BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted]., BY AND THROUGH [redacted].; AND [redacted]., **Petitioner,** **v.** **BARTOW COUNTY SCHOOL DISTRICT,** **Respondent.**	**Docket No.: 1940041** **1940041-OSAH-DOE-SE-8-Beaudrot** **Agency Reference No.: 1940041**

FINAL DECISION

The hearing in this matter was conducted by video conference before the undersigned on August 6-7, 10-11, 2020. Petitioner [redacted]. appeared *pro se* in the person of his father [redacted] Reagan G. Sauls, Esq. appeared on behalf of Respondent.

To maintain confidentiality as to the identity of the minor petitioner in this matter, in this Decision the term "Petitioner" will be used to refer to the minor who is the minor petitioner and who is subject of this matter. The term "Petitioners" will refer to Petitioner and his father, who are the two listed petitioners identified in this action, collectively. Petitioner's father when referred to individually will be referred to as "[redacted]," Petitioner's mother will be referred to individually as [redacted] and the two parents will be referred to collectively as Petitioner's "Parents".

After considering the arguments of the parties and considering all the evidence and the full and extensive record in this matter, including listening to approximately eight hours of recordings of various meetings referred to in the testimony, Respondent's actions in this matter are **AFFIRMED** and Petitioners' case is **DISMISSED WITH PREJUDICE.**

FINDINGS OF FACT

1. At the time of filing of the due process request giving rise to this case on May 28, 2019, Petitioner was an eight-year-old student going into the third grade at [redacted] Elementary School in the Bartow County School District ("Respondent" or "the District"). (Ex. R-10 (BCSD095).) Petitioner subsequently withdrew from the District and enrolled in the Paulding County School District for the 2019-2020 school year in August 2019. (Due Process Hearing Transcript (hereinafter Tr.) at 468, 770). This case therefore only deals with the two-year period of May 28, 2017 to May 28, 2019.

2. Petitioner's Parents are both trained as special education teachers. Petitioner's father, [redacted] has a doctorate in special education and currently teaches as a special education teacher in the [redacted] County School System. (Tr. at 15-16.) Petitioner's mother, [redacted]., is also a special education teacher teaching in the [redacted] County School System at [redacted] Elementary School. (Tr. at 491, 558, 591-93.)

3. When Petitioner enrolled in the Paulding County School System, Petitioner's Parents agreed with Paulding County School System that Petitioner would repeat the second grade in the Paulding County School District. (Tr. at 468.) Petitioner did not qualify for either occupational therapy or speech services supplied by the school district when he was admitted to Paulding County schools. (Tr. at 596-597.)

4. In 2015, Petitioner was found to be eligible for services pursuant to the Individuals with Disabilities Education Act ("IDEA") under the eligibility category of speech language impairment to address articulation needs. (Ex. R-69 (BCSD583); Tr. at 385.) During the relevant time period, Petitioner received speech services through an individual educational plan ("IEP") and also academic support through the Response to Intervention Process ("RTI"). (Exs. R-6

(BCSD029-30), R-7 (BCSD031), R-8 (BCSD063), R-9 (BCSD079), R-10 (BCSD095), R-19 (BCSD145-149), R-31 (BCSD198-202), R-38 (BCSD213-218).) Implementation of the IEP was overseen and directed by a group consisting of a group of teachers and school education specialists (the "IEP Team").

5. RTI is a process for providing struggling general education students with research-based and evidence-based interventions. (Tr. at 683-84.) Cara Shores is the Coordinator for Exceptional Children for the District. (Tr. at 682.) Ms. Shores testified that RTI is a process that has been "heavily researched and has evolved from its first use with just elementary school reading to being applied to all grade levels in schools." (Tr. at 684.)

> Q And is Response to Intervention the same as IDEA?
>
> A No, it's not. Response to Intervention is not part of IDEA. It is a process. It is not a legal requirement and was -- has never been required by IDA.[sic]
>
> Q Is -- are the students that are in the Response to Intervention in general education?
>
> A Yes, students in the general education process.

(Id.)

Speech Services Provided to Petitioner

6. Amy Williams worked as a Speech Language Pathologist for Respondent and served as Petitioner's case manager during 2017-2018 and 2018-2019. (Tr. at 383.) During this period, Petitioner received speech services for an articulation disorder that was "pretty severe" when he first started in Pre-Kindergarten. (Tr. at 420.) The basis of such services was a "processing disorder which means he had groups of error patterns that he was using in his speech

which impacted his intelligibility." (Tr. at 420.). Ms. Williams testified that, when this sort of disorder is treated, it is aimed at a group of sounds. (Id.)

7. Ms. Williams testified that, in order to assess what group of sounds presented an issue for Petitioner, she gave Petitioner an articulation evaluation and then analyzed those error sounds on a phonological assessment checklist. (Tr. at 420.) That assessment then breaks down the responses into various processes and error patterns that a child can demonstrate and, "if a child demonstrates 40 percent or more of that error pattern in their speech in that conversation, then that is considered an active process, and it's recommended that it be addressed and treated." (Tr. at 420-21.)

8. Ms. Williams further testified that a phonological processing disorder is a disorder that is typical in young students and, as they grow older, the students usually grow out of those patterns. (Tr. at 421.) "But if they continue to hold on to those error patterns, it's not typical of normal speech development, and it's recommended that therapy is provided. But normally a -- a child grows out of these errors." (Tr. at 421.) In Petitioner's case, Ms. Williams explained she began treating him for five different groups of sounds. Some resolved with treatment, and he grew out of others. (Tr. at 421-22.)

9. During the relevant time period, Petitioner received speech services in a room separate from the regular classroom until the October 16, 2018 IEP meeting. (Tr. at 387; Ex. R-7.) Ms. Williams testified that he made progress on his speech goals. (Tr. at 389.) Information regarding this progress was provided to the Parents in progress reports and reviewed during the IEP meetings that occurred during the relevant time period. (Exs. R-1 (BCSD015), R-2 (BCSD023-025), R-3 (BCSD026), R-4 (BCSD027), R-7 (BCSD060), R-8 (BCSD076-77), R-9

(BCSD092-93), R-10 (BCSD101-103), R-14 (BCSD126).) During the fall of 2018, Petitioner had mastered his goals, and the IEP Team discussed potential re-evaluation of Petitioner. (Tr. at 402.)

> [T]he first meeting, we discussed looking at a reevaluation at that time because he was progressing and not showing a lot of errors in the classroom and not at the time, the -- the articulation was not impacting him in the classroom, and so we discussed early on in the year possibly looking at reevaluation for him.

(Tr. at 402.)

Ms. Williams testified that, by this time, she did not hear Petitioner making speech errors, inside or outside the classroom. (Tr. at 403.)

10. In October 2018, Ms. Williams told the IEP Team that, based on Petitioner's progress, she thought that if Petitioner were re-evaluated for speech services, he would not be eligible for speech services. (Tr. at 405; 424.) The validity of this opinion is supported by the Paulding County School District's evaluation and determination the Petitioner was not eligible for speech services when Petitioner subsequently enrolled in Paulding County schools. (Tr. at 774-45.) Ms. Williams also testified that in order to be eligible for such services, the issue must affect Petitioner's education. (Tr. at 423.) She stated that, in her professional opinion, there was no educational impact during the 2018-2019 school year associated with Petitioner's speech. (Tr. at 423.) Even though it was Ms. Williams' opinion the Petitioner would not be eligible for speech services, she testified that she would not be the party making the eligibility determination. Rather, the IEP Team would make that determination. (Tr. at 406.)

11. During the October 2018 IEP meeting, Ms. Williams recommended a change of service to consultative services. (Tr. at 409-10.) She also recommended keeping the same goal as

in the previous IEP, even though Petitioner had mastered it, because she wanted to ensure that Petitioner was generalizing his sounds in the classroom. (Tr. at 423; 428.)

> [T]he consultative model allows for me to go into the classroom or to pull him if I need to, to gather baseline data or assessments, collect data. But it's mainly in the classroom, consulting with the teacher, getting her suggestions on how to help him in the classroom.

(Tr. at 416.)

12. During the November 1, 2018 IEP meeting, the IEP Team offered to have a speech evaluation conducted with Petitioner and a different speech language pathologist. (Tr. at 426.) This was offered throughout the six meetings District personnel had with the Parents during Petitioner's second grade school year.

