



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. EDS 12796-23

AGENCY DKT. NO. 2024-36745

**MANALAPAN-ENGLISHTOWN REGIONAL  
BOARD OF EDUCATION,**

Petitioner,

v.

**H.M. ON BEHALF OF E.M.,**

Respondent.

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**Marc G. Mucciolo**, Esq., for petitioner (Methfessel & Werbel, P.C. attorneys)

**H.M.**, on behalf of **E.M.**, respondent, pro se

BEFORE **JOAN M. BURKE**, ALJ:

Record Closed: February 27, 2024

Decided: March 27, 2024

**STATEMENT OF THE CASE**

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and state regulations. Petitioner, the Manalapan-Englishtown Regional Board of Education (“the District”), seeks an order denying respondent H.M.’s request for independent evaluations.

## **PROCEDURAL HISTORY**

On November 13, 2023, the District filed a Request for Due Process seeking an order denying respondent's request for an independent educational evaluation (IEE). The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on November 16, 2023, for hearing. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. This matter arose from another due process matter under OAL Dkt. No. EDS 07698-23 (older matter). On November 9, 2023, at a scheduled conference call with the parties on the older matter, I was informed that the reason for the due process hearing in EDS 07698-23 no longer existed. The parent requested to amend his complaint to file a new due process complaint for evaluations. The parents had notified the District that they were requesting an IEE. The undersigned advised the parties that a new due process was needed. The parties agreed that the District would file a new due process complaint in response to the respondent's request for an IEE. The respondent also agreed he would withdraw his original due process complaint. The parties also agreed to waive the mediation requirement and go to an immediate hearing on the newly filed due process complaint. Given that a date was already scheduled for the older matter, the parties agreed that when the new matter was filed, it would be heard on December 4, 2023.

A hearing was conducted on December 4, 2023, in the matter, and the parties agreed to submit their closing summations after receipt of the transcripts. The closing summations were received on February 27, 2024, and the record closed then.

## **FACTUAL DISCUSSION**

At the hearing, the District offered testimony by the District's director of special education, Georgianna Petillo, and the learning disabilities teacher consultant (LDTTC), Lisa Reiser. The respondent offered testimony from the following subpoenaed District's employees: Meghan Rice, an LDTTC; Robyn Park, a board-certified behavior analyst (BCBA); and Kristen Martin, the school psychologist at Milford Brooks. The sequence of events and the surrounding facts are undisputed. Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the

demeanor of the witnesses and assess their credibility, I **FIND** the following pertinent **FACTS**:

E.M. is seven years old and attends Taylor Mills Elementary School in the District. E.M. is in second grade and is eligible for special education and related services under the classification category of Autism. (Petitioner's Due Process Petition Brief.)

I also accept as **FACT** the testimony set forth below:

### **Testimony for petitioner**

**Lisa Reiser** (Ms. Reiser) is currently the supervisor of special education in the District. Ms. Reiser was newly appointed to this position approximately two weeks ago. Prior to this position, she was the LDTC for the District. She worked for fourteen years as an LDTC in the District and previously spent three years in the South Brunswick and West Orange districts. Ms. Reiser also worked as a reading specialist for five years, and prior to that, she was a special education teacher for seven years. Ms. Reiser is involved with students from pre-school to grade eight. Ms. Reiser holds certifications as a principal, supervisor, LDTC, reading specialist, teacher of the handicapped, and elementary school teacher. As a case manager/LDTC, Ms. Reiser is responsible for holding referral meetings, initial individualized education program (IEP) meetings, and reevaluation meetings; responding to parents' requests; and preparing amendments to IEPs. She serves at all district levels; manages all aspects of the IEP process; monitors students' progress; and tests students to determine eligibility in reading, writing, math, oral language, basic skills, and fluency. Ms. Reiser works with teachers to ensure that IEPs are followed as written; she also monitors students and programs and conducts evaluations. Ms. Reiser also participates in professional development with the District each year.

