



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT NO: EDS 17946-18

AGENCY DKT. NO. 2019-28897

K.D. ON BEHALF OF E.D.,

Petitioners,

v.

MARLBORO TOWNSHIP

BOARD OF EDUCATION,

Respondent.

AND

MARLBORO TOWNSHIP

BOARD OF EDUCATION,

Petitioners,

v.

J.D. AND K.D. ON BEHALF OF E.D.,

Respondents.

OAL DKT. NO. EDS 02892-19

AGENCY DKT. NO. 2019-29470

(CONSOLIDATED)

Julie Warshaw, Esq., for petitioners (Warshaw Law Firm, LLC, attorneys)

Robin S. Ballard, Esq., for respondent (Schenck, Price, Smith & King, LLP,
attorneys)

Record closed: May 19, 2020

Decided: June 10, 2020

BEFORE **ELAINE B. FRICK**, ALJ:

STATEMENT OF THE CASE

These consolidated matters were filed in accordance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1415. Petitioners/respondents, K.D. and J.D. on behalf of E.D., (petitioners/the parent(s) and student) filed for due process, asserting the student was denied a free and public education (FAPE) for having been declassified for eligibility for special education and related services, as the student had received in his prior New York City school. Respondent/petitioner, Marlboro Township Board of Education, (the District) opposes the request, contending the student does not qualify for special education and related services and was appropriately declassified. The District also seeks affirmation of its denial of the parents' request for an independent neuropsychological evaluation.

PROCEDURAL HISTORY

Petitioners submitted a request to the New Jersey Department of Education, on October 9, 2018, seeking to re-certify the student to continue eligibility for special education and related services. The matter was transmitted to the Office of Administrative Law, (OAL) where it was filed on December 18, 2018, as a contested matter. N.J.S.A. 52:14B-1 to B-15; N.J.S.A. 52:14F-1 to F-13. A telephone conference was conducted with the parties on January 31, 2019, and hearing dates were assigned. On February 22, 2019, petitioners' counsel entered a Notice of Appearance at the OAL.

The District thereafter filed a petition seeking to deny the parents' request for independent evaluations. That matter was transmitted to the OAL, where it was filed on February 28, 2019, and docketed as Marlboro Township Board of Education v. J.D. and K.D. obo E.D., EDS 02892-19. On March 13, 2019, a telephonic conference was conducted with counsel, during which the previously scheduled hearing dates were confirmed.

On April 5, 2019, petitioners filed a Motion to Amend their due process request and a Motion to Consolidate the pending petitions. The District opposed both motions. The Motion to Amend was denied by order entered May 3, 2019. The Motion to Consolidate was granted by Order entered May 7, 2019.

The hearing was conducted with testimony taken on May 7, 2019, July 1, 2019, July 23, 2019, and October 18, 2019. Subsequently scheduled telephonic hearings for the review and confirmation of evidential documentation were adjourned by consent for the extension of the time for submission of written summations, clarification of evidential documentation, and submission of comprehensive evidence lists, as requested by the ALJ. Telephonic hearing dates in March and April 2020, were adjourned due to the disruption of proceedings and working conditions, by COVID-19 circumstances. A final telephonic hearing was conducted on May 19, 2020, at which time additional evidential documentation was confirmed as entered. The record closed. This is the Final Decision.

FACTUAL DISCUSSION AND FINDINGS

E.D. was born on September 25, 2010. He was residing with his family in Staten Island, New York, where he attended second grade in the New York City School District (NYC) for the 2017/2018 academic year. He was in the Nest Program and received special education instruction in a classroom with both a general education teacher and a special education teacher, and he received services for occupational therapy (OT) and speech, pursuant to an Individualized Education Plan (IEP) from the NYC district, dated March 23, 2018. (P-64.) He was classified as “autistic” pursuant to the NYC IEP.

In July 2018, E.D. moved with his family to Marlboro, New Jersey. The Marlboro Township Board of Education (the District) child study team (CST) completed evaluations of E.D. and determined he would be declassified. The District asserts the student does not demonstrate the need for special education and related services to enable him to access his educational curriculum. Petitioner, K.D., mother of E.D., requested a due process hearing, seeking to continue eligibility for E.D. for special education and related

services. The District thereafter filed its petition seeking to deny the parents' subsequent request for an independent evaluation. The matters were consolidated.

Testimony was heard and documentary evidence was entered for consideration. The testimony and evidence are summarized as follows:

Debra Kurzman testified for the District. She has been employed by the District as an Occupational Therapist for six years. She holds a bachelor's degree in elementary education and earned a master's degrees in occupational therapy (OT) and Education. She worked in public and private elementary education for thirteen years as a classroom teacher and curriculum coordinator, prior to pursuing her degree in OT. She is licensed to practice OT and certified to be a school occupational therapist in New Jersey. Her elementary education credentials are from Massachusetts. She is trained to complete various assessments and has completed approximately seventy to seventy-five OT evaluations. She acknowledged she does not have any training, education, or certification in evaluating autistic children. She was qualified as an expert in the field of performing OT assessments.

Her duties as an occupational therapist for the District include providing therapeutic intervention and conducting OT evaluations. She observes students in the classroom and makes recommendations for strategies and tools to use as part of the Response to Intervention (RTI) process. She collaborates with the education team. OT is provided to students to enable them to access their educational environment and to successfully engage and participate in the educational setting.

Ms. Kurzman was assigned to complete an OT evaluation of E.D., to reevaluate the student's continued eligibility for OT services. She conducted the evaluation on September 13, 2018, and completed her report on September 21, 2018. (R-4.) She participated in the September 26, 2018, eligibility reevaluation meeting.

She began her assessment process by reviewing the student's prior NYC IEP to determine what skills the student had, and to determine what tools would be appropriate to assess his skills for participation in school. (P-74.) She acknowledged that the NYC

IEP identified the student's disability classification as autism. (P-74 at 1.) He received OT twice per week, in a small group for thirty minutes. (P-74 at 10.) She was also aware from the NYC IEP that the student received speech/language (S/L) therapy services and the parents received counseling and training. (Id.)

She determined it would not be necessary to conduct a sensory evaluation of E.D., because the NYC IEP indicated that a sensory profile had been completed and he scored in the majority range. (P-74 at 1.) She believed that the OT outlined in the NYC IEP was not for sensory processing issues. She expressed that the goals in the NYC IEP were possibly addressing some behavioral concerns, not sensory processing issues, but had no direct knowledge of same. She acknowledged that some children with autism do have issues with sensory input.

Ms. Kurzman did not test E.D. regarding social interaction with peers. That is not within the scope of practice in the Marlboro schools for occupational therapists to assess. She is not aware of ever having occupational therapists test social skills.

Her evaluation process spanned approximately one and one half hours with E.D. She first observed him in the classroom. He participated in the lesson while seated at his desk. He raised his hand, waited his turn to be called upon, and answered the question correctly. He continued to work on the class assignment thereafter. (R-4 at 2.) She had no concerns about E.D.'s functioning in the classroom, based upon her observation.

She then assessed E.D. in the therapy room for physical neuromuscular skills, fine motor skills, and visual motor/visual perception skills. (R-4 at 2.) He transitioned seamlessly from his classroom to the therapy room. During the process, she noticed that E.D. liked movement breaks, such as jumping on the trampoline and throwing a ball against the wall and catching it. (Id.) She gave him approximately three breaks of about two minutes in duration. She completed other informal assessments of E.D.'s range of motion, general physical skills, bilateral integration, and eye-hand coordination, in between the administration of two standardized tests.

Regarding E.D.'s physical neuromuscular skills assessment, she reported that he

demonstrated normal range of motion and normal upper body strength. He performed jumping jacks with a correct reciprocal pattern; maintained supine flexion and prone extension for approximately twenty seconds; and was able to dribble a ball for more than eight repetitions with his dominant hand, non-dominant hand, and alternating hands. (R-4 at 2.)

She observed the student's fine motor skills by noting he held writing implements with a dynamic tripod three grasp and stabilized the paper with his non-dominant hand. He correctly utilized scissors. He demonstrated the ability to grasp and manipulate items with a pincer grasp and successfully completed in-hand manipulation tasks. (R-4 at 2.)

Ms. Kurzman observed E.D.'s visual motor/visual perception skills by conducting formal and informal assessments. He was able to independently write his name, address, phone number, first and last names of the members of his family, and the alphabet. His writing was legible. (R-4 at 3.)

She chose to administer two standardized testing tools which are assessments used nationally, as part of her evaluation. The first test was the Bruininks-Oseretsky Test of Motor Proficiency, second edition (BOT-2), to assess E.D.'s fine motor control and manual dexterity.

The BOT-2 measures "an array of motor skills[.]" (R-4 at 3.) There are four subtests typically used for OT evaluations, which she utilized in evaluating E.D. He was able to complete all tasks. When assessing "fine manual control" by the BOT-2, there are two subtests used to score the student: fine motor integration and fine motor precision. E.D. demonstrated the ability to complete evaluation tasks for those subsets with developmentally appropriate accuracy, and scored as average for "fine manual control." (R-4 at 3.)