The 2017-2018 Academic Year

13. During the 2017-2018 school year, Ms. Carrie Savage was Petitioner's first grade general education teacher. (Tr. at 56.) Ms. Savage never had a problem understanding Petitioner's speech while Petitioner was in her class, nor did she have concerns about his handwriting. (Tr. at 72-74.) She testified that she did have concerns about certain behaviors of Petitioner that included "licking his hands, licking the desk, licking his shoes, shoestrings, the rug" and getting him to sit down to work. (Tr. at 73-74; 102.)

14. Ms. Savage testified that an RTI meeting was held with the Parents, at which she went over Petitioner's progress in the process. (Tr. at 67.) During this meeting, she discussed with the Parents that Petitioner was slightly below benchmark for segmentation fluency, blended whole words and nonsense word fluency. (Id.) She testified that Petitioner was receiving reading intervention through Early Reading Tutor. (Tr. at 93.) Ms. Savage also testified that Petitioner was struggling to complete his work without numerous redirections. (Tr. at 101.) During a March

2018 RTI meeting, Petitioner's father, [redacted]., announced that he was recording in the middle of the meeting. At that point, the meeting was tabled. (Tr. at 98.)

15. Although the Parents told Ms. Savage that they had arranged for private evaluations to be conducted with Petitioner, Ms. Savage never saw the results of any such private evaluations. (Tr. at 106, 119.) Ms. Savage testified that she had a conversation with [redacted], in which [redacted]. reported that Petitioner's evaluation indicated that Petitioner was only slightly on the spectrum. (Tr. at 119.) Petitioners did not request an occupational therapy ("OT") evaluation during the 2017-2018 school year. (Tr. at 114.) Ms. Savage also testified that Parents did not provide any private evaluations during the school year. (Tr. at 114.)

The 2018-2019 Academic Year

16. In the second grade, Petitioner had multiple teachers, unlike his first-grade year. Ms. Patricia Childers taught Petitioner writing. (Tr. at 129-30.) Petitioner's teachers, including Ms. Childers, were aware of Petitioner's participation in the RTI process. (Tr. at 132.) During the course of Petitioner's second-grade school year, Ms. Childers implemented interventions with Petitioner for writing, such as keeping writing checklists on his desk. (Tr. at 133.) She also verbally prompted Petitioner during his writing process. (Tr. at 134.) Petitioner's writing and language were below grade level. (Tr. at 160.) Ms. Childers testified that, when it came to putting his ideas on paper, Petitioner seemed to have a disconnect. (Tr. at 161.) More specifically, Petitioner appeared to struggle to transfer his ideas, and this struggle did was not appear to be due only to issues with the mechanics of handwriting. (Tr. at 161.) Ms. Childers testified that she provided interventions for writing in addition to those listed in his RTI folder because it was such a struggle for Petitioner. (Tr. at 139-40.) "What I did as a teacher is regardless of what is -- what he was on paper, tier 2 or tier 3. I gave him accommodations and everything that he needed in my

class to be successful, regardless of what tier he may have been when we talked and on paper." (Tr. at 157.)

17. Ms. Childers explained that it was hard to address Petitioner's needs at times due to the lack of information. (Tr. at 146.)

> But as the material got harder, sometimes it seemed like he was avoiding getting started on the work because, you know, it was becoming harder. It was -- he was a smart boy, so I'm not sure he picked up on that, but he required one-on-one on a daily basis and lots of prompts, and that's what we provided -- I provided.

(Tr. at 147.)

18. Ms. Childers was also concerned about Petitioner's word retrieval. (Tr. at 181-182.) Ms. Childers testified that Petitioner exhibited behaviors that interfered with his learning, such as inattentiveness; for instance, Petitioner would want to work from the floor but would quickly become off-task and distracted. (Tr. at 145-46.) She agreed with the IEP Team's request for a full comprehensive evaluation. (Tr. at 179.) Ms. Childers did not have any issues with understanding Petitioner's speech during class. (Tr. at 182.)

19. Marilyn Anderson taught Petitioner math in second grade. She testified she was aware of Petitioner's RTI plan. (Tr. at 271-72; 274.) Ms. Anderson testified she implemented the RTI and IEP plans. (Tr. at 282.) Ms. Anderson testified that Petitioner's behavior changed as the work got harder, and some of his scores were below grade level in math. (Tr. at 280-81.) She did not have any occupational therapy concerns as to Petitioner in her class. (Tr. at 284.) Ms. Anderson did not observe that Petitioner had fine motor issues that affected his education. (Tr. at 301.) Ms. Anderson likewise did not hear any speech articulation issues that affected Petitioner's education. (Tr. at 301-02.)

20. During the 2018-2019 academic year, there were five separate meetings involving the Parents, teachers and members of the IEP Team. During these five meetings, the teachers provided information to the IEP Team about what accommodations were used in the classroom by the teachers through the RTI process including: redirection, repeating directions, writing the directions on the board, gaining Petitioner's attention, seating him in close proximity to the board and teacher, one-on-one assistance, extra time, check for understanding, using a slant board for writing, giving him a written model on his paper to copy, and giving him boundaries on his paper when writing. (Exs. R-7 (BCSD060), R-8 (BCSD076-77), R-9 (BCSD092-93), R-10 (BCSD101-103), R-14 (BCSD126).)

21. Ms. Anderson testified that it was difficult to schedule meetings with the Parents. The Parents also told the IEP Team multiple times they would share the private evaluations. In fact, the Parents never provided any of their private evaluations. (Tr. at 302.). Ms. Anderson agreed with the request from the IEP Team for a full psychological evaluation of Petitioner. (Tr. at 285-86.)

22. Christopher Randolph is the lead special education teacher at [redacted] Elementary School. (Tr. at 330.) Mr. Randolph attended an RTI meeting on September 28, 2018, at which the team determined to have an occupational therapy ("OT") consultation as to Petitioner. (Tr. at 367.) Mr. Randolph testified that, other than the request for the OT consultation the team agreed to do in September of 2018, the parents did not request an OT evaluation during the relevant time period. (Tr. at 367.)

23. During the October 16, 2018 meeting, the IEP Team discussed the speech services that were provided, the Parents' concerns and additional concerns the teachers were seeing in class. (R-7.) It was noted that Petitioner met his IEP goal with 100% accuracy. (Tr. at 423.) Based on

Petitioner's progress in speech, Petitioner's services were moved to consultative with service for four fifteen-minute sessions per month. (Tr. at 409-10.) As noted previously, Ms. Williams, the Speech Language Pathologist, testified that she kept the same goal as the previous IEP despite Petitioner's mastery because she wanted to ensure he that was generalizing his sounds in the classroom. (Tr. at 423; 428.)

24. At the Parents' request, the IEP Team met again on November 1, 2018 to discuss services to Petitioner and his placement. (R-8, BCSD076.) At that meeting, the IEP Team reviewed the Petitioner's grades, which included an Unsatisfactory in Language Arts. (Id.) During the discussion regarding the Petitioner's then levels of performance, the teachers reported Petitioner's writing was below grade level. (Id.) The teachers also expressed concern about Petitioner's difficulty with staying focused during the day, requiring frequent redirection to complete his work assignments. (Id.) Further, the teachers reported using the following strategies in class to help the Petitioner be more successful: sitting in close proximity to the teacher, redirection, repeating directions to him, writing the directions on the board, and one-on-one help. (Ex. R-8 (BCSD076).)

25. The IEP Team again met on November 12, 2018 to once again discuss evaluations. (Ex. R-9 (BCSD092).) On April 10, 2019 and May 28, 2019, the IEP Team conducted a facilitated IEP meeting. (Exs. R- 10 (BCSD101), R-14 (BCSD125).) Ms. Amerson testified that that process is one in which a "facilitator from the DOE" leads the meeting when it has become difficult to come to a resolution. (Tr. at 737.) During the April 2019 IEP meeting, the issue of an OT consultation was reviewed, and it was recommended that a full evaluation be conducted. (R-10 (BCSD101); R-65 (BCSD454-455).) All the educators that testified agreed with the

recommendation that the Petitioner be evaluated for speech, occupational therapy and be given a full psychological evaluation. (Tr. at 179; 285-86; 369; 692.)

26. The parties agreed to a resolution at the facilitated April 2019 IEP meeting, which was documented. This agreement was breached by the Parents by revoking consent to the evaluation of Petitioner. (Tr. at 749.)

Petitioners' Failure to Cooperate with the District

A. Parents Refused to Sign Consent to Evaluate.

27. The IEP Team met numerous times with Petitioners, including two facilitated IEPs, in order to discuss the need for a full comprehensive evaluation. (Exs. R-12 (BCSD112-113); R-15 (BCSD131-133).) Ms. Amerson explained on multiple occasions the District's obligation to evaluate a student in all suspected areas of disability. (Tr. at 726-727; Exs. R-12 (BCSD112-113), R-15 (BCSD131-133).)

