v. Vashon Island Sch. Dist., 337 F.3d 1115, 1133 (9th Cir. 2003).

Defendant proposed multiple dates for the IEP Team reevaluation and eligibility meeting – but Plaintiffs rejected those dates and failed to provide alternative dates for the meeting. Defendant took reasonable steps to afford Plaintiffs the opportunity to participate in the IEP Team meeting. Because Plaintiffs failed to make a good faith attempt to schedule a mutually agreed upon date for the IEP Team reevaluation and eligibility meeting, Defendant is entitled to judgment as a matter of law on this issue.

2. ***Parental Designee Attendance at IEP Team Meetings***

IDEA provides that an IEP Team includes, "at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate." 20 U.S.C. § 1414(d)(1)(B)(vi). See 34 C.F.R. § 300.321(a)(6). "The determination of the knowledge or special expertise of [such individuals] . .

. must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team." 34 C.F.R. § 300.321(c).

Plaintiffs assert that Defendant violated IDEA's procedural requirements when they held the February 28, 2008 IEP team meeting without their designee (i.e., their attorney). (Pls. Br., at 17-18.) However, there is no evidence that Plaintiffs ever notified Defendant that their attorney could not attend the February 28 meeting. Rather, Plaintiffs only mentioned that they would be accompanied by counsel once the meeting was scheduled.

Defendant's decision to proceed with the February 28, 2008 meeting without Plaintiffs' attorney does not constitute a procedural violation of IDEA. First, Plaintiffs have failed to cite any authority that an attorney is the type of individual contemplated by 20 U.S.C. § 1414(d)(1)(B)(vi). Second, even if an attorney would be considered an individual with "knowledge or special expertise regarding the child," there is no evidence that Defendant was ever aware that Plaintiffs' counsel was unable to attend the meeting on that date. C.f. Michael J. v. Derry Township School District, 45 IDELR 36, 106 LRP 7357 (D. Pa. 2006) (finding that a school district did not violate IDEA when it proceeded with an IEP team meeting despite the fact that counsel for Plaintiffs notified the school, the day before the meeting, that she was unable to attend the meeting on the following day). Accordingly, Defendant is entitled to judgment as a matter of law on this issue.

B. ***Amendment to [redacted]'s IEP at February 28, 2008 Meeting***

Plaintiffs assert that Defendant failed to comply with the procedural regulations established for changing and amending an IEP by not including [redacted]'s parents when it amended [redacted]'s IEP. (Pls.' Br., at 19-21.)

Amendments to an IEP may be made either by the entire IEP Team at an IEP Team meeting or by agreement between the parents and the school district. See 34 C.F.R. § 300.324(a)(6); GA. COMP. R. & REGS. r. 160-4-7-.06(18)(e). "In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the [school district] may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP." 34 C.F.R. § 300.324(a)(4)(i). See GA. COMP. R. & REGS. r. 160-4-7-.06(18)1. Finally, similar to the IEP Team, an Eligibility Team is "a group of qualified professionals and the parents of the child (Eligibility Team) [who determine] whether [a] child is a child with a disability and the educational needs of the child." GA. COMP. R. & REGS. r. 160-4-7-.04(6)(a).

Plaintiffs assert that because Defendant amended Plaintiffs' IEP and eligibility by extending [redacted].'s eligibility for services at the February 28, 2008, Defendant violated IDEA because [redacted].'s parents, as members of both the IEP Team and the Eligibility Team, were not present at the meeting and they did not agree to any amendments of [redacted].'s IEP. (Pls.' Br., ¶¶ 16-18.)

However, as discussed supra, [redacted].'s parents would not agree to extend [redacted].'s eligibility or provide alternative dates for an IEP Team meeting prior to the expiration of [redacted].'s eligibility. A school district is entitled to hold an IEP meeting when the alternative would be to violate IDEA's timeline requirements. See E.P. v. San Ramon Valley Unified School District, No. C05-01390 MJJ, 2007 U.S. Dist. LEXIS 47553, at *31-33 (N.D. Cal. 2007).

[redacted].'s eligibility would have expired, if Defendant had not held the meeting and "amended" [redacted].'s IEP by extending his eligibility. Therefore, Defendant did not violate IDEA

when it extended [redacted]'s eligibility (and thereby amended [redacted].'s IEP) in the parents' absence. Accordingly, Defendant is entitled to judgment as a matter of law on this issue.

C. ***Triennial Re-evaluation***

Plaintiffs claim that Defendant failed to comply with the procedural regulations established for the re-evaluation of disabled children by not conducting a timely re-evaluation of [redacted]. (Pls.' Br., at 3.)

Before a child with a disability may begin receiving services under the IDEA, a school district must conduct an initial evaluation. 20 U.S.C. § 1414(a)(1)(A). The school district must subsequently conduct a reevaluation of a child with a disability "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 34 C.F.R. § 300.303(b)(2); GA. COMP. R. & REGS. r. 160-4-7-.04(3)(a).