Ms. Reiser is trained in and familiar with the Woodcock-Johnson Tests of Achievement and Oral Language; the Battelle Developmental Inventory for young children; the Kaufman Test of Educational Achievement (KTEA-3); and the Wechsler Individual Achievement Test. Ms. Reiser has conducted over 500–600 special education

determinations, approximately 1200–1300 IEPs, and an undetermined amount of program placements. Ms. Reiser was offered as an expert in special education and as an LDTC.

In June 2023, Ms. Reiser became aware that E.M. was a new student coming to the District and that she would be her case manager. As such, she reviewed the records received on E.M. and spoke with her parents. She spoke with Meghan Rice, who gave her a written list of behavior received from Nicki Nazarski (Ms. Nazarski) at the TALK school, where E.M. previously attended. The first IEP meeting was scheduled for July 5, 2023. Ms. Reiser testified that she received and reviewed the transferred IEP prior to the meeting to determine placement. At the July 5, 2023, meeting, she was there along with Ms. Nazarski. Based on an initial belief, it was thought that E.M.'s behavior was hard to manage. This was garnered from Holly Cohen's psycho-educational evaluation and reports from Ms. Nazarski. Ms. Reiser reviewed the academic evaluation, which was received on July 7, 2023. (R-4.) She read the KTEA-3. (R-4.) She reviewed the occupational therapy (OT) evaluation as E.M.'s case manager. (R-5.) Ms. Reiser also reviewed the speech and language evaluation that was done on November 2, 2022. The District speech therapist reviewed it as well. It was determined that the July 5, 2023, meeting should be continued because all of the aforementioned evaluations had not been received at the time.

On July 13, 2023, an IEP continuance meeting was held to see what was needed. At that meeting, it was determined that no further evaluation was necessary for placement. There were accommodations in place to curb E.M.'s behavior. (P-7.) The occupational therapist thought an additional evaluation was necessary in order to prepare the right goals for E.M. (Tr. at 31:16–18.) After the continuance meeting on July 13, 2023, Ms. Reiser sent a letter to E.M.'s parent informing him that the District proposed to conduct an occupational therapy evaluation and an observation of E.M. in the educational placement and requesting his consent. (P-9.) The parent granted consent on July 13, 2023, and the occupational therapist conducted an evaluation of E.M. on August 3, 2023. (P-9; P-8.) Ms. Reiser testified that the parent did not request any additional evaluations. Ms. Reiser identified a written notice that she sent on July 18, 2023, to the parent, wherein it states: "The respective [child study team] members reviewed the evaluation and it was

determined that no further educational assessment is warranted no further speech and language evaluation is warranted. Parent agreed.” (R-4; Tr. at 34:12–16.)

The occupational therapist’s evaluation was completed by Ms. Afonso, the District occupational therapist, on August 3, 2023. (P-8.) On August 21, 2023, there was another meeting to review the evaluations that were done. The parents did not request any further evaluations. As of September 5, 2023, Ms. Reiser was no longer E.M.’s case manager.

Ms. Reiser testified that she felt the OT and the behavioral evaluations were appropriate because the OT led to agreement on the services for E.M., and the behavior observation confirmed that the originally agreed upon program was still appropriate. (Tr. at 38:13–20.) Ms. Reiser assesses students to identify their levels of academic and functional performance. Based on all the information they had for E.M., i.e., the IEP, information from the parents, the observation of E.M., the OT evaluation, and the other evaluations from the TALK school that were less than one year old, the child study team (CST) had enough information to determine placement. (Tr. at 39:11–16.) Ms. Reiser testified that if there had not been sufficient information to make a determination, they would have requested more evaluations. Ms. Reiser opined that no independent evaluation of E.M. was necessary. (Tr. at 30:2–5.)