> If there is any area in which we suspect a disability, then we do have to evaluate in that area and determine if there is a disability. If we didn't do that, then potentially a parent then would have grounds to file a due process hearing because we did not complete our obligation under Child Find.

(Tr. at 726.)

Ms. Amerson also explained that, once the evaluations are complete, if the parents did not want to consent for those services, they could decide not to agree to placement or services. (Tr. at 728-29. Exhibit 78, Recording November 12, 2018 at 55:00 and following.)

28. The Parents repeatedly refused to allow the IEP team to evaluate Petitioner comprehensively as requested by the District. (Tr. at 359; 365-66; 368; 732; 733; 792.) The reasons for this refusal articulated by the Parents changed over time. The parents refused to

consent to the evaluations "until the RTI process has been put in place." (Tr. at 359.) During the hearing, another reason was offered that the student had seizures. (Tr. at 792.)

> You know sometimes it was: We don't want him pulled out of class. Sometimes it was: Testing will cause him anxiety. Then it was: We want the RTI in the IEP. It was also: We don't trust the school system, so we want a private evaluation. We told them they could get it after we did ours, that they would have that right to request one. At one point, it was even -- it was just a bad time personally. Her dog had died, and they were -- she was having back surgery, and she just -- she broke out in tears and just said this is just not a good time. So, like, it was really hard to address the -- the lack of consent because the reasons for the lack of consent really changed. So here she's offering a whole new reason is that he's got seizures.

(Tr. at 792.)

29. Although the Parents refused to sign consent for evaluations by Respondent, they did allow Paulding County School District to evaluate the Petitioner. (Tr. at 770-71.)

B. The Parents Did Not Work Cooperatively with the IEP Team.

30. In addition to refusing to sign a consent to the evaluations that the IEP Team agreed were necessary, the Parents repeatedly stated that they would provide copies of the private evaluations they had obtained in order to help with the education planning. In fact, however, they failed and refused to do so. (Tr. at 302; 366; 407; 463; 675-77; 734-35; 749; 759.) This is evidenced by the recording of May 28, 2019 facilitated IEP meeting where this failure to provide these records was again discussed. (R-78 Audio Recording, May 28, 2019, 1:14-1:14:33).

31. As an example of the difficulty Respondent had when dealing with the Parents, [redacted]. at one point testified that the Parents *did* provide private evaluations to the school. (Tr. at 448-52.) Then [redacted] testified that he did not provide private evaluations because he was not

obligated to do so. (Id.) Further, [redacted]. testified that he did not provide copies of the Harbin Clinic psychological evaluation. (Tr. at 450.) [redacted]. admitted that the Parents offered to provide that evaluation, but in fact they never provided it. (Id.) [redacted]. then agreed that he did not provide any private evaluations by the date of the due process request. (Tr. at 455-56.) He even testified that he could not recall whether [redacted] provided any private evaluations in any of the six IEP meetings he attended. (Tr. at 456.)

32. In order to support their contention that the Parents did in fact provide copies of private evaluations, [redacted]. testified that she provided them to Respondent by placing the doctor's note on the table at a meeting and then took it home with her at the conclusion of the meeting. (Tr. at 500.) She then admitted what she placed on the table was not actually an OT evaluation. (Tr. at 599-60.) Additionally, [redacted] testified that she flung the speech evaluation across the table at Ms. Amerson at the. (Tr. at 620.) This is contradicted by testimony of others at those IEP meetings, including [redacted]., April 2019 facilitated IEP meeting and the audio recordings which indicate that no evaluation was provided. (Tr. at 689; 733; Ex. R-78 Audio Recording, April 10, 2019, 2:39- to the end.)

33. When Petitioner enrolled for school in Paulding County, the Parents provided copies of the private evaluations they had obtained to Paulding County School District. (Tr. at 781.)

34. Mr. Randolph testified that it was sometimes difficult to schedule meetings with the Parents and that the Parents were not always respectful of the starting time of those meetings. (Tr. at 358.) Having six IEP meetings in a year is not typical. (Tr. at 368.) Mr. Randolph's testimony is consistent with Ms. Savage's experience, as she testified that the Parents were late to

every meeting scheduled with her. (Tr. at 98.) There were many team members that did not like having meetings with the Parents because they felt bullied by the Parents. (Tr. at 369.)

35. Ms. Amerson became involved in this matter when the matter became contentious between the Parents and the staff at the school. This included a threat by [redacted]. to file a Complaint against Ms. Shores. (Tr. at 729.) [redacted]. testified that he indeed filed a Complaint against Ms. Shores because she violated his rights to view student records, even though this statement was false. (Tr. at 687; Exs. R-8 (BCSD076); R-78 Audio Recording November 1, 2018, 34:18-25, 35:13-53.)

> THE ADMINISTRATIVE LAW JUDGE: So you're saying you requested a -- you requested this document on 11/1/2018; is that correct?
>
> PETITIONER [redacted].: Yes.
>
> THE ADMINISTRATIVE LAW JUDGE: And –
>
> PETITIONER [redacted].: That document was presented -- I'm sorry.
>
> THE ADMINISTRATIVE LAW JUDGE: Go ahead. And when was it provided?
>
> PETITIONER [redacted].: It wasn't until after. I don't -- I don't remember the date, to be honest.
>
> THE ADMINISTRATIVE LAW JUDGE: Well, can you -- can you approximate? Within six weeks? Within a year? Within a month?
>
> PETITIONER [redacted].: Probably within – **within a few weeks. I would say less -- less than four weeks.**
>
> THE ADMINISTRATIVE LAW JUDGE: So you requested the document on 11/1/2018, and you think you had it -- I'm trying -- I'm going to pick a date -- by -- by 12/15 it had been provided; is that correct?
>
> PETITIONER [redacted].: Correct. (Tr. at 206-07; 253.)

36. When the recording of the November 1, 2018 IEP meeting was played during the hearing, [redacted]. reluctantly admitted that his testimony on this point was false and that he in fact received the records the same day. (Tr. at 258.)

37. More specifically, the recording of the meeting shows that [redacted]. requested the opportunity to look at Petitioner's folder during the November 1, 2018 IEP meeting. (Tr. at 687.) Ms. Shores responded that it was not Bartow County policy to make files available for review during meetings but that copies would be provided *after* the meeting. [redacted]. became incensed when Ms. Shores took this position and refused to let him review the file immediately. [redacted]. objected that Ms. Shores' refusal was illegal, inappropriate and defeated the entire purpose of the meeting. [redacted]. stated that he had been able to review files and information in prior meetings. [redacted]. threatened to file a complaint with the professional ethics commission of educators. (Tr. at 687. Ex. R-78, Audio Recording, November 1, 2018, 5:20-7:49; 17:15-17:30.) Audio recordings and testimony confirm that Ms. Shores did have copies made of the documents requested and these were provided on November 1, 2018. (Tr. at 687; R-78 Audio Recording, November 1, 2018, 34:18-25, 35:13-53.) Mr. Randolph testified that [redacted], requested records at the November 1, 2018 IEP meeting, and he made copies of those records and provided them to [redacted]. at the end of the meeting. (Tr. at 369-370.)

38. Despite being provided with those records on the same day he requested them immediately following the meeting, [redacted] repeated his allegations that Ms. Shores had not provided the documents at the meeting. Being hyper-literal, one can arguably justify this statement as literally correct given Ms. Shores' insistence that the documents would only be provided *after* the meeting. But [redacted]s statement is deliberately misleading and does not reflect what happened as most individuals would understand these events. [redacted]. stated he filed a complaint against Ms.

Shores both at the very end of the November 12, 2018 IEP meeting (Ex. R-78, Audio Recording, November 12, 2018, 1:04:25) and in front of the May IEP team at that meeting. (Ex. R-78 Audio Recording, May 28, 2019, 1:04:14-39.) At the November 12, 2018, meeting, [redacted]. again asserted that Ms. Shores conduct withholding the files until after the meeting was a violation of law and of Respondent's policies. (Ex. R-78 Audio Recording, November 12, 2018, 1:03:50-1:04:42.)

39. The Parents breached the agreement reached at the April IEP meeting by revoking their consent to the evaluation of Petitioner. They also breached the agreement by refusing to provide the private evaluation that they had promised to provide. (Tr. at 749.) Notwithstanding the lack of cooperation by the Parents and breach by the Parents of the agreement reached at the mediated April IEP meeting, Respondent continued to implement the accommodations agreed to during the April meeting until notified that Petitioner had transferred to another school district. (Tr. at 749.)