The second aspect of the BOT-2, to assess "manual coordination," is done by the administration of subtests for manual dexterity and upper-limb coordination. (R-4 at 3.) E.D.'s manual dexterity efficiency was assessed by timing his completion of various assigned tasks. He completed the tasks at a pace similar to same-aged peers. (R-4 at

3.) He completed various ball skill tasks with a tennis ball for the upper-limb coordination subtest, with ease and enjoyment (R-4 at 4.) He received an above average score for “manual coordination” for the BOT-2.

The second standard test Ms. Kurzman utilized was the Beery-Buktenica Developmental Test of Visual Motor Integration, Sixth Edition (Beery VMI). E.D. completed three tests for the Beery VMI, assessing his visual motor integration, visual perception, and motor coordination. (R-4 at 4.) The tests required E.D. to copy drawings of geometric forms, which were arranged in order of increasing difficulty. (Id.)

She summarized that E.D.’s scores on the subtest for legible written work were comparable to typically developing same aged peers at a similar pace. E.D. performed in the average range for visual motor integration and motor coordination. (R-4 at 4.) He scored in the high range for visual perception. (Id.) Ms. Kurzman reported that such findings are indicative of E.D. possessing the prerequisite skills to complete legible written work. She also identified that his ability to discern slight differences in visual information was a relative strength for him. (R-4 at 4.)

Ms. Kurzman reported that E.D. cooperated throughout the entire evaluation process and put forth his best effort. (R-4 at 4.) She believed that the results from the BOT-2 demonstrated that E.D. has the underlying skills to complete legible written work in the educational setting. The results from the Beery VMI suggest that E.D. has the capacity to complete school assignments legibly. He wrote all letters with correct formation and orientation to the line, with adequate spacing between words. (R-4 at 4.)

She summarized that based upon E.D.’s BOT-2 and Beery VMI scoring results, and his demonstrated excellence in gross motor eye hand coordination tasks, E.D. possessed the prerequisite skills to complete school assignments legibly and efficiently. She did not find any areas of weakness to require OT services to enable E.D. to access his education. Her recommendation was for the educational team to review the results, “along with pertinent additional information, and make recommendations accordingly.” (R-4 at 5.)

Debbie Staloff testified for the District. She has been employed by the District as a Speech Language (S/L) Specialist for fourteen years. She possesses a bachelor's degree in communication disorders, a master's degree in speech pathology and audiology, and completed additional educational credits and practicum for certification in audiology. (R-11 at 3.) She holds a S/L specialist degree in New York and New Jersey to work in schools and for state licensure. She possesses a certificate of clinical competence in speech pathology and audiology from the American Speech Language Hearing Association. She previously worked for United Cerebral Palsy for approximately eleven to twelve years, working with children with a variety of disabilities, such as autism spectrum and developmental physical disabilities. (R-11 at 1.) She had a gap of employment for approximately fifteen years, during which time she provided some speech services with an estimated six children, privately in home as favors, before becoming employed by the Marlboro school district. She conducts on average twenty S/L evaluations per year, and has completed at least five hundred evaluations over the course of her career. She was qualified as an expert S/L therapist and S/L evaluator.

Ms. Staloff explained that speech therapy is provided to a student in an educational setting with the goal of enabling the student to access the curriculum. The child's disability must be causing an adverse educational impact for that child to receive S/L services in school. There are objective criteria to be met for a student to qualify for S/L services in school. Such criteria include scoring below the tenth percentile on two standardized tests. One of the standardized tests must be a comprehensive test regarding receptive and expressive language skills, which demonstrates there is an educational impact upon the child's functional skills in the classroom. Hence, a student may have an issue addressed in a clinical speech therapy setting, but may not qualify for speech therapy services in school because their issue does not impact the child's ability to access the educational curriculum.

As the S/L specialist for the District, Ms. Staloff has a variety of responsibilities, such as completing speech evaluations, testing students, participating in IEP meetings, and assisting in the development of IEPs. She is experienced in completing S/L evaluations of autistic children. She has been trained to administer "a whole gamut of tests" such as language tests for language fundamentals, comprehensive assessment of

spoken language, language development, auditory processing of language, articulation evaluations, stuttering, and social language development. (T1 87:23-25; 88:1-8.)¹ She selects the standardized testing to be done based upon the information she receives during an initial identification meeting from the parents and the CST; prior information from previous therapists; and by discerning what the specific areas of weaknesses may be for the student. In this matter, Ms. Staloff completed a speech evaluation of the student and thereafter was the speech therapist for him.

Ms. Staloff attended the September 5, 2018, reevaluation planning IEP meeting for E.D. (R-2.) She recommended that a S/L evaluation be completed, particularly since there were no such evaluations available from the student's previous school district nor from a previous speech therapist. She was advised he was classified under the disability category of autism in the NYC school district. (P-74 at 1.)

The student's prior NYC IEP indicated the goals for speech therapy and that he would receive speech services three times per week for forty-five minutes, and one time per week for thirty minutes. (P-74 at 1-2; 6-8; 10.) Ms. Staloff learned that the student did not like to be pulled out of the classroom. She learned that it would be beneficial to him, during his integration into the District's third grade class, to follow a modified schedule for speech therapy, rather than the schedule from the prior NYC IEP. After conferring with E.D.'s mother, it was determined during the planning reevaluation meeting on September 5, 2018, that the student would receive twice per week pull out speech services and once per week push services in his classroom in the District. (R-1.)

Ms. Staloff acknowledged that the agreement for the change in the schedule of services indicated that such services had a "Start Date" of September 6, 2018, and an "End Date" of September 26, 2018. (R-1.) During the pendency of this petition, she continued to provide speech services throughout the 2018/2019 school year to address the goals set forth in the NYC IEP, admittedly according to the modified schedule in the

¹ The written transcripts from the hearing dates will be referred to herein as T1 for May 7, 2019 ; T2 for July 1, 2019; T3 for July 23, 2019, and T4 for October 18, 2019; with reference to page number and line(s).

agreement reached with the mother at the time of the reevaluation meeting at the beginning of the year. (P-74; R-1; R-7; R-9; R-14.) She admitted the schedule was different than that which was in the NYC IEP. She continued to follow the modified schedule that the mother agreed upon during the reevaluation meeting.

Ms. Staloff conducted her S/L evaluation of E.D. on at least three days: September 6, 7, and 13, 2018, and authored a report which she signed on September 13, 2018. (R-3.) She recognized her report contained a typographical error, with the date of September 13, 2018, appearing twice as to the days when she conducted her evaluation. (R-3 at 1.)

As part of her evaluation process, Ms. Staloff spoke to the student's mother at the initial identification and reevaluation meeting. E.D.'s mother reported concerns with his social skills, whereby he tended to dominate conversations, and had difficulty picking up the finer nuances of certain things, which perhaps would cause him some trouble, believing other students might say something and E.D. would not really understand the ramifications. (R-3 at 2.)

She spoke to E.D.'s teachers. They confirmed he was able to keep up with the pacing and content of the curriculum in the classroom; he was socially adjusted to being in his new school; and he was engaging well with the other students. (R-2.) The teachers reported to her that E.D. was an active participant in class and "in no way tries to dominate any classroom discussions or other group activities as was mentioned as a concern" by E.D.'s mother, and that he had "shown appropriate social skills in class." (R-2 at 3.) Ms. Staloff conceded E.D.'s mother might have mentioned to her that E.D. will have a "honeymoon" period where he acts appropriately initially in a new setting, but then returns to his social skills issues, yet she could not recall such information being told to her.

Ms. Staloff conducted two classroom observations of the student. The first observation occurred on the second day of school which she found "very telling" and "amazing how well he did adjust to everything considering he was from a different district, [and] was unaware of the other children in the school." (T1 110:6-11.) She observed him for approximately forty-five minutes during a social studies lesson when a fire drill occurred. He transitioned outside for the drill and returned to the classroom, without

difficulty. He transitioned back to his desk to complete his work, with one verbal prompt from the teacher to continue working. (R-3 at 4.) She acknowledged that she was unaware the student liked movement breaks, such as the fire drill “break”, indicating she had never been told that.

The second classroom observation was approximately thirty to forty-five minutes during a language arts lesson. The class was working on writing assignments and being able to include all information needed for a writing assignment. He “did perfectly.” (T1 111:5-6.) She acknowledged that during the classroom observations, the teacher was aware of her observing E.D., so he was called upon more frequently. She reported that E.D. did not appear “frustrated when others were called on instead of him, which was mentioned in the initial meeting with his mother as possibly being an issue for him.” (R-3 at 4.)

During her evaluation process, Ms. Staloff noted that E.D. “did exhibit an open mouth posture at rest[.]” (R-3 at 3.) She did not find that to affect his ability to access the curriculum or otherwise have an educational impact. Overall, she found that he “presented with good oral motor skills as they related to strength, mobility and function.” (Id.) She found his speech, articulation, sentence structure, and formation of sounds to be age appropriate and he was easily able to articulate sounds in conversation.

Ms. Staloff conducted standardized testing of E.D. as part of her evaluation. The tests she administered are recognized within her field as nationally utilized testing tools. The tests she utilized produce standard scores done on a bell curve where 100 is the average performance within a fifteen point range, so any score from eighty-five to 115 would be considered within normal limits. The tests she administered to E.D. were age appropriate.