On cross-examination, Ms. Reiser testified that the KTEA-3 was less than one year old, and she had no reason to believe the test was not conducted appropriately. According to Ms. Reiser, by law, a reevaluation is done every three years, and if necessary, before that. (Tr. at 42:8–10.) Ms. Reiser was asked about the accommodations made to the KTEA-3 and the notes that “the scores should be interpreted with caution.” (Tr. at 44:6–11.) Ms. Reiser testified that this means that they had to break the standardization for E.M. because of her expressive and receptive language delay. This means the repeating of directions to a student, and in a standardized test, this may not be possible. (Tr. at 44:10–23.) While this test was broken up, Ms. Reiser had no problem relying on the test for a child going into second grade.

Ms. Reiser testified that she was able to identify E.M.’s present level and functionality based on the IEP and discussions with Ms. Nazarski at the TALK school.

Ms. Reiser testified that based on what they were first told, their original thought was that E.M. would be best out-of-district. This was discussed at the July 5, 2023, meeting along with the self-contained program. (Tr. at 60:3–10.) E.M. is currently in the multiple disability (MD) program, and it was being discussed to move her to a learning and language disability (LLD) program. Respondent introduced the recording of the July 5, 2023, IEP meeting. (R-18.) Ms. Reiser admitted on re-direct that at the July 5, 2023, meeting, they realized that there were other evaluations that she did not receive, and thus, they decided to continue the IEP meeting to July 13, 2023. Ms. Reiser testified that when a student has modifications to standardized testing, additional standardized testing would not be necessary for a student with E.M.'s profile. (Tr. at 79:8–25; Tr. at 80:1–2.) Furthermore, although the KTEA-3 was done for thirty minutes ten months before the IEP meeting, Ms. Reiser felt it was sufficient to make a determination. (Tr. at 85:11–20.)

Ms. Reiser admitted that E.M. was placed first in the MD class because that was where she was at her previous school. The LLD class was not recommended. In the recording that was played of the July 5, 2023, IEP meeting, a “group home” was suggested by Ms. Reiser. (R-18.) According to Ms. Reiser, she did not mean that the best that could be expected of E.M. is that she would end up in a group home. Ms. Reiser apologized to H.M. if he took it that way. Ms. Reiser reiterated that the July 13, 2023, meeting can be considered a reevaluation planning meeting. Here, they determined what evaluations were warranted. That is where determinations for an observation and an OT evaluation of E.M. were made. Ms. Park, the principal, and Ms. Patel, the occupational therapist, went to the TALK school to observe E.M. On recross-examination—during the meeting on July 5, 2023, it was discovered that there were additional evaluations that were not received at the time of the meeting. According to Ms. Reiser, a more standardized test was not recommended as appropriate for a child with E.M.'s profile.

**Georgianna Petillo** (Ms. Petillo) has been the director of special education in the District for the past thirteen years. Prior to this position, she was the assistant director of special education. She is a BCBA with a master's degree in administration and a Bachelor of Art degree in special education. Ms. Petillo also has certifications in homeland security on threat assessments, as a school administrator, business administrator, principal, supervisor, teacher of the handicapped, and in elementary

education, and is a Crisis Prevention Institute non-violent restraint trainer. Ms. Petillo previously worked for the State Department of Education in New Jersey as a program specialist. In that position, she monitored special education programs for code compliance. She was also the Monmouth County special education supervisor. In her current position, Ms. Petillo is responsible for code compliance, IEP implementation, overseeing the special education teachers, the child study team, related service providers, 504 plans, guidance counsellors, liaising with the homeless, and the department's budget. Ms. Petillo was offered as an expert in special education.

Ms. Petillo observed E.M. at the TALK school as the behavioral analyst to get a better understanding of E.M., as she had received conflicting information. Ms. Petillo wanted to observe E.M.'s current behavior in her class setting. Ms. Petillo received consent from the parent on July 13, 2023, to conduct this observation. According to Ms. Petillo, E.M. is a beautiful, delightful child with the ability to follow routines and transition from one activity to another. At the IEP meeting on July 5, 2023, the CST agreed that some documents were missing, and they would continue the meeting on July 13, 2023. Prior to the July 13, 2023, meeting, she reviewed the TALK school academic evaluation, OT evaluation, speech evaluation, and behavioral data. (P-4; P-5; P-6; P-7). Ms. Petillo agreed with the team that only the observation and OT evaluation should be done. The parents did not request any further evaluations.