Plaintiffs assert that [redacted].'s last psychological evaluation was conducted on February 2-11, 2005 and that evaluation was allowed to expire because Defendant failed to convene an IEP Team or eligibility team meeting within three years to discuss re-evaluation. (Pls.' Br., ¶¶ 18-19.)

A school district "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). Further, a school district must "obtain informed parental consent prior to conducting any reevaluation of a child with a disability." GA. COMP. R. & REGS. r. 160-4-7-.04(3)(c).

However, "such informed parental consent need not be obtained if the LEA can demonstrate that it has taken reasonable measures to obtain such consent and the child's parents failed to respond." GA. COMP. R. & REGS. r. 160-4-7-.04(3)(c). "[I]f a student's parents want

him to receive special education under IDEA, they must allow the school itself to reevaluate the student." M.T.V. v. Dekalb County Sch. Dist., 446 F.3d 1153, 1160 (11th Cir. 2006). "If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation . . . ." 34 C.F.R. § 300.300(c)(ii) (emphasis added).

Defendant proposed February 14, 2008 as a date for the reevaluation meeting, but [redacted]'s parents rejected that date without suggesting any alternatives. Ms. Stevenson provided consent forms to [redacted]'s parents and suggested that they could consent to the reevaluation without a meeting. When [redacted]'s parents objected to the sufficiency of the information provided about the reevaluation, Ms. Stevenson provided additional information. The meeting to discuss reevaluation took place on February 28, 2008. Minutes of the February 28 meeting were provided to [redacted]'s parents. The minutes of the meeting explained in explained in more detail the reasons for the re-evaluation, the various evaluations sought, and the specific assessment instruments that would be used for the psychological evaluation. Thereafter, [redacted]'s parents never consented to the re-evaluation.

Defendant was not required to conduct a re-evaluation because [redacted]'s parents refused to consent to the reevaluation. Moreover, [redacted]'s mother indicated that a re-evaluation was not necessary. Accordingly, Defendant is entitled to judgment as a matter of law on this issue.

D. ***Annual IEP Review Meeting and Extended School Year ("ESY") Services***

Plaintiffs assert that Defendant did not comply with IDEA because it failed to hold an annual IEP review meeting to develop and discuss [redacted]'s 2008-2009 IEP and ESY services for the summer of 2008. (Pls.' Br., at 21-25.)

IDEA requires a school district to ensure that an IEP Team "reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the

child are being achieved." 20 USCS § 1414(d)(4)(A)(i). Additionally, a school district "must ensure that extended school year services are available as necessary." 34 C.F.R. § 300.106(a)(1). A school district must provide ESY services "if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child." GA. COMP. R. & REGS. r. 160-4-7-.06(18)(c). Finally, as discussed supra, a disabled student's parents are members of their child's IEP team and must be afforded an opportunity to attend all IEP Team meetings. See 20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.321(a)(1).

Plaintiffs assert that they were unable to accept the dates Defendant proposed for the IEP Team meeting because of conflicts with their employment and because they could not agree on a mutually agreed upon location. (Pls.' Br., at 4.) However, Defendant offered numerous dates to meet for an IEP annual review meeting, none of which were accepted by Plaintiffs. Moreover, Defendant offered Plaintiffs the opportunity to participate via telephone conferencing, which Plaintiffs did not accept. Finally, Defendant offered Plaintiffs written placement options for ESY services in 2008 – to which Plaintiffs never responded.

34 C.F.R. § 300.322 provides, in pertinent part:

> ~~Each public agency must take steps to ensure that one or both of the parents of a~~ child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—
> (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
> (2) Scheduling the meeting at a mutually agreed on time and place.

34 C.F.R. § 300.322(a)(1)-(2) (emphasis added).

Defendant took steps to ensure that [redacted].'s parents would be present at an IEP Team meeting to develop [redacted]'s 2008-2009 IEP and 2008 ESY services. However, Plaintiffs refused to agree to any meeting that would be held on school grounds and they did not accept Defendant's alternative offer to participate in the meeting via telephone.

The parental right to participate in IEP Team meetings does not amount to a veto power over procedural decisions such as the location of a proposed IEP meeting. Cf. Ms. S. ex rel. G v. Vashon Island Sch. Dist., 337 F.3d 1115, 1131 (9th Cir. 2003) (noting that a school district "has no obligation to grant [parents] a veto over any individual IEP provision"); Fitzgerald v. Fairfax County Sch. Bd., 556 F. Supp. 2d 543, 551 (E.D. Va. 2008) (noting that the parental right to participate does not equate to a parental "veto" power in disagreements with a school district); White v. Ascension Parish Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003) ("The right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such."). "IDEA does not require school districts simply to accede to parents' demands without considering any suitable alternatives." Blackmon v. Springfield R-XII Sch. Dist., 198 F.3d 648, 657 (8th Cir. 1999).