She selected one test, as required by law, to evaluate receptive language skills and expressive language skills. The Comprehensive Assessment of Spoken Language (CASL) test evaluates receptive and expressive skills and includes different subtests targeting pragmatic language judgment and figurative language, which were the mother’s expressed areas of concern during the reevaluation meeting. The CASL test focuses on

four language categories: lexical/semantic, to assess knowledge and use of words in combinations; syntactic, to assess knowledge and use of grammar; supra-linguistic, to measure comprehension of complex language; and pragmatic, to measure awareness of the appropriateness of language in relation to the situation in which it is used. (R-5 at 6.) The student received standard scores on the subtests, all within the normative range, resulting in a core composite score of 109. (R-3 at 7.) He excelled in the subtest for non-literal language. His core composite score placed him in the seventy-third percentile for same aged peers. (Id.) This was reported as “age level performance.” (R-3 at 8.)

Ms. Staloff acknowledged that in the pragmatic judgment section of the CASL, the student fell within the fifty-third percentile, which was lower than his percentile placement for antonyms, syntax construction, paragraph comprehension, and non-literal language. (R-3 at 7.) She found he was still solidly within the average range for pragmatic judgment, with a standard score of 101, when the average range is a standard score of eighty-five to 110, and his score was above the mean.

The other standardized test Ms. Staloff administered to E.D. was the Social Language Development Test-Elementary. (R-3 at 5.) That test looks at a variety of areas to determine if a child is demonstrating appropriate social skills for their age. It is divided into four sections, targeting: making inferences; interpersonal negotiation; multiple interpretations; and supporting peers. E.D. performed “exceptionally well.” (T1 112:7.) Regarding the first sub-test “Making Inferences”, there were two tasks scored for E.D. He received a score of 115 (eighty-five to 115 considered within the normative range) as he was “easily able to make appropriate inferences from the situations given” regarding the expression of one’s thoughts. (R-3 at 5.) He was able to extract information from visual cues given to support his inferential reasoning, receiving a score of 111 for that task, also within the normative range. (Id.)

When tested for interpersonal negotiation, E.D.’s scores fell within the average range. He demonstrated relative strengths and weaknesses, with a “solidly average” score in his ability to state a problem, and explain why the solution he proposed was viable. He scored towards the lower range of average in his ability to propose a solution. (R-3 at 6.) Ms. Staloff found that E.D. excelled in the areas of multiple interpretation and

supporting peers, scoring above the average range for each area compared to others at his age. Overall, he scored 118 on the social language development test, above the high end normal limit of 115. (R-3 at 5.) This was also reported by Ms. Staloff as demonstrating “age level skills[.]” (R-3 at 8.)

Based upon the standardized testing results, Ms. Staloff determined that E.D. would not qualify for classification under the category of communications impaired. Considering those test results, and her complete evaluation of the student’s S/L skills, Ms. Staloff concluded that E.D. did not meet the criteria to qualify for S/L services in the school setting, and thus was not a candidate for speech services in the District. She opined that as per the law criteria, a child needs to be below the tenth percentile on two standardized tests as well as demonstrate functional need and educational impact, neither of which he demonstrated during the testing. His teachers reported that E.D. was excelling in areas academically as well as socially within the classroom. She observed him doing group projects and group presentations and found him always on target in terms of behavioral expectations. She found that he was excelling, and she did not observe any S/L issues having an educational impact. She did not believe that E.D. needed social skills training to access his educational program.

Ms. Staloff did not have reservations about the appropriateness of the evaluation she conducted of the student. She “tapped into all areas of concern, even the expressed concern of the family in terms of social language skills and he demonstrated at least age level performance in all areas, if not some of which were even higher than age expectations.” (T1 114:24-25; 115:1-3.) She concluded that E.D. does not require educational based speech therapy.

She attended the eligibility meeting for E.D. on September 26, 2018. (R-6.) She provided input at the meeting regarding all testing that was done on him for S/L. She confirmed that her recommendation was that E.D. was ineligible for speech services in a school setting, as he did not present with any weaknesses impacting his education.

After September 26, 2018, Ms. Staloff continued to provide speech therapy services to the student. She addressed the goals delineated in his previous NYC IEP,

targeting inferential reasoning, social language skills, problem solving, and figurative language. (P-74.) She provided such services on the schedule of two pull out sessions per week and one push in session per week in the classroom, as agreed upon by the mother at the reevaluation meeting. (R-1.)

During the group pull out speech therapy sessions, E.D. never wanted to come, because he hated missing what was going on in the classroom. However, he did cooperate in the group sessions in her room. She found him to be age appropriate in receptive language skills and expressive language skills.

Ms. Staloff acknowledged that E.D. did not always have other students involved in the pull out sessions. He was not the only child from the school focusing on social skills, but he was the only student in his grade targeting those skill goals, pursuant to his NYC IEP. (P-74.) If he was the only child in her room, she would work on development of social skills by using a variety of formats utilizing videos, role playing, and iPad apps which presented situations in the community, school, and at home. She found that he did not require intervention services for speech, which concerned her because he was missing his classroom instruction time to attend the S/L pull out sessions.

She was not aware that the mother expressed concern that E.D. engaged in parallel play with other children, rather than interactive play. She empathically denied having ever observed that by E.D. in school.

Ms. Staloff confirmed that at times she would have E.D. dictate his responses to her for some of the worksheets they reviewed. (P-H at 9.) She does that frequently with her students because her goal is not the written expression itself, it is the content of the information that they are working upon. She recognized that she would not be able to see the student's letter formation or spelling, but spelling was never one of E.D.'s targeted goals.

During the push in sessions throughout the 2018/2019 school year, Ms. Staloff wanted to ensure that the topics covered in the pullout sessions were carried over and integrated into the classroom. They would work on implied reasoning, implied meaning,

tone of voice, sarcasm, and inferential reasoning during pull out sessions, and she could focus on those skills in the context of the classroom assignments in the classroom, without singling him out. She found him to be a high achiever in his classroom. Some of the times when he was working on classroom reading comprehension programs, which are closely tied to language skills, he would score 100 percent. She found E.D. to be a leader in his class for receiving stars for his reading comprehension, encompassing figurative language, implied reasoning, and inferential skills, which were part of his NYC IEP goals.

Ms. Staloff was able to observe E.D.'s interaction with other students during the push in class sessions. He was always appropriate with his peers. He would engage with classmates when permitted to do so, and if a task required him to focus on his academic assignment, he did that appropriately. She denied ever seeing E.D. engage in behaviors such as rocking in a chair, using a pencil to twirl his paper, refusing to do work, or making statements upon entering a room.

She observed him in other settings, most recently in the cafeteria, where he engaged with his peers and went to a child at the nut free table who was seated by himself and started to speak to that child; then went back and spoke to the other boys at his table. Other recent opportunities she has had to observe him is while she completes her outdoor bus duty. She saw him engaged with other children both going on and coming off the bus and he always seemed very happy and interactive with his peers. She conceded she was unaware of an incident on the bus when E.D. choked another child.

During the 2018/2019 school year, Ms. Staloff noted that E.D. was easily able to keep up with everything they were doing. His teachers did not report to her any concerns about his speech, language, or social skills. She was advised that he was socially adapting and doing well in all areas. His class work and scores were always excelling, and if not the highest in his class, certainly one of the highest. She did not observe any regression in E.D.'s speech. She has observed him interacting in the classroom with his peers and participating the same amount of time as other students. She was aware that his mother reported E.D. was having meltdowns at home. She recalled receiving emails from E.D.'s mother and responding to them, but did not recall any requests for specific assistance. Her recollection was that E.D.'s mother just wanted to make it known there

were difficulties going on at home.

Ms. Staloff authored a S/L progress report for E.D. as of November 2018. (R-7 at 3-4.) She reported that the goals outlined in the NYC IEP were targeted during his speech sessions both pull out and push in, and confirmed that he met those goals. She confirmed that E.D. will participate in play and interaction, without dominating by checking to see if his peers or adults agree with his actions during cooperative activities. He demonstrated flexibility when an adult or peer made a planned or spontaneous change in an activity. He also understood and was able to use figurative language such as idioms, similes, and metaphors to make situational and contextual inferences within a grade level text and draw conclusions within colloquial conversations. He was able to regulate his actions based upon the listener's perspective and the environment, by changing his language and monitoring his tone of voice and body language. (R-7 at 1.)

As of November 2018, Ms. Staloff further reported that E.D. was complaint and cooperative in large group settings. He was observed to participate in his class without any signs of dominating an activity or frustration when not called upon. He was observed to be interacting with his peers, both within the whole class setting and in small group cooperative work. He was observed to be flexible with any schedule changes and demonstrated self-regulation of behavior in the context of the classroom. (R-7 at 4.)

Ms. Staloff authored another progress report for E.D. as of January 2019. (R-9 at 3-4.) She reported that E.D. was able to perform all the skills that were of an area of concern. She worked on sarcasm, tone of voice, figurative language skills, and inferential reasoning. She found that E.D. was able to understand, comprehend, and utilize the skills appropriately for those areas.

In March 2019, Ms. Staloff authored another S/L progress report for E.D. (R-14 at 4-5.) She again reported that E.D. was easily able to comprehend and use the skill areas that were targeted in his NYC IEP. (R-14 at 4.) He understood each concept during sessions and was able to integrate those skills within the classroom. (Id.) The concept of sarcasm was addressed to provide further insight for E.D. with implied meaning, both in conversations and in text format. He was able to identify and use sarcasm

appropriately. (R-14 at 4-5.)