According to Ms. Petillo, standardized tests do not benefit a student of E.M.'s profile because there are specific parameters that a student has to abide by, and they do not allow for repeating or larger prints, which E.M. requires. At the TALK school, E.M. was in a 1:1 program and made excellent progress. "She came from a setting where it was discrete trials, one to one individual instruction, and maybe dyad instruction . . ." (Tr. at 98: 4–6.) "[I]n contrast with the LLD is more of a whole group class lesson, it's more of a turn and talk cooperative learning groups, and that is not the setting that she came from." (Tr. at 97:25, 98:1–3.) Ms. Park accompanied Ms. Petillo to the behavioral observation. Based on their observation, E.M. did not display any behaviors, so the Functional Behavior Assessment would not be appropriate. E.M. followed the transitions seamlessly, knew her schedule, and performed what she was asked to do. When she veered off, she was given directions, and she immediately turned back and continued at

the task. (Tr. at 99:1–9.) Ms. Petillo attended the August 21, 2023, meeting, where the team reviewed the OT and behavioral observations with the parents. Ms. Petillo agreed with the team’s determination that no additional evaluations were warranted. (Tr. at 99:14–21.) She agreed with the team’s decision based on her understanding of E.M.’s profile, academic abilities, and behavioral data.

In September 2023, they reviewed E.M.’s progress, and in October, they discussed programs. E.M. was making excellent progress with the support provided in class. (P-8.) On September 6 or 7, 2023, E.M. had made leaps and bounds in her progress, and Ms. Petillo was pleased with the programming. Ms. Petillo testified that there were multiple discussions.

Ms. Petillo opined that the CST was collective in making education decisions for E.M. According to the Special Education Code, there is a requirement that a student’s education must be multi-disciplinary, and they had two evaluations. The CST further reviewed the information received, which yielded E.M.’s academic profile; they did their own observation for the behavioral component. Based on the speech evaluation and the OT evaluation, they provided the appropriate services. (Tr. at 104:12–24.) The parent also agreed in an email about the TALK school evaluations, where it was stated: “Her evaluations, from seasoned experts are very current. Also, both of her parents are available to meet.” (R-9 at 2.) Ms. Petillo testified that the parent made the statement several times throughout their meetings that the evaluations from the TALK school were current. (Tr. at 106:17–19.) Ms. Petillo testified that the District has not conducted any formal educational evaluation by an LDTC in this case. (Tr. at 106:24–25.) An academic evaluation and a psycho-educational evaluation were conducted by Ms. Cohen in November 2021. These are educational tests that demonstrate the rate of progress that E.M. would make. Ms. Perillo testified that they were quite impressed by E.M.’s progress from September until the time of the hearing. (Tr. at 107:12–18.) Ms. Petillo testified that in her professional opinion, an IEE was not necessary for E.M. at this time because E.M. would receive more from performance-based information. (Tr. at 107:24–25.)

On cross-examination, Ms. Petillo testified that you cannot use standardized testing with a child that requires constant prompting. Ms. Petillo admitted that the