40. The Parents improperly demanded that Ms. Amerson not be involved in the educational process for Petitioner to her supervisors, including board members and the School Boards Superintendent. (Tr. at 751-52.). These demands and communications were inappropriate and were not conducive to moving this matter to resolution. The Parents also persisted in making false statements regarding Ms. Shores' failure to provide records. (Ex. R-78 Audio Recording, May 28, 2019, 1:04:14-39.)

Respondent's Alleged Failures

41. The Parents assert that Respondent failed to meet its responsibilities to provide Petitioner with a free and appropriate public education based on the district's failure to "Child Find," evaluate suspected disabilities, comply with the accommodations outlined in his Petitioner's

IEP, and follow through with the Response to Intervention ("RTI") plan. The Parents identify several alleged lapses regarding which they contend Respondent did not address properly.

42. The Parents assert that Respondent failed to meet its "Child Find" obligations in addressing concerns as to Petitioner's fine motor skills in the 2015-2016 Academic Year. This issue is noted in the 2015-2016 IEP. (Tr. at 496:11-18.) This issue is outside the two-year period that is the subject of this matter, however.

43. The Parents assert Respondent did not act in Petitioner's best interest by failing to assess occupational concerns between 2016 and 2018. To the extent these allegations relate to the period prior to May 28, 2017, they are outside the scope of this case. To support their contentions, the Parents point to the approximately five-month delay between completion of the request for the Occupational Therapy assessment conducted by Respondent and the delivery of that assessment to Petitioners. (Tr at 247:15–248:5; Tr. at 351:19-23). After the occupational therapist's consultation was provided to the parents on or about March 22, 2019, the Parents assert Respondent was tardy in scheduling a meeting until the end of April or early May 2019.

44. It is undisputed that Petitioner received speech services in a room separate from the regular classroom until the October 16, 2018 IEP meeting. (Tr. at 387; Ex. R-7.). Petitioners sought to establish that, at various times after the October 16, 2018 meeting, in violation of the IEP, Petitioner was removed from his regular classroom for continuing speech services. (Tr. at 537-40). The testimony on this issue is inconclusive. (Tr. at 708-10.)

45. The Parents assert that they provided documentation as to a diagnosis of anxiety for Petitioner to Respondent via the school/home communication folder in March of 2018 and assert that this diagnosis should have been used to create his RTI accommodations beginning with the March 27, 2018 meeting. (Tr. at 514:15-23, 20:7-13.) In addition, [redacted]. reiterated that a

doctor's letter was provided to Respondent in March 2018 relating to Petitioner's anxiety. (Tr. at 650:2-21.) Respondent notes it was aware at various times of the potential issue of Petitioner's possible diagnosis for anxiety, but Respondent denies ever having received any such letter. (Tr. at 650:2-21.) The testimony and recordings of the various meetings are persuasive that for whatever reason, Respondent did not receive the letter relating to Petitioner's anxiety. It is not disputed, however, that Respondent was aware of [redacted] concerns as to Petitioner potentially having anxiety, even though Petitioner's teachers did not observe manifestations of anxiety. (Tr. at 604; Ex. R-78, Recording, October 16, 2018, 8:54-9:54.) Petitioners did not show that Respondent failed to address the issue related to Petitioner's anxiety. Indeed, Respondent's awareness of an undocumented potential anxiety disorder is another reason supporting Respondent's request that Petitioner receive a full evaluation to serve as the basis for additional services, as an anxiety disorder is one such possible basis for services. (Tr. at 731-32.)

46. Petitioners assert that Respondent did not collect RTI documentation or document the RTI steps taken to address Petitioner's non speech related educational issues, and S.M. specifically testified that Respondent did not collect any RTI data (Tr. at 487:1-6.) According to the team of teachers present during the October 16, 2018 IEP meeting, Petitioner was making improvements and gains without any documented accommodations (Tr. at 488:15-20.) S.M.'s testimony on cross-examination and the documentary evidence referred to in that testimony corroborates that Petitioner's teachers in fact made various accommodations and interventions for the benefit of Petitioner, irrespective of whether these were formally documented in a separate RTI folder. (Tr. at 627-45.). On this issue, it is quite striking that, during the meeting on October 16, 2019, Mr. Randolph, [redacted]. and [redacted]. engaged in an extended discussion about the record keeping for IEP and RTI, the conflation of IEP and non-IEP interventions using RTI being used, and the

propriety of including non-speech related issues and accommodations in Petitioner's IEP. (Ex. R-78, Recording October 16, 2018, 25:20-35:10; 50:35-53:38). [redacted]. acknowledged his expertise in the area as a special education teacher, specifically noting that he "does this all day." (Ex. 78, Recording October 16, 2018 at 52:20.) [redacted] did not appear to be unduly troubled by the way matters were being addressed, although he did express opinions as to the proper way to handle the documentation. (Ex. R-78, Audio Recording October 16, 2018 at 52:15-53:25.). [redacted]. also mentioned the conflation of information during this meeting, noting that how the records were maintained and where various matters were notated seemed to change regularly depending who was addressing the matter. Again, she did not appear to be particularly troubled, simply affirming that she wished for these issues to be addressed. (Id.)

47. The incident that appears to have inflamed [redacted]. the most in this entire matter, and the shot that appears to have started the war, was Ms. Shores' refusal to provide Petitioner's files to [redacted] during the meeting on November 1, 2018. The record is painfully clear that, in [redacted]'s mind, this was a major violation of Petitioner's legal rights and illustrative of Respondent attempting to bully the Petitioners. Whether this refusal was objectively legally improper is unclear. And whether [redacted]'s perceptions of the seriousness of Ms. Shores' actions accord with objective reality is dubious. [redacted] received the files the same day – that is, less than an hour after the issue arose and tempers flared. Although this incident clearly inflamed [redacted]., there is no evidence that the timing of the receipt of the files had any effect on the merits of the issues in this case.

48. Petitioners correctly note, and Ms. Amerson frankly acknowledges, that she made several incorrect statements at the June 19, 2019 IEP meeting, including that Respondent was "terminating" Petitioner's IEP and denying the exercise of "Stay Put" rights by the Parents.

Counsel for the Respondent was not at this meeting. Ms. Amerson is not a lawyer, and this was the first time Ms. Amerson had found herself in any situation like that meeting. During the meeting, when [redacted] challenged Ms. Amerson on these exact issues, stating that [redacted]. had been so advised by legal counsel, Ms. Amerson sought to call her legal counsel for advice on these issues. She was prevented from doing so when [redacted]. objected. Following the meeting, Ms. Amerson immediately corrected her error the next day and sent written documentation of such correction to Petitioners. (Tr. at 543-44, 756-57; Ex. R-16.) Although Petitioners allege that this resulted in the Parents incurring expenses and although [redacted]. made generalized statements to that effect (Tr. at 542), Petitioner's submitted no documentary evidence or detailed testimony to support what was done by the Parents or what expenses were incurred as a result.

Procedural History

49. Petitioners' filed this due process request on May 28, 2019 alleging violations of IDEA due to (1) identification; (2) evaluation; (3) educational placement and (4) FAPE.

50. Respondent filed a timely response followed by a Motion for Summary Determination as a total bar to Petitioners' claims on July 30, 2019.

51. Respondent filed a "Request for a Ruling on the Motion for Summary Determination" ("Motion for Summary Determination") on October 31, 2019. Petitioner did not respond to Respondent's Motion for Summary Determination in writing within the time and as required by OSAH Rule 616-1-1-.15.

52. On May 15, 2020, the Court held a telephone conference regarding the status of Respondent's Motion for Summary Determination and the overall status of this matter. At the telephone conference, the Court allowed [redacted] to respond orally to Respondent's pending Summary Determination Motion. The parties participated in another telephone conference on June 10, 2020

regarding the Motion for Summary Determination. On July 14, 2020, the Court entered "Order on Motion for Summary Determination" (the "Summary Determination Order") in which Respondent's Motion for Summary Determination was granted in part and denied in part.