Ms. Staloff determined that E.D. did not demonstrate a functional impairment, nor a need for S/L services while she has been working with him in the classroom or during the pull out sessions. He has not demonstrated any areas of weakness in speech and language skills. She asserted that E.D. met the goals delineated in the NYC IEP.

Eleanor McMahon testified for the District. She completed an educational evaluation of E.D. (R-5.) She has been employed by the District for seven years as the Learning Disabilities Teacher Consultant (LDTTC). She holds bachelor's degrees in psychology and elementary education. She earned a master's degree in special education and holds a post-master's certificate as a LDTTC. (R-12.) She began her education career as an elementary teacher. She then was a special education teacher, before becoming a learning consultant and securing her current position with the District. She tested seventy-four students in the District during the 2018/2019 academic school year and tests approximately sixty to eighty students per year. She estimated she completed about 400 evaluations during her career with the District.

She is trained to administer many tests in the field of education. Although not specifically trained to administer tests in other fields, such as a psychology, she is trained in interpreting the data from other disciplines. She is a member of the District's CST and attends almost every eligibility meeting for the District's students in which she has administered testing. She was qualified as an expert for completing educational evaluations.

She first learned of E.D. shortly before the 2018/2019 school year began, when she received information about students who had transferred into the District. She scheduled the initial planning meeting for the first day of school. E.D. was transferring into the district as a classified student, under the category of autism, with an IEP from the NYC school district. (P-74.) She confirmed that not every child diagnosed with autism automatically is eligible for special education and related services. There needs to be evidence of the disability having an academic impact, requiring special education programming, to enable a student to access their education.

Ms. McMahon completed the document confirming the modified schedule of services, which was agreed upon at the initial reevaluation meeting on September 5, 2018. (R-1.) Upon reviewing the documentation available to them at that time, the CST formulated a plan to give E.D. a program as he started in the District, while they were conducting the reevaluation. He was assigned to an in-class resource classroom for third grade. That is a general education classroom which has two teachers: a general education teacher and a special education teacher. This type of classroom setting is commonly referred to as co-teaching. Related services in the areas of speech and OT were offered. The mother agreed to the delivery of such services as set forth within the agreement. (R-1.)

CST reevaluations were also proposed as contained within the Reevaluation Planning-Additional Assessment Warranted letter of September 5, 2018. (R-2.) The evaluations to be completed were in S/L, OT, and an educational evaluation. E.D. had been receiving services in speech and OT as per his NYC IEP. (P-74.) The educational evaluation was to be done to determine E.D.'s educational abilities, and his strengths and weaknesses.

No other evaluations were requested by the parent at the meeting. No concerns were raised regarding the student's cognitive functioning, emotional functioning, nor was it asserted that E.D. had any learning disabilities. Ms. McMahon believed the reevaluation proposed for E.D. was appropriate to determine his continued eligibility for special education and his educational needs. (R-2.)

Ms. McMahon reviewed E.D.'s NYC IEP. She could not recall reviewing any of his records from the NYC district's Nest Program. She conducted her educational evaluation of the student on September 12, 2018, and authored her written report on September 24, 2018. (R-5.) She administered to E.D. the standardized Woodcock-Johnson Test of Achievement Form A (Woodcock-Johnson), which is the primary testing tool she utilizes. The Woodcock-Johnson test is a testing tool used and recognized within her field of expertise. It is standardized because the tested student's scores are compared to same age peers across the nation, to compare where the tested student's scores fall on the

national average range. It is an appropriate test to use for a student of E.D.'s age.

Prior to administering the Woodcock-Johnson test to E.D., Ms. McMahon discussed with Ms. Staloff the S/L evaluation she had completed. Ms. McMahon did so because there is "a lot of overlap in the different testing that we do, even some of the other tests—the psychological testing. We all look at similar things, but we look at them in different ways." (T1 171:15-17.) She will check in with other evaluators, to determine if there is any additional area she might want to explore. She explained this is a common practice.

Ms. McMahon reported that she began her educational evaluation with E.D. by engaging him in conversation and observing him. (R-5 at 1-2.) He was cooperative and polite. He appeared comfortable. His conversational proficiency and activity level were typical for his grade level. (R-5 at 2.)

The Woodcock-Johnson test administered to E.D. focused on three categories: reading, math, and written language. (R-5.) Each category has assessment clusters, which focus on the student's broad abilities, and subtests, which focus on the student's narrow abilities. The student's performance is compared to age-level peers. "The results are reported in percentiles, with twenty-five to seventy-five considered to be within the average range, and standard scores, with ninety to 110 considered to be in the average range." (R-5 at 2.)

E.D.'s reading was assessed by clusters of the following: broad reading, basic reading skills, reading comprehension, and reading fluency. Within the clusters were subtests for passage comprehension, sentence reading fluency, letter-word identification, word attack, reading recall, and oral reading. (R-5 at 2-4.) Ms. McMahon found that E.D. scored within the average and high average range for all the reading clusters and subtests. (R-5 at 4.) She acknowledged that his percentile rankings for reading ranged from a low of the thirty-seventh percentile in passage comprehension to a high of the eighty-second percentile in word attack. (R-5 at 4.) She acknowledged that his standard scores ranged from a low of ninety-five for passage comprehension, to a high of 114 in basic reading skills. (Id.) She confirmed having reported that the reading comprehension

scores indicated that reading was “an area of relative weakness,” meaning that the weakness was “only present” when comparing his performance in reading to his performance in the other areas of mathematics and written language. (R-5 at 6-7.) She emphatically testified and reported that his scores were within the average and high average range for reading and did not indicate that he would have difficulty in that area.

Ms. McMahon confirmed that in mathematics, E.D. scored in the high average range in broad math, math calculation skills, and math problem solving. In the subtest of applied problems, his range was “very superior.” (R-5 at 5.) She reported that the student’s performance in mathematics identified that as being a “specific area of strength for him.” (R-5 at 6.)

E.D.’s writing was tested. He scored in the high average area for writing, specifically in the subtests of spelling and sentence writing fluency. (R-5 at 6.) His writing sample score was in the top end of the average range. Ms. McMahon reported that this indicates E.D. “has the ability to express his thoughts in writing.” (Id.)

Based upon his scores from the Woodcock-Johnson test, Ms. McMahon determined that E.D. was accessing the general education curriculum and she expected that he would perform at grade level or above. She reported that her evaluation of E.D. revealed “that when compared to the scores earned by others at his age level, [E.D.’s] overall level of achievement is in the high average range.” (R-5 at 6.) His fluency with academic tasks, and his ability to apply his academic skills, were within the high average range, as he displayed strength in many of the tested areas. (Id.)

Ms. McMahon believed, in her professional and expert opinion, that she conducted a comprehensive educational evaluation of E.D. She had no concerns about the appropriateness of the education evaluation she completed. She acknowledged that her evaluation was done to determine E.D.’s academic strengths and weaknesses. She conceded she did not know E.D.’s intelligence quotient (IQ) score. She recalled hearing a Wechsler Preschool and Primary School Intelligence test (WPPSI) score of 130 being discussed. The WPPSI score is an IQ score. She recalled discussing it with the then school psychologist. She was not certain if the psychologist had attended the first

planning meeting on September 5, 2018. She remembered hearing E.D.'s IQ score being mentioned, and that he scored in the high average to superior range.

Ms. McMahon attended the meeting on September 26, 2018, when the CST evaluations were reviewed with E.D.'s mother. She could not recall if she handed to E.D.'s mother the education evaluation report of September 24, 2018, at the meeting. The mother did not question Ms. McMahon's evaluation report. (R-5.) She reviewed her report results with the parent during that meeting.

The student's classroom teacher, Ginger McGurl, was present at the eligibility determination meeting. (R-6 at 3.) Ms. McGurl reported that E.D. was performing well in the classroom. The speech therapist also reported that E.D. was performing well.

The CST determined that E.D. was no longer eligible for special education and related services, finding that he did not meet eligibility requirements for either speech or OT. Ms. McMahon acknowledged that prior to the meeting, she had consulted with the other evaluators and they had determined that the student would not be eligible for special education services. The team members had reviewed their evaluations and information and found that there was no academic impact reported to demonstrate that E.D. could not access the general education curriculum. He was performing at the same level as his peers. His standardized testing results indicated he was performing above what his peers would be expected to test. The teachers did not report any concerns for E.D. in class. Ms. McMahon asserted there was no need for a special education program. She confirmed that a parent is considered an equal member of the CST. The parent disagreed with the determination by other members of the CST, to declassify E.D. The parent stated her concerns at the meeting.

Ms. McMahon agreed with the team's determination that E.D. did not meet criteria to be classified as eligible for special education and related services. She asserted there would be nothing to write in an IEP, because there was no academic impact demonstrated.

She acknowledged that at the start of the meeting on September 26, 2018, no special education teacher was present. A special education teacher did arrive towards the end of the meeting. That teacher signed the attendance sheet and the mother did request that the teacher's name and signature be removed from the attendance sheet. She did not remove the name because she cannot do so once someone has signed the sheet, without the permission of her director. Her director told her "no", that she could not remove the signature because that special education teacher did attend. Ms. McMahon did not know the exact amount of time that teacher was at the meeting. She conceded that the special education teacher had not taken part in the evaluation of E.D., had not met the student, and was not part of the decision making process which determined to declassify E.D. Ms. McMahon could not recall that special education teacher participating in the discussions that went on at the meeting. She was aware that it is a requirement to have a special education teacher present during such a meeting.