information she received prior to the July 5, 2023, meeting changed her recommendation from outside placement to in-district placement. (Tr. at 134:17–22.) The petitioner was concerned that Ms. Petillo had concerns about E.M.’s IEP from as early as June 16, 2023. (Tr. at 135:4–16.) However, Ms. Petillo acknowledged that she was only concerned that the IEP did not correlate with the TALK school summary. (Tr. at 135:14–25.) Ms. Petillo admitted that Holly Cohen’s evaluation from 2021, a Drexel evaluation in 2020, and the TALK’s school evaluation were all included in the decision making. (Tr. at 138:8–14.) Ms. Petillo testified that Ms. Nazarski had felt that E.M. would be best served in an out-of-district placement based on the severity of her behavior. (Tr. at 142:9–21.) Ms. Petillo was asked why she felt that information that was received on E.M. between ten months and two years ago could be relied upon. She testified that at the time, E.M. had made behavioral progress, and the academic profile was appropriate. (Tr. at 147:3–22). The KTEA-3 was valid because it was less than a year old and there was nothing else to indicate a discrepancy. (Tr. at 148:13–19.) Ms. Petillo testified that E.M. made far more progress than they have seen behaviorally as well as academically in the four months she has been at the school. (Tr. at 149:8–10.) Ms. Petillo was asked whether she referenced a “group home” for E.M. Ms. Petillo testified that she did not say she was going to a group home or that she belonged to one. Ms. Petillo said she has been part of over one thousand IEPs, and many of them mentioned group homes. (Tr. at 166:8–16.) The respondent posited that if the District is communicating that they believed his daughter’s only capacity is to enter a “group home,” it colors the decision to put her in the MD classroom as opposed to the least restrictive classroom and thus thereby colors their overall efforts to evaluate or reevaluate E.M. (Tr. at 168:15–20.) Ms. Petillo testified that she was not saying that E.M.’s only option was to be in a group home. Ms. Petillo apologized to H.M. if he took it that way. (Tr. at 172:3–5.) Ms. Petillo concluded that they ensured that E.M. was placed in the least restrictive environment based on observations, evaluations, anecdotal and informal information, and placing her in the same program she came from with the same type of support. (Tr. at 183:24–25; 184:1–3.)

**Testimony for respondent:**

**Meghan Rice** (Ms. Rice) is a learning disabilities teacher consultant at the Taylor Mills Elementary school in Manalapan. She testified that she did request release forms

from the petitioner to obtain records from the TALK school and Horatio school. (Tr. at 187:12–23.) Ms. Rice was engaged in an earlier meeting that should have occurred on June 13, 2023. This was cancelled because E.M. would not have been there. (Tr. at 189:13–23.) The email identified a transfer IEP meeting for June 13, 2023. (R-9.) How the June 13, 2023, IEP meeting was cancelled and conveyed is not clear. However, there was a collaboration with Ms. Petillo, Ms. Reiser, and Ms. Rice on obtaining a new IEP date. Ms. Rice in an email to the petitioner states: “When completing initial referrals and transfers the team has always found it beneficial to meet the child paired with reviewing the IEP.” (R-9.) However, she was not sure why the June 13, 2023, IEP meeting was cancelled. She concludes based on the email from respondent that he agreed that the evaluations that existed on E.M. were current. (Tr. at 202:18–25, 203:1–3.)

**Robyn Park** is a BCBA with the District. When she first met E.M., she was a special education coach with the District, and since then she is now the BCBA. As a special education coach, she sits in on meetings with transfer students and observes the students, describing what the programs look like to parents throughout the District. (Tr. at 211:1–2.) She had observed E.M. virtually and in person. During the virtual evaluation, there was a problem with the audio, as it was loud in the room, and at times, she could not hear. From the virtual evaluation, she observed E.M. working one-on-one with an adult in the room. Ms. Park was at the July 5, 2023, IEP meeting, where she made a recommendation for an in-person observation. (Tr. at 214:22–23.)

Ms. Park testified that there are two MD classrooms in the District and that she recommended E.M. for the MD class because it is a structured setting. In addition, based on E.M.’s profile, she recommended the Milford Brook MD location. Her reasons were that E.M. was to be placed in a program where she would have some verbal models with some peers and where she would have a comparable setting to the TALK school. (Tr. at 218:1–4.) At the virtual evaluation, Ms. Petillo accompanied her. She thought E.M. did well and did not observe any behavior. E.M. was working and functioning independently with her peers as well as transitions. (Tr. at 219:20–25.) During the school year, the team made a recommendation that E.M. should be moved into a different classroom based on the absence of behavior and academic data. (Tr. at 223:1–4.) Ms. Park testified that at the in-person observation, she did not take data because there was no behavior

to take data on. (Tr. at 226:18–23.) She testified that she had two one-hour observations of the student, spoke with the parents, reviewed documents (i.e., IEP and other evaluations), spoke with Ms. Nazarski, and then made her recommendations. Ms. Park opined that at this point, E.M. would not benefit from an independent evaluation. (Tr. at 230:1–3.)