"Courts must strictly scrutinize IEPs to ensure their procedural integrity. Strictness, however, must be tempered by considerations of fairness and practicality . . . ." Roland M. v. Concord Sch. Comm., 910 F.2d 983, 994 (1st Cir. Mass. 1990). "The core of [IDEA] . . . is the cooperative process that it establishes between parents and schools." Schaffer v. Weast, 546 U.S. 49, 52 (2005). Therefore, with regard to scheduling IEP Team meetings, "[t]he duty to take steps to find a mutually agreed upon time assumes good faith attempts on both sides." Mr. M. ex rel K.M. v. Ridgefield Bd. of Educ., No. 3:05-CV-584 (RNC), 2007 U.S. Dist. LEXIS 24691, at *18 (D. Conn. 2007). It follows that if parents object to the particular physical location of a proposed IEP meeting, their objection must be based on reasonable grounds.

Plaintiffs have failed to establish any reasonable basis for their refusal to attend an IEP Team meeting on school grounds – or to participate in such a meeting via telephone. In fact, Plaintiffs' pleadings provided no specific reason for why the IEP Team meeting could not be

held on school grounds. Plaintiffs' emails to Ms. Stevenson and Dr. Blake indicate that the parents refused to attend an IEP meeting on school grounds because of the conduct of District's counsel at one resolution session in a previous case. In one such email, Plaintiffs stated: "Perhaps on neutral ground, all parties can conduct themselves respectfully." Even if this Tribunal were to accept Plaintiffs' position as reasonable, which it does not, Plaintiffs' explanation does not explain why the meeting could not have been conducted via telephone conference.

The purpose of the IDEA regulation regarding "mutually agreed upon" meeting locations is to allow for mutual convenience of the parties. The comments to the regulation provide examples of factors to be considered in scheduling the IEP meeting: "the distance parents typically have to travel to the meeting location and the availability of childcare." 71 FED. REG. 46677-78 (August 14, 2006). Additionally, the Office of Special Education Programs "OSEP" has recognized that school districts are entitled to consider their own scheduling needs. Letter to Anonymous, 18 IDELR 1303 (OSEP May 22, 1992). Defendant provided a legitimate reason for holding the meeting on school grounds (i.e., travel to an offsite meeting would unduly hinder the teachers' ability to participate in required end-of-school activities scheduled throughout that day). The provision in Section 300.322(a)(2) regarding scheduling an IEP meeting at a "mutually agreed on time and place" does not give parents the right to dictate the location of the meeting or the right to reject the school as a location for the meeting without a reasonable basis.

Plaintiffs' refusal to hold the IEP meeting on school grounds, based solely on the conduct of the District's counsel at one resolution session in a previous case between the parties, was unreasonable. Furthermore, when Plaintiffs refused to hold the IEP meeting on school grounds

and did not agree to conduct the meeting via telephone conference they failed to cooperate in scheduling the meeting.

Defendant is not liable for failing to hold an IEP annual review meeting when that failure was caused by Plaintiffs' lack of cooperation in scheduling that meeting. See M.M. v. Sch. Dist. of Greenville County, 303 F.3d 523, 535 (4th Cir. 2002) ("[I]t would be improper to hold [a] School District liable for the procedural violation of failing to have the IEP completed and signed, when that failure was the result of [the parents'] lack of cooperation") (citation omitted). Accordingly, Defendant is entitled to judgment as a matter of law on this issue.

E. ***IEP Meeting Notice***

Plaintiffs assert that Defendant failed to comply with the procedural regulations established for notice of IEP meetings by sending [redacted]'s parents notices that failed to identify the actual participants who would be in attendance at the meeting. (Pls.' Br., at 25-26.)

IDEA regulations require that the notice provided to parents of an IEP team meeting "[i]ndicate the purpose, time, and location of the meeting and who will be in attendance." 34 C.F.R. 300.322(b)(1)(i). DOE Rule 160-4-7-.06 adds the further requirement that the notice "informs the parents of their right to invite other individuals who, in their opinion, have knowledge or special expertise regarding their child, including related services personnel." GA. COMP. R. & REGS. r. 160-4-7-.06(11)(b).

Defendant is not required to identify by name the actual participants who will attend an IEP team meeting. See Vashon Island, 337 F.3d at 1136 n.25 (noting that a "school district may list merely the positions, and not the names, of personnel attending" on the notice sent to parents for an upcoming IEP Team meeting). Accordingly, Defendant is entitled to judgment as a matter of law on this issue.

V. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Determination is **GRANTED**. Accordingly, this matter is **DISMISSED**.

All other pending motions are **DENIED** as moot.

SO ORDERED, this 30th day of October, 2008.

STEPHANIE HOWELLS
Administrative Law Judge

Volume _____ Page _____