Ms. McMahon did not personally receive from E.D.'s mother a 2017 psychological report. It may have been provided to the CST, but she did not read it, offering that the school's psychologist may have reviewed it. The CST did not propose to do a psychological evaluation of E.D. at the reevaluation meeting. She did recall that at some point thereafter, the CST did suggest that a psychological evaluation of the student be completed. She does not know why or who raised the issue. She opined it may have been because the student was in third grade and the WPSSI that was previously administered is for very young children. She was aware that the student was not thereafter psychologically evaluated by the District. Ms. McMahon asserted that even if a psychological evaluation had been done, it would have had no bearing on E.D.'s eligibility. Although he may have a diagnosis of autism, that is one component of the evaluation process. She reiterated that there must be an education impact and that was not demonstrated for E.D., so there was no need for special education programming for him. That is why the student was de-classified.

Ms. McMahon did reach out to Dr. Blair regarding the parents' concern about declassifying E.D. She advised Dr. Blair that the child did not meet eligibility criteria. The CST did tell the parent at the meeting that the team would continue to monitor E.D., and that if any concerns would arise, the team could always re-look at the case. The day after

the meeting, the declassification letter issued to the parents. (R-6.) Ms. McMahon did not author the letter.

During the 2018/2019 school year, the CST continued to monitor E.D.'s performance in school via the third grade case manager. As the learning consultant, no concerns about E.D. were brought to Ms. McMahon by the third grade case manager, nor by E.D.'s co-teachers. It was reported to her that E.D. was the "star student in the class, that he is the shining bright light." (T1 179:17-18.) E.D. had also been observed reaching out to a new student going through the evaluation process, indicating to the new student if they needed help, to sit next to him. Ms. McMahon denied that the case manager was focusing on E.D. for litigation purposes.

Ginger McGurl testified for the District. She is employed by the District as a third grade general education teacher. She holds a master's degree in elementary education and is certified as a general education elementary school teacher and certified kindergarten through sixth grade teacher. She did student teaching in the district and has been a full time teacher for four years. She teaches all content to a twenty-two student, third grade class for the District. The subjects she teaches are reading, writing, math, science, and social studies.

She co-teaches her class with a special education teacher. They complete lesson plans together, teach lessons together, and generally handle all aspects of their teaching duties together. The 2018/2019 school year was her first year co-teaching a special education classroom. Ms. McGurl acknowledged that she does not have specific training regarding children with autism. She has some background knowledge about autism, through her graduate work.

E.D. was assigned to Ms. McGurl's third grade class for the 2018/2019 school year. She found him to be a "wonderful student." He is "very well behaved" and she referred to him "as a model student multiple times" throughout the school year. (T1 209:16-18.) Academically, she described him as "very bright" with "great problem solving, critical thinking skills." He has an "enthusiasm and passion for learning in the classroom" and he loves to participate in class. (T1 209:20-23.) "He is a straight A student." (T1

210:14.) She has not observed E.D. having any difficulty communicating verbally in the class. He is one of the “most enthusiastic participators” in her class. (T1 213:8-9.) He can self-advocate in the classroom. If he has a question, he raises his hand and asks for clarification, as any other typical student would do.

She did not observe E.D. to have any weaknesses in the classroom. She had no concerns for him. He does not receive any modifications or supports in the classroom. He has never required re-teaching with the special education teacher, nor any supports from the special education teacher. She did not believe that E.D. required any modifications, supports, or specialized instruction.

Ms. McGurl asserted that E.D. presented socially and emotionally as “any other typical third grade boy.” (T1 211:9-15.) He is a happy child. He is “very well behaved” and “very respectful, very sweet” and a “model student.” (T1 212:5-7.) He has not told her that he disliked school, but stated to her that he dislikes being pulled out of the class to attend the related services he receives.

She confirmed that E.D. raises his hand to answer most questions and is very enthusiastic. He loves to participate and knows the right answers. She believed that he raises his hand more than other students because he is so bright and wants to participate. Ms. McGurl denied that she called on him more than other students, as she tries to involve all students in the classroom discussions.

Neither Ms. McGurl, nor the special education teacher, requested assistance from any educational professionals regarding E.D. They have not requested a CST consultation. They have had no concerns during the school year for him, whether academically for understanding his classwork, or socially while working with others. She indicated that when group and buddy work is done in the classroom, E.D. works well with his peers, gets along with others, helps out, and does not dominate the group. When students are offered an option to work independently or with a group or buddy, he chooses to work with a group or buddy.

There are social skill supports available for students at the school, run by the guidance counselor and the speech therapist. Students will be referred to those programs, primarily by the student's teacher or parents. Ms. McGurl has previously referred some students for social skills intervention. She did not refer E.D., because she has not observed any social skill issues with him. He has many friends in the classroom. She has observed him in the cafeteria sitting with a group of students from class, engaging in typical behaviors such as talking, laughing, and getting along. She has seen him during extended recess time at the end of the school day. He also was observed doing typical behaviors with his peers, by running around, playing, laughing, and "having a great time." (T1 216:6-8.)

Ms. McGurl has communicated with E.D.'s parents during the school year. She has heard from E.D.'s mother via email, several times a week. His mother will inquire about academic concerns, such as E.D. having difficulty with his homework and understanding different concepts for learning. His mother also advised her about E.D.'s behaviors observed at home such as his frustration and having meltdowns. Ms. McGurl would respond to the mother's email concerns as quickly as possible, to reassure her that E.D. was not displaying any such behaviors in class and to provide comfort to the mother to be reassured E.D. did not display academic or behavioral issues in school.

Ms. McGurl would follow-up on the mother's concerns by observing E.D. in the classroom for the described home behaviors or issues, and by asking him questions and asking him to explain his thinking at arriving at his answers. He displayed mastery on all such assessments given to him in the classroom. She kept a close eye on his behavior in the classroom, yet never observed any of the frustration or outbursts the mother noticed at home. She relayed her observations to E.D.'s mother in reply emails.

She did recall being advised by E.D.'s mother through email correspondence that E.D. had lost his water bottle and his eyeglasses. Ms. McGurl indicated that misplacing a few items was very typical behavior of an eight year old. She did not recall being advised by E.D.'s mother that he threw out a homework assignment. She did recall that his mother sent an email that E.D. forgot his math work. Ms. McGurl responded by advising there were procedures in place for such an issue and that E.D. could access his

online math textbook to complete his homework. She gave the instructions to E.D.'s mother, yet his homework was not completed. She did not know why he did not complete that homework.

Ms. McGurl confirmed that E.D. received full credit for one homework assignment, even though there were three boxes on the worksheet that were not completed. (P-P page 14). She explained that homework assignments are graded on effort. Points are not deducted if the student does not complete the homework. If the student has tried their best, they get credit for the homework assignment. Homework is also a very small percentage of a student's grade. A student will receive a zero if they do not do the homework assignment; one point if it is turned in late; and two points out of two if they have attempted to complete the homework and turn it in.

E.D.'s mother did raise a concern in an email to Ms. McGurl that E.D. was abbreviating his answers by writing only the first letter of an answer, rather than the full word. She conceded that she had not noticed the issue without his mother bringing it to her attention. Ms. McGurl addressed the situation by having a quick chat with E.D. about writing out his full name and he responded that he would do so. He had been abbreviating to get his work done faster, but she denied that he rushed through his work at school. Ms. McGurl asserted if E.D. was abbreviating answers with initials and it was the correct answer, that was fine with her.

Ms. McGurl acknowledged that she sent a note, dated October 31, 2018, to E.D.'s parents regarding Fall 2018 Parent-Teacher Conferences. (P-86.) The note indicated she was not scheduling a conference with the parents, because E.D. was progressing well academically and was adjusted to the routines and procedures in her classroom. (Id.) She confirmed that she had received emails from E.D.'s mother advising her of concerns for E.D.'s behaviors and issues at home, before she sent the note that no conference would be scheduled. Ms. McGurl did not believe there would be any benefit to conducting a conference with his mother, because E.D. was doing so well at the time in class, and there was no concern about his in school progress. When E.D.'s mother responded and specifically requested a conference, Ms. McGurl did conduct same.

Ms. McGurl denied ever observing E.D. demonstrating any unusual or atypical behaviors or traits during class throughout the school year. Specifically, she denied ever noticing him clearing his throat; clasping his hands; pulling at his shirt; making out-of-the-normal facial movements or blinking of his eyes; picking at his lips or having bleeding lips; self-stimulating behaviors; crying; rocking in his chair; twirling his paper; refusing to do his work in class; or making statements upon entering the classroom that he was bored.

Ms. McGurl was cross-examined about her knowledge of incidents that occurred with E.D. during the school year. Ms. McGurl had limited knowledge about an incident when E.D. “choked” another child on the school bus. She denied having any details and did not witness it. She was aware that he fell and sustained an injury to his chin during recess in January 2019. She was not present when he fell. He came back from recess and may have had a band-aid or icepack, but indicated that to be a common occurrence with her third grade students. She confirmed she did not notify E.D.’s parents about the incident because it was not her responsibility. Such notification comes from the school nurse. She was also made aware that on April 4, 2019, E.D. was emptying his backpack on the bus. She was not given details about that, and did not witness it.