**Kristen Martin** is employed by the District and worked at Milford Brook. Ms. Martin is the school psychologist. She is trained in administering the Wechsler Intelligence Scale for Children, the Stanford-Bennet, Wechsler Individual Achievement Test, Wechsler Nonverbal IQ Test, Behavior Assessment Scale for Children, and the Adaptive Behavior Assessment System. She is not trained on the KTEA-3. Ms. Martin reviewed the reading evaluation. (P-4) She considers it informal because it was fairly brief. (Tr. at 235:7–9.) Ms. Martin has seen the evaluations in P-7 and P-9. Ms. Martin testified that the respondent raised concerns regarding Ms. Petillo’s reference to a “group home” and that he expressed this may be a predetermination about E.M.

The district stipulated that Ms. Martin was advised not to address any topic that involved evaluations with petitioner because of the litigation the respondent and the District were engaged in. Petitioner’s attorney also stipulates that having represented school districts all over New Jersey, the school districts do not permit observation of programs that are not being formally proposed for the student. (Tr. at 253:3–12.) Ms. Martin admitted that E.M. is being moved to an LLD classroom based on her classroom data. (Tr. at 255:13–19.) Ms. Martin admitted that she first became involved with E.M. in September 2023. She further indicates that no formal evaluation is needed in order to change placement. She also concludes that based upon all the information she had, there is no need for an independent evaluation to further determine the program or placement of E.M. (Tr. at 264:5–16.) In addition, without any standardized assessment, E.M. has demonstrated enough progress to move from a more restrictive setting to a less restrictive setting. (Tr. at 264:20–24.) The respondent asked why updated evaluations would not be useful. (Tr. at 272:24–25.) Ms. Martin testified that data from her current setting, observation of E.M., and the fact that E.M. is making progress is enough to warrant recommendation. (Tr. at 273:1–6.)

H.M., the father of E.M., did not testify but argues that the District did not conduct any evaluations of E.M. except for an OT evaluation. (Respondent's Post-Hearing Brief at 2.) Respondent further argues that "[t]he district held an IEP meeting and crafted an IEP on July 5 without conducting or reviewing any evaluations beside an almost 2 year old IEE and a virtual observation." Ibid. Respondent further contends that "the district refused to discuss the idea of an independent psycho-educational evaluation with the Parents despite having ample opportunity to do so." Ibid.

The petitioner contends that it complied with all legal requirements for conducting the OT evaluation and behavioral observation; the evaluations performed were appropriate and comprehensive and no further evaluations are necessary or warranted. (Petitioner's Post-Hearing Brief)

### **LEGAL DISCUSSION AND CONCLUSION**

The issues raised in this matter are: (1) whether the District conducted evaluations that the parents disagree with; and (2) if so, whether the parents are entitled to an IEE at public expense.

N.J.A.C. 6A:14-2.5(c) and 34 C.F.R. § 300.502 (2024) govern independent evaluations. N.J.A.C. 6A:14-2.5(c) states in pertinent part:

Upon completion of an initial evaluation . . . , a parent may request an independent evaluation if there is disagreement with the initial evaluation . . . provided by a district board of education . . . . The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation.

In addition, 34 C.F.R. § 300.502(b)(1) (2024) outlines that "[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency subject to the conditions in paragraphs (b)(2) through (4) of this section." Upon receipt of a parent's request for an independent evaluation, the district shall either provide the independent evaluation or request a due process hearing not later than twenty calendar days after receipt of the parent's independent evaluation request. N.J.A.C. 6A:14-2.5(c)(1)(i) and (ii); see 34 C.F.R. §

300.502(b)(2) (2024). The requested “independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made.” N.J.A.C. 6A:14-2.5(c)(1); see 34 C.F.R. § 300.502(b)(3) (2024).