53. The Summary Determination Order holds, *inter alia*, that Respondent has the burden to show the Parents' lack of cooperation, and, if true, such conduct bars Petitioner's claims under the IDEA. See Roland M. v. Concord Sch. Comm. 910 F 2d 983 (1st Cir. 1990); Loren F. v. Atlanta Indep. Sch. Sys., 349 F 3d 1309 (11th Cir. 2003). The Summary Determination Order additionally holds that, even if Petitioner's claims are not barred for the reasons asserted by Respondent, the sole basis for Petitioner's claim in this matter is whether Petitioner should be compensated for lack of educational opportunities prior to withdrawing from Respondent's school district. Petitioner's claims in this case are therefore limited solely to claims for compensatory services and reimbursement. See D.H. v. Lowndes Cty. Sch. Dist., No 7:11-CV-55, 2011 U.S Dist. Lexis 101803 (M.D. Ga. Sept 9, 2011). The Summary Determination Order states unequivocally that it will be insufficient for Petitioner only to show violations of the IDEA and that, to prevail, Petitioners must also show actual costs incurred by Petitioners resulting from those violations. The Summary Determination Order is explicit that the trial on the merits is limited to the foregoing matters.

54. Although Petitioner's father [redacted]. is not an attorney, [redacted]. is highly educated, has a doctorate in special education, is a special education teacher and is highly sophisticated as to matters involving the IDEA and special education issues. (Tr. at 15-16.) Notwithstanding [redacted]s sophistication, given the *pro se* nature of this matter, the Court consistently and repeatedly granted extraordinary leeway to [redacted]. in this matter to ensure that the record was fully developed.

55. Among these many indulgences, the Court did not use the Petitioner's failure to respond to Respondent's Motion for Summary Determination as the basis for the granting of such motion and dismissal of Petitioner's case, even though such action would have been fully justified in the absence of Petitioner's response to Respondent's motion.

56. Similarly, at the hearing on this matter, when it became apparent that [redacted] had not subpoenaed any witnesses and had made no arrangements for witnesses to be available for the presentation of Petitioners' case, the Court requested that Respondent completely re-arrange the scheduled presentation of Respondent's own witnesses in order to make them available for Petitioner so that [redacted] could question those witnesses as part of Petitioners' case-in-chief. (Tr. at 19-45.) Respondent in fact did so. (Tr. at 559.) Respondent's willingness to assist in this fashion in order to complete a thorough record in this matter is to be commended. (Tr. at 678.)

57. The record is replete with instances too numerous to list where the Court gave [redacted] great latitude in the presentation of Petitioners' case and attempted to assist [redacted]. in developing the record.

58. As a final example, the undersigned has reviewed and considered Petitioners' "Proposed Findings of Fact and Conclusions of Law," even though these were not filed timely by the close of business on October 5, 2020, as specified. They were received by the Office of State Administrative hearings electronically at 10:23 p.m. that day and were not filed until October 6, 2020.

59. Notwithstanding the Court's clear and explicit direction given in the Summary Determination Order, Petitioners failed to introduce any evidence whatsoever on the issue of the cost of compensatory services at the hearing on this matter. The first time Petitioners even adverted to the issue of compensatory services was in Petitioners' "Proposed Findings of Fact and

Conclusions of Law," which were submitted *after* the record in this matter had closed and the transcripts of the hearing had been submitted.

CONCLUSIONS OF LAW

The love of parents for their child is one of the most powerful forces in the universe. It is undisputed that the Parents in this case love Petitioner dearly. It is likewise undisputed that the Parents were deeply concerned about issues with Petitioner's academic progress in the first and second grades. Moreover, as special education teachers, the Parents understandably had strong opinions as to what educational services Petitioner should receive, how those services should be provided and how this should be documented.

Given this high level of emotional involvement and these strong professional opinions, and as Petitioner continued to show issues in his educational progress, it is not surprising that stress began to emerge in the dealings between the parties and that those dealings became fraught with high levels of emotion. Having listened to all of the Recordings which were admitted as Respondent's Exhibit 78 in their entirety, one can hear the mounting tension on both sides as the relationship became progressively more emotional. When one filters out the "noise" and the emotion, the ultimate facts in this case are straightforward. In 2015, Petitioner was found to be eligible for services pursuant to the IDEA under the eligibility category of speech language impairment to address articulation needs. This is the only eligibility category where a determination was ever reached that Petitioner qualified for services under IDEA. Petitioner received services with respect to his speech language impairment pursuant to his IEP. These services were successful.

While Petitioner was in the first grade, the Parents became concerned about Petitioner's academic progress, including issues regarding fine motor skills. Petitioner's teachers also began

noticing behaviors that were interfering with his progress and were concerned. These were all documented and discussed. The Parents and teachers discussed alternatives, which included possible testing and evaluation for occupational therapy and psychological evaluation. At no time did the Parents give written consent to any testing or evaluations of Petitioner. In the absence of parental consent, no testing was done by the District with respect to Petitioner, during the 2017-2018 academic year other than ongoing speech evaluations pursuant to the IEP.

When Petitioner entered the second grade, his academic performance continued to be below the appropriate norms in several areas. The Parents requested that the District provide various non-speech related services and identified what they believed to be various failures by the District. The District requested that Petitioner be evaluated and tested comprehensively to determine what services needed to be provided. The Parents refused to permit the evaluations and associated testing.

Discussions between the parties deteriorated. The parties ultimately reached impasse and this litigation resulted. The Parents enrolled Petitioner in another school where comprehensive evaluations and testing concluded that Petitioner qualified for services for a specific learning disability. Petitioner did not qualify for further services for speech impairment nor did Petitioner qualify for occupational therapy services.

I. PETITIONERS FAILED TO PROVIDE ANY EVIDENCE THAT WOULD SUPPORT REIMBURSEMENT FOR OUTSIDE SERVICES.

Because Petitioner no longer attends school in the District, his claims are limited solely to claims for compensatory services and reimbursement. See D.H. v. Lowndes Cty. Sch. Dist., No 7:11-CV-55, 2011 U.S Dist. Lexis 101803 (M.D. Ga. Sept 9, 2011).

Notwithstanding the specific directions given to Petitioners by the Court on this issue in the Summary Determination Order, Petitioners did not present *any* evidence to support

reimbursement for outside services that were provided to Petitioner. Petitioners did not call private therapists as witnesses to support this allegation. Petitioners failed to introduce copies of invoices or fee agreements or any evidence whatsoever as to the amounts spent on compensatory services. Petitioners failed to identify what services were used and by whom the services were provided. Nowhere in their testimony did [redacted]. or [redacted]. provide any testimony or documentation on these issues other than generalized statements from [redacted]. (Tr. at 542:17-25). Thus, Petitioner's claims for financial recovery fail for this reason.

II. PETITIONER HAS NOT MET ITS BURDEN AND HAS FAILED TO ESTABLISH BREACHES BY RESPONDENT OF IDEA THAT ADVERSELY AFFECTED PETITIONER.

After reviewing the record and hearing the testimony, the undersigned is persuaded that the Parents believed that, because of their training and expertise and their daily exposure to Petitioner, they knew more about what needed to be done in Petitioner's education than the District's personnel. Given the need for Petitioner to repeat the second grade and the testimony regarding his educational issues, it appears that steps could have and should have been implemented during the 2018-2019 academic year to address this. The record, taken in its entirety, supports Respondent's contention that the reason this was not done was the Parents' refusal to cooperate in permitting a full evaluation of Petitioner. This refusal made it impossible for Respondent to take steps needed to address Petitioner's educational issues. The Parents attempted to coerce Respondent to accede to their educational preferences of limited testing and assistance, even though doing so would be legally incorrect under the IDEA.

Respondent did not do a perfect job in handling this matter. For instance, the delay in providing the occupational therapy evaluation to Petitioners is not explained and appears to be a lapse on Respondent's part. But there is no evidence that this lapse had an adverse effect on

Petitioner.

Similarly, even assuming, without deciding, that [redacted] is correct and that Ms. Shores was wrong when she refused to provide Petitioner's file folder during the meeting on November 1, 2018, and even assuming she should have done so under applicable law and school policy, the fact is that she did provide the file folder at the close of the meeting. But even assuming that Ms. Shores was mistaken in her actions, there is no showing of prejudice to Petitioner as a result of the technical error in timing. The information was provided immediately following the meeting. Petitioners have not shown how this failure, if indeed it is one, prejudiced addressing the issue of providing the correct educational accommodations for Petitioner.

Similarly, Ms. Amerson, who is not a lawyer, was completely frank in acknowledging her errors as to certain statements regarding certain legal issues at the June 19, 2019 meeting—errors which could have been avoided by a phone call to counsel that [redacted]. would not permit. Ms. Amerson immediately documented her retraction the next day. The Parents failed to submit any evidence of adverse consequences to Petitioner that resulted from Ms. Amerson's technical errors.