Ms. McGurl specifically recalled an incident that occurred in April 2019, while E.D. was in his pull out OT session. Ms. McGurl was not present at the session. She learned of it from the OT, Ms. Marx, who advised her that E.D. was difficult in the OT session, which was uncharacteristic for him, and that he was “fresh.” He did not want to do the OT work and gave Ms. Marx a difficult time. Ms. McGurl questioned E.D. about the situation when he returned to her classroom. He immediately admitted that he was not acting as his usual self at OT. He expressed that he did not want to be pulled out of class for special services and wanted to stay in the classroom. He explained that he is not learning anything in OT that he does not already know. He then returned to work in the classroom, and was fine for the rest of the day. She acknowledged there was an email sent from Ms. Marx to E.D.’s mother discussing this situation. She specifically recalls the situation, because it was uncharacteristic for E.D. to have acted in the fashion Ms. Marx described.

E.D. was issued report cards for the first three marking periods. (R-8, R-10, R-15). Ms. McGurl and her co-teacher, the special education teacher in the classroom, collaborated on providing the grades. She acknowledged no grades were issued for “citizenship” and “social growth” in the boxes on the form report cards because none of the students are graded in those areas. (R-15.) The “Achievement Grade Scale” on the report cards indicates that an “A” ranges from ninety to 100 and is “Excellent”. E.D.’s grades ranged from a low of ninety to a high of ninety-nine in several courses, graded during all three marking periods. (R-15.) E.D. also was issued progress reports during the school year. (R-7, R-9, R-14.) Ms. McGurl intended to recommend E.D. be placed in the advanced, higher placement class for fourth grade, for reading, writing, and math. She acknowledged that fourth grade students would be switching classes, and depending upon his placement, fourth grade students do have more movement a few times per day.

J.G. testified for the petitioners. She is the grandmother of E.D. Her daughter, K.D., is E.D.’s mother. J.G. resides in New York. She was not presented as an expert witness, but did provide information regarding her background and employment in special education. She has worked for the City of New York, Department of Education (NYDOE). Her exact title is not known, as she described some job tasks, yet provided incomplete and disjointed historical information about her employment and education. She asserted she was a special education teacher for ten years; then was an educational evaluator for three years for a school base core team, which is analogous to a CST in New Jersey; and she works at the NYDOE regional office as a case manager for several schools to ensure compliance for initial, tri-annual, annual, and requested reviews.

She indicated her job tasks include collaborating with team members to collect data in the interpretation to see if a child is eligible for special education services. She observes students to assess their educational evaluation and social functioning. She works with parents, agencies, school personnel, and conferences the IEP meetings. She represents, presumably at IEP meetings for work, the school district, as well as being the special education teacher. She represents the district for mediations and impartial hearings. She has testified in matters before and on behalf of the school district of New York, but did not specify in what forum or tribunal she has so testified. She has taken a

college course through Staten Island College about autism. From 2001 to 2011, she was sent to training conferences. She holds a master's degree.

J.G. has another grandson, besides E.D., whom she described as having autism and that she has dealt with different people on methodologies to use with that grandson, as well as with E.D. She has a daughter and another grandchild whom she described as "handicapped", so she has taken "different seminars." (T2 8:1-4.)

She has been involved with United Cerebral Palsy Center in New York, which she described as a non-public school, providing services to children who are very delayed because the public school cannot meet such children's needs. Her handicapped daughter attended their programs from 1976 through 1979, and then attended public school. J.G. has a granddaughter who currently is in their programs. J.G. indicated that as part of her job duties with NYDOE, she goes to the United Cerebral Palsy facilities to do observations and receives reports from their related service providers and teachers.

Her daughter, K.D., mother of E.D., moved from Staten Island, New York, to Marlboro, New Jersey, in July 2018. J.G. has never resided with her daughter, K.D.'s family, in New York. J.G. resides in another town in New York. However, when E.D. was born, he "had a lot of difficulties" and K.D. would often stay with J.G., or she would go and stay with K.D. for support. She sees E.D. every Friday, when his mother, K.D. comes to visit. She then asserted that "they come in, they're always at my house every weekend on Saturdays unless there's been some other reason." (T2 27:24-25; 26:1.)

J.G. comes to New Jersey when K.D. is not coming to New York. J.G. stayed with them during summer break, and is together with K.D.'s family during holiday breaks, such as Easter and Christmas. She sees E.D. just as much as when he lived in New York. She talks to E.D. at least two, three times a week by phone, mostly "just yes, no." (T2 28:11-13.)

J.G. has been involved with E.D.'s health, functional and social development, and his educational/academic needs since his birth. She has been involved in helping her daughter, K.D., "come to conclusions on, you know, where to look, implement strategies.

I mean outside of not living in his house I've been very involved with him, his whole person." (T2 15:13-18.) E.D. had early intervention services and previously received applied behavior analysis for about one year and had "speech and OT and PT" in the NYC school district. (T2 16:18-20.) He has been in small class instruction and received one-to-one services with a teacher. He moved on to "integrated co-teaching" in NY schools, which was in a classroom with two teachers: a general education teacher and a special education teacher.

J.G. attended "every single meeting" regarding E.D.'s IEP meetings or meetings with child study teams. (T2 15:19-21.) She recalled attending a June 2015, IEP meeting in the NYC district, where E.D.'s psychological evaluation from February 2015, was discussed with the school psychologist. (P-36.) She questioned that evaluator regarding the area of non-verbal communication, and how it would affect E.D. in his school performance and what services he would need. It was explained to her that non-verbal communication interferes with one's ability to understand information, patterns, ideas, concepts, and the relationships that affect physical coordination, sensory, social emotional and problem solving skills.

E.D. had poor fine motor skills, because "his hands don't work" and "still to this day really don't work well together." (T2 25:12-14.) He needed OT because his poor fine motor skills interfered with his visual spatial awareness. He does not know where he is in space in relation to people and objects. It might appear that he is a clumsy child, constantly bumping into things. He stands "just about on top of you when you're talking to him or he'll approach you that he bumps you or steps on your foot because he's knocking over his milk, you know, things that he doesn't know where he is. His sensory is kind of mixed. He has low response which makes him seek it." (T2 25: 14-25.) She explained that "seek it" means that E.D. does not know where he is, and he is "always trying to ground himself." (T2 26:2-3.) He is the child to whom you would say "why are you stomping your feet" and that he "pushes things too hard." (T2 26:3-4.) When she plays with him, he "rough houses to the point where he hurts himself or others" but it is not malicious behavior. (T2 26:5-6.) He talks "very loud" and gets startled and withdraws when there are loud noises. They cut the tags out of his clothes. His clothes need to be form fitted because if they go out "in different environment" he "withdraws into his own

clothing because of the environment with people.” (T2 26:14-16.) Such behavior has been ongoing. He had to attend a twelve-month program in the NY school district so that he would not regress.

She recalled that during the 2015 NYC IEP meeting, there was discussion regarding E.D.’s difficulty with transitions. She describes his difficulty as almost like obsessive-compulsive disorder (OCD), which causes him a lot of stress. He needs to know what is scheduled. They set up behavior modifications for him such as having a visual schedule on his desk to see what was coming up next, which was often a good thing, but if there was a change, he verbalized that he could not do it. When they go out to a restaurant, E.D. needs to know when they are going and what time. If there is a change, such as having to wait to be seated, E.D. will lay down or withdraw into himself, put his head down, and refuses to eat. He has exhibited this type of behavior “since we have him.” (T2 31:18.) She insisted that transitioning continued to be a problem for E.D., despite his teachers asserting it was not an issue. She claimed his difficulty with transitioning was supported by a nurse’s report and that E.D. would complain to them that he did not want to leave his classroom and go to OT or speech services. This was due to his anxiety in not being able to move from one place to another.

J.G. perceived that when E.D. was a baby, he preferred his father over his mother and over her. Her description as to his behavior from birth was:

He just – you couldn’t look at him, you couldn’t move from one room to the other while you were holding him. He didn’t interact with his cousins, I have other grandchildren. He still has difficulty with familiar people. He’ll at least now when I come in, because everybody runs to the door, he’ll be standing in the room that he was in and then I approach him and, you know, I can kiss him on the head, and I hug him, he doesn’t hug me back, very seldom. You need to really draw him in. He has to be drawn into conversations. Then if he continues the interaction for a reasonable time it’s usually that he’s acting silly or just shuts down. He’ll repeat what you’re saying, echolalia used to be a big problem but it’s not there now, really, other than he repeats. (T2 31:20-25; 32:1-10.)

She testified in similar disjointed statements about the child's behaviors from 2015, yet would then indicate that it was not a problem now, or that someone would need to know to look for such behavior, and even conceded the child was never actually diagnosed with the alleged conditions. For example, she was asked: "When you describe your grandson does he have any physical or vocal ticks?" She responded:

E. has a lot of – I'm going to say a lot, but you might not notice because – and the reason I had pointed out – there were some that were obvious that K. [K.D., the child's mother] knew and because I'm familiar with it, he's got blinking, we've had his eyes checked, he twists his mouth and it's like time intervals, he has body twitches like this that you might say, okay—" and that "the reason I'm telling you it's a tick is because if you watch the frequency and the time intervals it's not interfering that if you're not really aware of what you're looking for, even just he does this a lot" [gesturing with her mouth]. (T2 33 16-24; T2 at 34:3-7.)