N.J.A.C. 6A:14-3.4 addresses the evaluation process. The regulation instructs that:

[t]he [CST], the parent, and the general education teacher of the student who has knowledge of the student’s educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the school district’s programs shall

1. Review existing evaluation data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers, and consider the need for any health appraisal or specialized medical evaluation.

[N.J.A.C. 6A:14-3.4(a)(1).]

On the basis of that review, the CST must identify what additional data, if any, is needed to determine whether the student has a disability; the present levels of academic and functional achievement and related developmental and educational needs of the student; and whether the student needs special education and related services. N.J.A.C. 6A:14-3.4(a)(2).

Here, E.M. transferred from the TALK School, which is a private placement through the Philadelphia Public School District. (Petitioner’s Post-Hearing Brief.) The record established that the District convened its first IEP meeting on July 5, 2023. An original IEP meeting was scheduled for June, but it is not clear why it did not occur. Ms. Reiser testified that at the July 5, 2023, meeting, the CST had E.M.’s IEP, a sixty-seven-page Psychoeducational Evaluation from Holly Cohen, and a list of behavior information from Ms. Nazarski at the TALK school. This meeting was a transfer meeting to gather all information and determine the appropriate placement for E.M. The TALK school had

informed the District that earlier in the fall, they had evaluated E.M. and had done a speech evaluation, educational evaluation, and occupational evaluation, and collected anecdotal behavior information. However, at the time of the July 5, 2023, IEP meeting, the District CST did not have all the evaluations that were completed by the TALK school.

The CST along with the parent agreed to schedule another meeting, which in essence would be a continuation of the July 5, 2023, meeting. The next meeting was held on July 13, 2023, to determine if the information that was received on July 7, 2023, was sufficient to confirm eligibility and placement. At the July 13, 2023, meeting, the speech and language therapist determined that the speech and language evaluation gave enough information to identify a frequency and duration of speech. Ms. Reiser, as the case manager, determined that no further educational evaluation was needed for program and placement. The occupational therapist determined that she wanted to conduct an evaluation. The CST determined that two evaluations were necessary, a behavior observation and an occupational therapy evaluation.

On July 13, 2023, a request was made to the parents for their approval, which they gave. The parents did not request any further evaluations. After these two evaluations were done, the CST met again on August 21, 2023. At the August meeting, they reviewed the OT evaluation to determine the services, frequency, and duration of the OT. They also discussed behavioral observation. Significantly, the record is bereft of any evidence suggesting that the parent objected to any of these evaluations or assessments or that the parent requested any additional evaluations or assessments, including the evaluation (i.e., psycho-educational evaluation) that the parent now seeks. Indeed, at the conclusion of the July 13, 2023, meeting, H.M. provided his written consent for the District's proposed evaluations, which were ultimately conducted.

The OT evaluation was conducted by the District's occupational therapist. It was thorough. The evaluation method she utilized in her report included: the parent's report, the Beery Buktenica Development Test (BDT) of Visual Motion Integration, the BDT of Visual Perception, the BDT of Visual Coordination, the Short Sensory Profile-2 Parent Questionnaire, and the Functional Assessment. (P-8.) I **CONCLUDE** that this evaluation was appropriate.

Ms. Park conducted the behavior observation of E.M. She credibly testified that she did a virtual observation and an in-person observation. Respondent seems concerned that Ms. Park did not take any data in her observation. However, Ms. Park testified that there was no behavior to take data on. Her conclusion as to placement in the MD class was based on two one-hour observations, speaking with the parent and the director for the TALK school, and reviewing the IEP and other evaluations that were done. I **CONCLUDE** that this evaluation was appropriate.

Respondent argues that there should be an IEE because “the placement on its face, identifies a poor placement. That is, the District began discussing a change in classroom for E.M. in September and settled on a plan to move her by October. However, the reliance on informal, unscientific evaluations and assessments, which were objected to by the parents in person and in writing, call for an independent psycho-educational evaluation.” (Respondent’s Post-Hearing Brief at 19.) The last psycho-educational evaluation was done in November 2021 by Holly Cohen. (P-2.) There is no District evaluation with which the parents could disagree because the District board of education had not conducted its own evaluation. Therefore, there is no obligation for the District to perform independent psycho-educational evaluations at public expense.