And it appears that the Parents may well be correct in their contentions that the administration of the RTI process for Petitioner was less than perfect from a documentation perspective. The recordings certainly indicate the process was confused, and the relationship of the two efforts were conflated. But again, there is no evidence that technical lapses in RTI record keeping and maintenance of the RTI folder are what caused adverse effects on Petitioner's education. Both the Parents and the educators were well aware of the issues regarding Petitioner's education in both the 2017-2018 and the 2018-2019 academic years. Although the Parents had many well thought out and carefully articulated concerns about the effectiveness of Petitioner's IEP for speech that they voiced but that were not adopted, the IEP speech intervention was

nonetheless successful.

In summary, even assuming for purposes of argument that Respondent made certain errors in its handling of this matter that, with the wisdom of hindsight could have been handled better, there is no showing that such lapses caused compensable damages to Petitioner. The Parents' continued focus on perfect procedural compliance misses the larger focus of the matter at hand. Indeed, the facilitator of the April 2019 IEP Meeting put it aptly when she compared the parties' argument regarding procedural defects in the RTI process and technical complexities of the RTI versus IEP processes as moving deck chairs on the Titanic. (Ex. R-78, Audio Recording, April 10, 2019, 1:32:28.)

III. PARENTAL FAILURE TO COOPERATE BARS PETITIONERS' CLAIMS.

What did have a demonstrably adverse effect on Petitioner was the Parents' unwillingness to allow Petitioner to participate in a full evaluation as requested repeatedly by Respondent. The District was thus hamstrung in its efforts to identify and approve any special services that Petitioner needed.

When parents fail to cooperate with a District's concerted efforts to develop an IEP, the District cannot be liable for a violation of the procedural requirements of the Act. For example, in Roland M. v. Concord Sch. Comm., 910 F.2d 983, 995 (1st Cir. 1990), the court refused to find a procedural violation in the face of the "parents' studied lack of cooperation with ongoing attempts to develop" the IEP. The court explained that the IDEA should not "abet parties who block assembly of the required team and then, dissatisfied with the ensuing IEP, attempt to jettison it because of problems created by their own obstructionism." Roland M., 910 F.2d 983, 995; see also Fitzgerald v. Fairfax Cnty. Sch. Bd., 556 F.Supp. 2d 543 (E.D. Va. 2008) (parental participation requirements of the Act do not rise to the level of parental veto).

These decisions recognize an obvious and necessary truth: the IEP process is a two-way street. Parents may not seek to hold a school district liable when that failure was brought about by the parents' intransigence, defiance and lack of cooperation. Indeed, this simple truth was stated plainly in the Supreme Court's decision in Schaffer when it observed that "[t]he core of the statute . . . is the **cooperative** process that [the Act] establishes between parents and schools." Schaffer v. Weast, 546 U.S. 49, 53 (2005) (emphasis added).

Why the Parents would not agree to the comprehensive evaluations that Respondent repeatedly requested to identify the source of Petitioner's apparent learning issues remained a mystery throughout this litigation. Respondent was entirely within its legal rights and responsibilities to request a full set of evaluations before proceeding with IDEA-level interventions. Respondent was fully entitled to reject the Parent's attempts to pursue a piecemeal approach. And the Parents consented to just such evaluations when Petitioner changed schools.

The only real light shed on Petitioners' perplexing behavior comes from the April facilitated IEP meeting. At that meeting, the Parents seemed to indicate that they opposed testing because they were fearful that it would result in Petitioner being placed in "special education" and, as a result, stigmatized or perhaps lost in the system. It appears to the Court that this fear is the crux of Petitioners' refusal to agree to comprehensive testing, instead attempting to shoehorn the necessary services into the RTI process. (Ex. R-78 Audio Recording, April 10, 2019, 1:46-1:48.) Regardless of the reason, however, the Parents' continued refusal was inappropriate and corrosive to the cooperative process of the IDEA.

Respondent is bound by the IDEA and is legally obligated to provide Petitioner with a Free Appropriate Public Education. But Respondent is not an insurer, and Respondent cannot guarantee that a student will be an academic success. Before Respondent can embark on a program of

interventions in order to provide FAPE, it must first determine what needs must be addressed by those interventions. The evidence in this case is compelling that Respondent's efforts to provide Petitioner with his FAPE were thwarted by the Parents lack of cooperation.

A. Evaluations are necessary in order to determine eligibility, services and placement.

It is axiomatic that a school district's provision of special education services must be based on the individual needs of the student with a disability. In order to ascertain the specific nature of those needs, it is incumbent on the school district to be able to conduct comprehensive evaluations and reevaluations of the student. 4 C.F.R. §§ 300.301-300.305. When developing a child's IEP, the IEP team must consider the results of initial or most recent evaluations. 20 U.S.C. § 1414(a)(2)(B).

When parents request that a school district consider a private evaluation, the parents must allow a school district to reevaluate the student and not rely solely on a parent's independent evaluations. M.T.V. v. DeKalb Cnty. Sch.Dist., 446 F.3d 1153, 1160 (11th Cir. 2006) (recognizing that "[e]very court to consider the IDEA's reevaluation requirements" has so concluded); K.S. v. DeKalb Cnty. Sch. Dist., No. 1:05-CV-3251(JTC), 2008 WL 8478768, at * 7 (N.D. Ga. May 28, 2008) (obligation to consent to requests for reevaluation exists even after due process request filed by family). 34 C.F.R. § 300.324(a).[1]

The purpose of an evaluation is to ensure that the student is receiving appropriate educational services and placement through the student's IEP. In Draper v. Atlanta Indep. Sch. Sys., 518 F.3d 1275, 1287-88 (11th Cir. 2008), for example, the court found the school district's

[1] It does not appear to be disputed that conditions on the consent for reevaluation is not allowed under IDEA. M.T.V. v. Brown, No. 1:03CV0468(CA), 2004 WL 3826048, at #4 (N.D. Ga. Oct. 21, 2004) (court ordered "whatever testing Defendants and the testing expert desired . . .[and] [redacted]s parents must cooperate in the ordered testing 'in order to continue to receive special education services under the Other Health Impaired (OHI) category of eligibility.'").

failure to conduct a comprehensive evaluation and provide appropriate eligibilities and programming justified private placement. The purpose of such an evaluation is to determine whether the child is a child with a disability. 34 C.F.R. § 300.305(a)(2).[2]

The evidence shows that the IEP Team provided information to support evaluations for occupational therapy, speech and a full psychological evaluation. Ms. Savage, Petitioner's first grade teacher, shared her concerns about Petitioner's behaviors and academics. (Tr. at 67, 93.) Ms. Savage testified that Petitioner was struggling to complete his work without numerous redirections. (Tr. at 101.) During the course of his second-grade school year, the teachers provided Petitioner with a number of interventions for academics and behaviors using the RTI process when Petitioner was performing below grade level. (Tr. at 133-34, 139-40, 157, 162-63, 282; Exs. R-7 (BCSD060), R-8 (BCSD076-77), R-9 (BCSD092-93), R-10 (BCSD101-103), R-14 (BCSD126) (redirection, repeating directions, writing the directions on the board, gaining his attention, sitting in close proximity to the board and teacher, one-on-one assistance, extra time, check for understanding, using a slant board for writing, giving him a written model on his paper to copy, and giving him boundaries on his paper when writing.))

The teachers also shared their concerns that would warrant the requested evaluation: (1) his writing and language were below grade level (Tr. at 160); (2) when putting his ideas on paper, there seemed to be a disconnect (Tr. at 161); (3) word retrieval and getting his thoughts on paper (Tr. at 181-82); and (4) behaviors that interfered with his learning, such as inattentiveness and wanting to work from the floor instead of his desk and becoming off-task. (Tr. at 145-146). Ms.

[2] In Georgia, if a student is referred for learning and/or behavior concerns, the student should be evaluated by a "multi-disciplinary team." When a psychological evaluation is conducted, it must be completed by a school psychologist with a valid S-5 certificate or higher in school psychology and he or she does not maintain one of the other credential requirements set out by the state. Ga. Comp. R. & Regs. 160-4-7-.04(a)(i).

Anderson testified that Petitioner's behavior changed as the work got harder and that some of his scores were below grade level in math. (Tr. at 280-81.)

Ms. Childers testified it was hard to address Petitioner's needs at times due to the lack of information. (Tr. at 146.)

> But as the material got harder, sometimes it seemed like he was avoiding getting started on the work because, you know, it was becoming harder. It was -- he was a smart boy, so I'm not sure he picked up on that, but he required one-on-one on a daily basis and lots of prompts, and that's what we provided -- I provided.