She continued:

"Yeah, and you'll see, but it's not, 'um, um, um, um, um,' you know, that so we let him chew gum, you know, even the teacher will let him chew gum. Things you wouldn't notice. His blinking is not all the time, but when it does happen it's involuntary and it's like he used to flap in front of his face and spin when he's got his pencil and now he'll just be swinging it. We've gotten him out of the tapping because that is – you know, we say 'okay, we'll allow that.' Where if you're not aware of his diagnosis you would – that's not interfering with the classroom you wouldn't notice it necessarily. He clears his – what somebody would say, 'you're clearing your throat,' you know, even during times --. (T2 at 34:10-23.)

Regarding his throat clearing, she continued: "And you say, 'go get a drink of water,' it's not that. He – I'm trying to think of what else, what other ticks he has." (T2 at 35:1-2.)

She was then asked how E.D. sleeps, and she continued:

With the flapping over the time we changed to that he went to a squeeze toy that he was allowed to keep in his desk then it was that – as he got a little older the squeeze toy became a problem in the classroom for himself and others, so we went to like put your hands in your pocket, but now that he's older

it doesn't really look very good when you're out side and he's shaking his pants with his hands in his pocket, so he now knows to squeeze his hands and he just does little – so he does that, which makes it – then he ends up flicking his hands or his lip. (T2 35:7-17.)

J.G. acknowledged that E.D.'s teachers never reported seeing E.D. blinking in class. She claimed the teachers did not know what they were looking at. She further acknowledged she was aware that his teachers never reported observing him with any tics in the classroom. Ultimately, J.G. admitted that E.D. has never been diagnosed by a physician with any type of tic disorder.

Another example of J.G.'s method of responding to questions, whether on direct or cross examination, was her answer to the question as to what personal knowledge she had about whether E.D. has difficulty sleeping. She stated:

Okay. Even when K. [E.D.'s mother] lived in Staten Island the children slept over my house often, but I have to say E. really didn't, because he wakes up like four o'clock in the morning, he's unable to stay in bed. The bedrooms are upstairs and downstairs so I couldn't allow him to go down. He does sleep over since K. has this new house. I share the room with E. up until this last time that I was here, she finally got a high rise and put me downstairs. I went to bed last night a little after eleven, E. was still up. When I slept in his room you would think that he was restless, but sometimes knowledge is not the best thing, so I would watch to see how often, what was going on and he actually has the throat clearing while he's sleeping, but they're involuntary. And I would say he's just – so he goes to bed very late, he's up very early, he's constantly moving and I know about the tick of throat clearing. (T2 36:11-25; 37:1-3.)

She was then asked: "Have you ever noticed that his ticks are worse when he hasn't slept?" to which she responded:

It could be when he hasn't slept. I attributed it to anxiety or when he's under some kind of stress or he's not – somebody might say when he's not getting his own way, I think it causes internal, is it a trigger, we discussed that, so just for – there was discussions at time, did he need an FBA, functional behavior assessment, you know, were those things – I don't

know if they're getting worse. I don't know if say okay, that's what it is, I'm not so worried about it. (T2 37:6-15.)

E.D. has great difficulty understanding what is and is not important, and he "just follows the rubric" and is unable to use thinking skills and is highly unorganized. (T2 41:18-22) He has no inferencing skills, which interferes with his ability to plan. Everything is very literal for E.D., which J.G. asserts causes interference with his reading comprehension and his writing because he cannot expand on anything. He can read a book and say the words, but it is mechanical. He does not understand that a word can have more than one meaning. He is unable to take a skill he learns in one environment and apply it to another. He is very rote.

E.D.'s interaction with his cousins and siblings is that he waits to be invited in. They must greet him. If they are playing a game, he starts acting silly and tries to change it. He will parallel play. "He has to control the conversation. He can only answer about his topic, most of his responses to them are yes, no, short phrases. He also kind of repeats what people say, but not to an extent that we're crazy like we used to be over it." (T2 43:4-16.) She later claimed that conversations with E.D. only consisted of someone having to ask him a question and then getting a very exact, clear, cut, short answer such as yes, no, not now, or maybe.

She asserted that E.D. does not socialize. She knew he was into magic, "so I bought magic, but then I realized that was isolating him because he's just doing the trick and it had to be exact and he didn't want to share it. Now we're working on card games, but somebody else can't play, it has to be just the two, because if somebody else changes the rule for whatever reason he has – he gets angry. I'm going to say I'm using the word 'angry,' 'he appears to be angry,' he'll say, 'that's not fair.' He kind of punishes himself, he says 'I'm going to my room,' you know." (T2 44:4-13.) E.D. gets easily frustrated and reverts to either raising his voice or states that someone is cheating or broke the rules. He will slam down whatever he has, go to his room, slam the door, and isolate himself.

E.D. does not write well. He uses simple sentences without details. She could tell from his homework, when he brings homework back, that he is not able to do his own work. She claimed to have seen his writing samples, but could not recall a specific one.

Regarding E.D.'s enrollment in the Marlboro district, J.G. accompanied K.D. and her children to the school, before the start of the 2018/2019, academic year, to meet the staff. J.G. did not attend the initial planning meeting. (R-2.) She attended and participated in the meeting of September 26, 2018, by telephone.

J.G. asked during the September 26, 2018, IEP meeting if a special education teacher was present, and was told that the special education teacher who knew E.D. was out of the building and another special education teacher was going to attend. The meeting proceeded without the special education teacher, who did not show up until after the recommendation was made to declassify E.D. She denied having knowledge that her daughter consented to start the IEP meeting without the special education teacher initially present, insisting that they never wrote or signed consent for that to occur. At the end of the meeting, she could hear other voices through the phone and K.D. advised her that the special education teacher finally arrived and was signing the paper that he was in attendance. J.G. told K.D. that she needed to protest that the special education teacher had not attended the entire meeting and to not allow him to sign the paper. However, when K.D. received the paperwork, the special education teacher's signature was on it.

During the IEP meeting, E.D.'s education evaluation and reading comprehension was discussed. J.G. pointed out that there was "a greater than a minus two deviation in his comprehension" and that his autism was "interfering" because there was "a great discrepancy between his IQ scores." (T2 54-55.) She believed this demonstrated that the District's findings on the educational evaluation were "not true." (T2 55.) She continued to be "very adamant about pointing out the difficulty in his comprehension, the scattering, there's definitely a disability there. We acknowledge his decoding is very high, but he cannot answer anything that is not explicitly – you can say go back to the text and tell me where you seen that, he can do that, he knows, his memory." (T2 55:10-16.)

J.G. acknowledged that she never observed E.D. in the Marlboro classroom setting and had no firsthand knowledge of any such comprehension issues occurring in the classroom. She was aware that E.D. was a straight A student. She was aware that he was being recommended for the fourth grade advanced academic track in language arts and math for the 2019/2020 school year.

She asserted that the speech evaluation was just a “very skimpy test” and should have addressed E.D.’s area of disability. He scored well because his vocabulary score brought up his scores to look very good, but insisted his expressive language was limited and was not tested. She believed the speech evaluation was a “false positive test.” (T2 57:8-17.) J.G. admitted she was not trained in speech therapy, nor trained as to how to administer speech evaluation testing, and does not have the letters behind her name, but she judges the adequacy of speech therapy evaluations in her job all the time. She gets reports and reviews them with a team to discuss the educational impact. She could not specify how many times she has disagreed with speech evaluation findings in her line of work, estimating it was very low. She admitted that E.D. was evaluated for his ability to make inferences and scored in the high average range, with the lowest score being a ninety-six, which was solidly average. (R-3 at 5.)

J.G. asserted that the OT evaluation did not address E.D.’s visual perception skills, other than to indicate what the score was. She asserted the test did not assess his fine motor skills and his sensory issues. The OT evaluation was “not competent” and was not “the true picture.” (T2 57-58:1-2.) She confirmed she was not trained to be an occupational therapist. She conceded that the OT evaluation did test his visual perception skills and fine motor skills, despite her earlier contention that those areas were not tested. (R-4.) She explained that she was not claiming he was not tested in those areas, rather, the test provided a “false positive.” (T2 90.)

J.G. believed a psychological evaluation should have been completed, but acknowledged she was not at the initial planning meeting and did not have knowledge as to what was discussed regarding the completion of such an evaluation, except for what her daughter may have told her. She is certain K.D. provided E.D.’s prior psychological evaluation for to the District, before the school year began. They were advised by

someone from the District that the prior psychological evaluation was substantial, and the school did not need to do their own evaluation.

At some point after the September 26, 2018, IEP meeting, J.G. and/or her daughter, K.D., spoke to Dr. Blair, Director of Special Services from Marlboro. J.G. indicated that they voiced their concerns for having E.D. declassified. Dr. Blair advised that additional testing was needed, but J.G. was not certain if she recommended that a neuropsychological evaluation or neurological evaluation be completed. J.G. indicated they were against further evaluations being done at that time. She did not think it was fair. They already had competent evaluations completed and a diagnosis. They did not want E.D. to undergo the stress of additional evaluations. She confirmed that after the due process petition was filed, and K.D. retained counsel, they requested independent evaluations to be done.