Consistent and credible testimony was offered by all the witnesses that no further assessments or evaluations were necessary to determine E.M.’s placement. No evidence was introduced to show that the District’s evaluations were inappropriate or that any additional evaluation was necessary or appropriate. In the respondent’s post-hearing submission, he notes that “the district pre-determined the placement and avoided comprehensive evaluations in favor of what they identified as the next placement on the continuum.” (Respondent’s Post-Hearing Brief at 11.) Succinctly stated, the parent’s allegation that E.M.’s placement was pre-determined is unsupported by competent proof and is further overborne by Petillo and Reiser’s credible testimony explaining the reason why further evaluations were not conducted.

Based upon a review of the totality of the evidence presented, I **CONCLUDE** that the District has established, by a preponderance of the credible evidence, that the District

complied with all legal requirements for conducting evaluations, that the evaluations it performed were appropriate, and that no additional evaluations are necessary or warranted. I further **CONCLUDE** that since there are no current psycho-educational evaluations conducted by the District, there is no District evaluation with which the parents could disagree. I, therefore, **CONCLUDE** there is no obligation for the District to perform an independent psycho-educational evaluation at public expense.

Accordingly, I further **CONCLUDE** that the parent's request for independent evaluations should be denied.

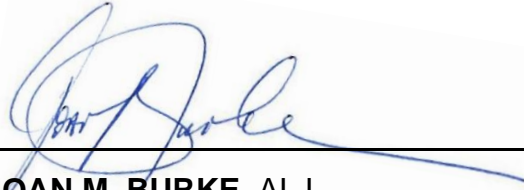
**ORDER**

I **ORDER** that the District's due process petition be and hereby is **GRANTED** and the parent's request for independent evaluations be and hereby is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2024) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2024). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Policy and Dispute Resolution.

March 27, 2024

DATE

  
\_\_\_\_\_  
**JOAN M. BURKE, ALJ**

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JB/sg/sb/mg



**APPENDIX**

**LIST OF WITNESSES**

**For Petitioner:**

Lisa Reiser  
Georgianna Petillo

**For Respondent:**

Meghan Rice  
Robyn Park  
Kristen Martin

**LIST OF EXHIBITS IN EVIDENCE**

**For Petitioner:**

- P-1 Petition to Deny Independent Evaluations
- P-2 Private Psycho-Educational Eval – Holly Cohen, November 2021
- P-3 Private Evaluation – Kate Piselli, March 3, 2020
- P-4 Talk School Academic Evaluation, September 27, 2022
- P-5 Talk School OT Evaluation, October 24, 2022
- P-6 Talk School Speech Evaluation, November 2, 2022
- P-7 TALK School Behavioral Data
- P-8 CST OT Evaluation
- P-9 Evaluation Consent, July 13, 2023
- P-10 Parental Request for IEE
- P-11 CV Georgianna Petillo
- P-12 CV Lisa Reiser

For Respondent:

- R-1 Revised IEP
- R-2 Email from Principal Kimmel
- R-3 Emails to/from Lisa Reiser
- R-4 Written Notice, July 18, 2023
- R-5 Releases
- R-6 Email from Lisa Reiser
- R-7 Internal MERS emails
- R-8 Emails from Talk School- IE
- R-9 Emails to/from Meghan Rice
- R-10 Email to Petillo
- R-11 Email to/from Petillo
- R-12 Notice of July 5 IEP meeting
- R-13 Request for Due Process
- R-14 Emails to/from Kristen Martin
- R-15 Emails to/from Kristen Martin
- R-16 Request for Evaluation
- R-17 Emails to/from Lisa Reiser
- R-18 IEP meeting recorded, July 5, 2023
- R-19 IEP meeting recorded, October 26, 2023