(Tr. at 147.)

Ms. Amerson explained on multiple occasions the District's obligation to evaluation a student in *all* suspected areas of disability. (Tr. at 726-27; Exs. R-12, R-15.)

> If there is any area in which we suspect a disability, then we do have to evaluate in that area and determine if there is a disability. If we didn't do that, then potentially a parent then would have grounds to file a due process hearing because we did not complete our obligation under Child Find.

(Tr. at 726.) Ms. Amerson testified that she also explained that once the evaluations are complete and if the parents did not want to consent for those services, the parents could decide not to agree to placement or services. (Tr. at 728-29.)

B. Petitioners' obstruction of the IEP process negates any potential claims.

In Loren F., the Eleventh Circuit made clear that "[e]ven where a FAPE is not provided, courts can nevertheless deny reimbursement if a parent's own actions frustrated the school's efforts." Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1312 (11th Cir. 2003). Similarly, in Hjortness v. Neenah Joint Sch. Dist., 507 F.3d 1060 (7th Cir. 2007), the court found that the parents had failed to cooperate during the IEP development efforts because they were only

interested in discussing whether the school district would pay for their desired private school and were not interested in meeting to finish creating an IEP. As stated by the Court of Appeals:

> As a result, the school district was left with no choice but to devise a plan without the meaningful input of [the student's] parents. Under these circumstances, the parents' intransigence to block an IEP that yields a result contrary to the one they seek does not amount to a violation of the procedural requirements of the IDEA. *To hold otherwise would allow parents to hold school districts hostage during the IEP meetings until the IEP yields the placement determination they desire.*

507 F.3d at 1066 (emphasis added); see also C.G. v. Five Town Cmty. Sch. Dist., 513 F.3d 279 (1st Cir. 2008) (parents' recovery barred when they obstructed the completion of the IEP process in effort to create procedural violation claim and obtain residential placement for daughter).

The testimony at trial and the audio recordings show that the Parents were attempting to force the IEP team to do what the Parents wanted. Apparently, what the Parents wanted was for the District to provide additional non-speech related IEP level interventions without the District having the benefit of the required evaluation and testing. The IEP Team met numerous times with the Parents, including two facilitated IEP meetings, in order to discuss the need for a full comprehensive evaluation. (Exs. R-12 (BCSD112-113); R-15 (BCSD131-133)). As stated above, Petitioners' rights to agree to services was explained to Petitioners, as was the District's obligation to evaluate a student in all suspected areas of disability. (Tr. at 726-29; Exs. R-12 (BCSD112-113); R-15 (BCSD131-133)).

1. Petitioners' reasons for failing to consent to evaluations changed.

The Parents refused to allow the IEP team to evaluate Petitioner as requested. (Tr. at 359; 365-66; 368; 732; 733; 792.) The reasons for this refusal changed over time: (1) "until the RTI

process has been put in place."(T. p. 359); (2) a reason offered at the hearing was that the student had seizures, although this was not shared with the school (Tr. at 732); (3) the Parents did not want Petitioner pulled out of class (Tr. at 792); (4) testing would cause Petitioner anxiety (Tr. at 792); (5) the Parents wanted RTI in the IEP (Tr. at 792); (6) the Parents did not trust the school (Tr. at 792); (7) the Parents were having a hard time personally. (Tr. at 792). Perhaps, as alluded to in the April 2019 facilitated IEP meeting, the real reason was to avoid special education placement for Petitioner.

Again, although Petitioners refused to sign consent for evaluations in the District, they did allow Paulding County School District to evaluate Petitioner. (Tr. at 770-71.)

2. The Parents erratic testimony regarding the private evaluations illustrates Respondent's difficulties in dealing with the Parents.

Evidence of the difficulties Respondent had dealing with Petitioners was illustrated at the hearing when [redacted] testified that the Parents **did** provide private evaluations to the school. (Tr. at 448.) It was only during cross examination that [redacted]. then admitted that the Parents offered to provide evaluations, but in fact never provided them. (Tr. at 448-50, 455-56.) [redacted]. even testified that he could not recall whether [redacted]. provided private evaluations during any of the six IEP meetings he attended. (Tr. at 456.)

In order to support the fact that Petitioners did provide private evaluations, [redacted] testified that she **did provide** them to the District by putting the doctor's note on the table at a meeting and then took it home with her. (Tr. at 500.) She then admitted that what she provided was not an OT evaluation. (Tr. at 599.) Additionally, [redacted] testified that she flung the speech evaluation across the table at Ms. Amerson at the April 2019 facilitated IEP meeting. (Tr. at 620.) This assertion is contradicted by others at that IEP meeting, including [redacted], and the audio recordings. (Tr. at 689; 733; Ex. R-78 (April 10, 2019, 2:39- to the end).)

Petitioners did, however, provide private evaluations to Paulding County School District. (Tr. at 781.) Petitioners have failed to show any valid basis for the Parents' refusal to share their evaluations or to consent to the District conducting its own evaluations of Petitioner.

3. Petitioners sought to intimidate District employees.

District employees testified how difficult it was to work cooperatively with the Parents. This included Mr. Randolph's testimony that it was sometimes difficult to schedule meetings with the Parents and that team members felt like Petitioners were bullies. (Tr. at 358; 369.) After [redacted]. threatened to file a complaint against Ms. Shores in a meeting in front of the IEP team, Ms. Amerson became involved to support the school employees. (Tr. at 729.) [redacted]. testified that he filed a Complaint against Ms. Shores because she violated his rights to view student records. (Ex. R-8 (BCSD076).) [redacted]. testified to this matter that he requested records and that Ms. Shores refused to provide them until a few weeks later. (Tr. at 206-07; 253.)

> THE ADMINISTRATIVE LAW JUDGE: So you requested the document on 11/1/2018, and you think you had it -- I'm trying -- I'm going to pick a date -- by -- by 12/15 it had been provided; is that correct?
>
> PETITIONER [redacted].: Correct.

(Tr. at 206-07; 253). Even after giving [redacted] a chance to listen to the audio recording and refresh his recollection, it took [redacted] many questions to admit that the truth that the requested records were provided on the same day they were requested. (Tr. at 258.) Ms. Shores testified that, when she would not turn over Petitioner's IEP folder, [redacted] threatened to file a complaint with the professional ethics commission of educators. (Tr. at 687.) The audio recording supports Ms. Shores' and Mr. Randolph's testimony that those records were provided that same day. (Tr. at 369-70, 687; Ex. R-78 (Audio Recording, November 1, 2018, 34:18-25, 35:13-53).) It is deeply troubling that [redacted] attempted to perpetuate this untruth against Ms. Shores at the hearing in this

matter, as well as in emails to her supervisor. [redacted] also stated that he filed a complaint against Ms. Shores based on this deception in front of the May IEP team, which included a facilitator from the State Department of Education. (Ex. R-78 (Audio Recording, May 28, 2019, 1:04:14-39).)

Petitioners demanded that Ms. Amerson not be involved in the educational process for Petitioner to her supervisors, including School Board members and the Superintendent. (Tr. at 751-52.).

The recordings fully support the District's contentions. The level of hostility from the Parents is at times painful to listen to.

4. Petitioners would agree and then rescind consent to evaluations.

In addition to the three other IEP meetings in which Petitioners would say they would consent for evaluations only to then rescind that consent, during the facilitated IEP meeting held in April of 2019 where a resolution was finally reached, the Parents again agreed to consent. (Ex. R-10.) As explained during that meeting, evaluation is essential in order to provide a more complete picture of what services are needed. When a student, such as Petitioner, is off-task or is acting out, without evaluation, it is unclear whether these behaviors are due to the student's need for disability services or due to the student merely being a child. (Ex. R-78, Audio Recording, April 10, 2019 45:15-47:17.)

During that meeting, the agreement the Parents agreed they would sign consent for the District to conduct evaluations of Petitioner for speech, occupational therapy and a full psychological evaluation and that the Parents would provide their private evaluations. (Tr. at 735-36, 738-40.) The District then agreed to implement extensive accommodations through the RTI process without additional eligibility to determine appropriate IEP services. (Tr. at 742.)

After that meeting, Petitioners revoked consent for the evaluations that the District agreed to, unless all of the accommodations, including those not related to Petitioner's speech eligibility, were put in his IEP. (Tr. at 745-46.) Petitioners still did not provide the private evaluations. (Tr. at 749.) Even though Petitioners breached the agreement, the District continued to implement the accommodations agreed to during the meeting. (Tr. at 749.)

The Parents' behavior in their dealings with their fellow educators at the District is troubling and difficult to understand. They failed to give prior notice that they were recording meetings, they were frequently late, they attempted to bully members of the IEP Team, they were untruthful to the IEP Team and perpetuated misstatements of facts including in the hearing on this matter, they threatened to file spurious complaints against staff, they demanded the Director of Special Education not be involved in discussions, they engaged is inappropriate correspondence with Board of Education members, and they failed to provide private information that would have helped the address Petitioner's educational needs. This lack of cooperation also bars Petitioner's claims.

IV. THE DISTRICT'S REQUEST FOR ATTORNEY'S FEES

In its Closing Argument and its "Proposed Findings of Fact and Conclusions of Law," Respondent has requested an award of attorney's fees on the basis that this action was pursued by Petitioners frivolously and in bad faith.

If a state education agency or local education agency prevails in an IDEA action and the court determines that the action was frivolous, unreasonable, or without foundation, the court may order the parent's attorney to pay reasonable attorney's fees. 34 CFR § 300.517 (a)(1)(ii). Oscar v. Alaska Dep't of Educ. and Early Dev., 50 IDELR 211 (9th Cir. 2008); A.A. and L.A. v. Clovis Unified Sch. Dist., 65 IDELR 18 (E.D. Cal. 2015). In El Paso Independent School District v.

Berry, 55 IDELR 186 (5th Cir. 2010, unpublished), the U.S. 5th Circuit Court of Appeals held that a FAPE claim was frivolous when the attorney continued to seek services that the student no longer required. The attorney "stonewalled" efforts to end the litigation, despite the fact that the student had outgrown his speech impairment and no longer needed speech services.

Similarly, a Massachusetts district that successfully defended IDEA and Section 504 claims based on its alleged failure to identify a high-achieving teenager as a student with a disability obtained a significant victory at the District Court level. Characterizing the parents' claims as "patently frivolous and unreasonable," the U.S. District Court, District of Massachusetts ruled that the district was entitled to recover its attorney's fees and costs. Lincoln-Sudbury Regional Sch. Dist. v. Bureau of Special Educ. Appeals, 71 IDELR 153 (D. Mass. 2018). Noting that a tenth-grader's parents failed to present any evidence showing their daughter had a need for special education after she suffered a concussion during field hockey practice, the District Court agreed with an independent hearing officer that the parents' claims were frivolous. That court affirmed the IHO's decision for the district on the parents' IDEA and Section 504 claims and granted the district's motion for attorney's fees. Lincoln-Sudbury Regional Sch. Dist., 71 IDELR 153 (D. Mass. 2018) (Although the District Court reduced the district's fee request by 6 percent, it ultimately awarded the District $188,996.00 in the first reported attorney's fees case against a student's parents.).

The Parents' behavior in this matter is deeply disappointing. The hostility of the Parents to teachers and administrators in this matter and their behavior in dealing with the District were at best unwise and ill-considered. At worst, the Parents descended to harassment, bullying and dishonesty. The emails sent by the Parents to the School Superintendent and School Board Members show, at best, bad judgment. They were not conducive to moving the matter forward.

The lack of veracity of the Parents, both in their dealings with the District and in their testimony at the hearing in this matter, is troubling. The Parents participated in meetings where they were not forthcoming and either intentionally or inadvertently made incorrect statements, they threatened and attempted to bully District employees, including filing or threatening to file complaints against educators and they refused repeatedly to cooperate with the District's request for evaluations of Petitioner. Not surprisingly, these behaviors were completely counterproductive.

Petitioners filed the due process request against the District claiming that Petitioner did not receive appropriate services. The evidence in this matter vindicates Respondent in its contention that the reason services could not be adequately provided was principally due to the Parents' own obstruction. The fact that the Parents readily signed a consent to evaluate with a new school district certainly suggests that their concern with agreeing to an evaluation had little to do with the evaluations themselves and everything to do with the Parents' unwillingness to cooperate with the District.

CONCLUSION

The frustration and anxiety of the Parents regarding the educational struggles of their child in this case are understandable and palpable. All parents want the best for their children in school. It is apparent that the Parents thought they knew best the correct steps to be taken to address Petitioner's educational issues. They were frustrated by Respondent's completely proper insistence on a full-fledged evaluation before attempting to implement changes to Petitioner's IEP to include services unrelated to speech.

The last sentence in Petitioners' "Proposed Findings of Fact and Conclusions of Law" is enlightening. "In addition, the [Parents] are requesting an apology from [Respondent] for the

neglect in [Petitioner's] education and failure to provide an appropriate education." After reviewing the exhaustive record in this matter and listening to multiple days of testimony, and hours of recordings of contentious meetings, the undersigned is left with the overwhelming conviction that the Parents got so frustrated and angry with what they viewed as mistakes and delays by Respondent and got so caught up in proving they were right about the proper course to be followed with Petitioner that they lost sight of the real goal of the IDEA.

The goal of the IDEA is to address Petitioner's educational needs. Instead of focusing on that goal, the Parents fell into the trap of on having things done and documented the way they thought best. As a result, the process degenerated into an escalating dispute where the Parents' efforts were more focused on getting their own way than taking the steps necessary to identify and address Petitioner's educational needs. This is indicated by the Parents' misplaced fixation on immaterial errors and preoccupation with formal compliance with procedures. The fact that Petitioners failed to introduce any evidence on the issue of damages in this hearing is perhaps the most blatant example of the Parents' complete loss of focus.

The Court is persuaded that the Parents' intentions in pursuing this matter were good. But as the proverb says, "The road to Hell is paved with good intentions."

This case is not an academic exercise. This case, and the huge investment of time and resources it has required, is not about determining who was right so that the Court can award a peppercorn to the winner. This case is to determine whether Petitioners have a claim for compensable damages under the IDEA. The answer to that question is an unequivocal "No."

On the merits, the Petitioners have failed to make their case for three separate reasons. First, Petitioners failed to introduce any evidence whatsoever as to compensatory services and

reimbursement. Second, although Petitioners raised some potentially valid issues about various lapses by the District, they did not show by a preponderance of the evidence that Respondent's lapses resulted in adverse effects on Petitioner. Finally, a preponderance of the evidence shows that even assuming, *arguendo*, that Petitioners otherwise had valid claims against the District, Petitioners' claims in this matter are barred as a result of the failure and refusal of the Parents to cooperate in the evaluation process, specifically their repeated and unexplained refusal to consent to the requisite testing.

The evidence, especially the Recordings, shows that the Parents' behavior in this matter worsened as their frustration grew. Ultimately, their behavior sank to making false accusations, harassment and attempted intimidation. The evidence also raises distressing issues as to the Parents' truthfulness. Viewed in the most sympathetic light, it appears that the Parents became progressively more emotional and more desperate in their efforts to persuade Respondent to implement the steps that the Parents were convinced should be implemented to address Petitioner's issues. They became angrier and angrier due to the delay that was in fact attributable to their own failure to consent to testing. Of all people the Parents, who are professionals with special expertise in this area, should have understood that Respondent was correct when it insisted that additional services could not be implemented without proper evaluation and testing and that testing could not be conducted without the Parents' consent.

The issue of Respondent's request of an award of attorney's fees to the District is a close case on the facts. Particularly after listening to the presentation by the mediator to the Parents in the April 2019 facilitated IEP meeting, the Court is sorely tempted to impose sanctions. In that session, the mediator laid out with surgical precision and complete clarity the real issues in this case, the reasons why the Parents would ultimately fail in this case and the benefits of the proposed

settlement to which the Parents then agreed. Yet the Parents, after agreeing to resolution, revoked consent and persisted in this matter.

Although the undersigned does not condone or excuse the Parents' behavior in this matter, the undersigned is convinced the Parents' believed their actions were appropriate. The undersigned believes that their excesses are attributable to frustration, misdirected emotional involvement and a complete loss of objectivity. Only because of the sincere belief of the Parents as to the correctness of their position in this matter, no matter how misguided that belief was in fact, can the Court conclude on balance that an award in favor of Respondent is not appropriate.

In sum, for the foregoing reasons, Respondent's actions in this matter are **AFFIRMED** and Petitioners' case is **DISMISSED WITH PREJUDICE.**

SO ORDERED, this 30th day of December, 2020.

Charles R. Beaudrot
Administrative Law Judge

NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Kevin Westray - 404-656-3508; Email: kwestray@osah.ga.gov; Fax: 404-656-3508; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.