J.G. asserted that E.D. has a cognitive disability because a test had demonstrated there was a discrepancy between his non-verbal skills and other areas. She confirmed E.D.'s IQ testing was in the superior range and that a high IQ is not a cognitive disability.

J.G. confirmed she has not personally evaluated E.D., but if she did so, she "probably" would not be objective. (T2 99:6.)

K.D. testified for the petitioners. She is the mother of E.D. She purchased her home in Marlboro in July 2018. She previously resided in Staten Island. Although never described during her testimony, the family structure is outlined in documentation. K.D. and her husband have four children. E.D. has an older sister and two younger siblings, the youngest being born in approximately 2017.

K.D. was a full-time high school math teacher, starting in approximately 2003, but took a leave of absence for six years to care for E.D. She clarified that she resigned from the full-time math teaching position in August 2013, and then started working as an adjunct math professor at a college in Staten Island.

She has a background in special education, having been born into a family with an older sibling with hydrocephalus. She has a niece who is severely disabled, an autistic nephew and grand-nephew, and older family members with mental retardation diagnoses. When she was a high school student, she was a volunteer at group homes and would do party dances and social interactions with the residents. In her late teens she worked at the neighborhood group facility as a direct care counselor assisting individuals with daily living skills, transportation to medical appointments, and bringing them into the community to participate in everyday life and acted as an advocate. She volunteered at a sleep away camp dedicated to children with different disabilities, until she started having her own children and could no longer volunteer. She has been exposed to different people in the field such as special education teachers, therapists, respite workers, and direct care counselors.

E.D. was born in September 2010. After he was diagnosed with hydrocephalus and autism, she attended countless seminars and meetings to help her through daily problems and struggles she had with him at home. She learned through the student accessibility office at the college where she teaches now, how to recognize autistic children in the classroom and what to do to incorporate them into her lessons and find resources to assist them. She met a professor at the college who runs the autism spectrum disorder certificate program there. She has always been exposed to such issues and is aware of the day to day challenges.

She had issues with childcare for E.D. when he was an infant. He would scream all day long. No one could console him. He was reluctant to engage with other people. He would cry when approached. There were problems with feeding. He did not hit milestones at a young age. Initially, family members would watch him for her. Then she had childcare workers, but they could not handle the stress. She put E.D. in daycare and the daycare would call her repeatedly and then told her they could not handle his behavior and he could no longer stay there. She had an au pair, but she was unable to handle the situation. K.D. ultimately resigned from her full-time math teacher position in August 2013 and began teaching as an adjunct immediately thereafter.

Due to the issues with E.D.'s constant crying and behaviors, she had him evaluated for early intervention services in 2012, when he was approximately eighteen-months-old, at the Gingerbread Learning Center in New York (GLC). (P-1) Evaluations were completed by GLC of E.D. for OT, speech, and psychology. (P-3, P-4, P-5.) An Individualized Family Service Plan (IFSP) meeting was conducted on April 11, 2012. (P-7.) The GLC later completed a physical therapy (PT) evaluation of E.D. (P-8.)

E.D. was then initially evaluated by a neurologist. The neurologist authored a letter, dated April 12, 2012, indicating that E.D. was diagnosed with pervasive developmental disorder and hydrocephalus. (P-6.) K.D. confirmed that the diagnosis of hydrocephalus resolved. She reported to an educational evaluator in 2013 that E.D. had a complex medical history, including a diagnosis of hydrocephalus, which did not require any treatment. (P-17.)

There was additional medical testing of E.D. in approximately 2012, which revealed he had a chromosome disorder, which she was told could affect neurological functioning. She did concede that it was reported in his IFSP from NYC in 2013 that E.D. was "missing half a chromosome but was informed it will not affect him at this time." (P-14 at 1.)

The neurologist recommended that E.D. be provided speech therapy, OT, and special instructional therapy "on a regular basis in order to optimize his overall function." (P-6.) Without such services, the neurologist expressed in his letter that it would be likely for E.D. to "suffer significant clinical and neurological deterioration which would gravely affect his already guarded prognosis." (P-6.)

E.D. was deemed eligible for early intervention and began receiving services in 2012. He attended an early intervention school center five days per week, for two hours, receiving one on one applied behavior analysis (ABA) therapy. K.D. had follow through therapy with E.D. at home. He also received PT for low muscle tone.

He was reevaluated every six months in the early intervention program. (P-13, P-14.) He again underwent a psychological evaluation, educational evaluation, PT

evaluation, and an OT evaluation in April 2013, by Children at Play, another early intervention center. (P-15, P-17.) A speech/language evaluation was done in May 2013. (P-22.) The neurologist recommended that E.D. be provided a therapeutic nursery program utilizing speech, OT, and special instructional therapy. (P-21.) K.D. provided historical information to Children at Play, which was included in a Social History statement. (P-16.) She was concerned because E.D. was aging out of early intervention and she wanted services to continue for him. He was three-years-old then. He needed constant repetition of lessons. As of that time, E.D. was receiving his early intervention services at a school called Thursday's Child, with additional home therapy services, having been identified with the diagnosis of Pervasive Developmental Disorder-Current State. (P-18.)

K.D. had been offered OT and PT home services in 2013. She declined such services because it would be too much for him. (P-16, P-17.) She did not obtain private services for him. She declined OT, PT, and ABA in the school setting. He was not even two-years-old. There was no time for him to be a baby when he was receiving ten hours of school per week and there was an ABA therapist coming into the home every day.

An IEP meeting was conducted on June 11, 2013. (P-23.) E.D. was classified as a pre-school student "with disability," which K.D. explained every child getting special education services from ages three to five in New York gets that disability classification, regardless of an actual diagnosis. He was deemed eligible and attended a twelve-month program at GLC for the 2013/2014 academic year. He was a pre-school special education student, receiving related services of S/L therapy, OT, and PT. (P-23 at 19.14.)

E.D.'s annual review was conducted in May 2014, with GLC issuing an educational annual review, a speech annual report, OT annual report, and a social history update with information provided by K.D. (P-24, P-25, P-26, P-27.) K.D. testified that E.D. was working on receptive and expressive language and communication skills, as well as feeding skills. She confirmed however, that there was nothing reported about working on feeding skills in the speech annual report. (P-26.) She claimed feeding was worked on during the speech therapy sessions. She confirmed he was never diagnosed with an auditory processing issue.

An IEP meeting was conducted on June 13, 2014. (P-28.) Based upon the GLC evaluations and reports, it was recommended that E.D. continue with OT, speech, and PT. She acknowledged that it was recommended in 2014 that there be a decrease in both OT and speech services. (P-26.) E.D. was reported to be making “great progress towards reaching his goals.” (P-26.) Although the recommendation to decrease services was made, that was not effectuated for him. He was still classified as a student with a disability. (P-28.) He received continued pre-school special education instruction and related services for S/L therapy, OT, and PT at the GLC. (P-28, P-29, P-30.)

K.D. affirmed that GLC reported that E.D. was “eager to play and socialize with his peers” when evaluated in 2014. (P-24.) She further confirmed it was reported that he “will engage in cooperative play under adult supervision, however, he can struggle with sharing and turn-taking.” (P-24.) He did not like to share, and it was reported he would “tantrum a bit if he is asked to share.” (P-24.) K.D. denied that many three-year-olds have difficulty with sharing and turn-taking. (T4 at 169.)

In January 2015, GLC completed a social history update, teacher report, a PT graduate report, S/L therapy progress report, psychological-educational report, and OT graduate report for E.D. (P-33, P-34, P-35, P-36, P-37, P-38, P-39.) E.D. was turning five-years-old as of the 2015/2016 academic school year, and would be entering the public school system in NYC. He was being assessed for continuation of special education services.

K.D. acknowledged that in 2015, the school psychologist noted in the psychological-educational report: “Although observation of a Speech and Language group session revealed [E.D.] to have strength in pragmatic language, clinical observations both in the classroom and evaluation setting revealed social skills that did not appear intact.” (P-36.) The report also concluded that his language skills were intact for communication, with expressive language “mature and impressive” and his receptive skills “were well developed.” (P-36 at 2.) K.D. agreed she was not present for the testing that occurred and acknowledged he willingly and easily separated to go for the testing.

GLC completed annual provider reports for E.D. in April 2015 for PT, an Autism Diagnostic Observation Schedule 2 report, speech, and OT. (P-39, P-40, P-41, P-42.) An IEP meeting was held on May 1, 2015. (P-43.) It was determined that the child met eligibility criteria for an educational disability to be placed in an integrated co-teaching class and receive related services of OT, speech, and parent counseling and training. (P-43, P-46.)

K.D. asserted that E.D. was diagnosed with autism in 2015, and his classification was identified as such in the NYC IEP of May 1, 2015. (P-40, P-46.) He was enrolled in the Nest Program for kindergarten in the NYC school district for the 2015/2016 academic school year. She explained that the Nest Program specifically targeted high functioning autistic children to help them work on their social relationships and pragmatic language. It was tailored to children diagnosed with at least a 125 IQ or higher, and the children were able to sit in a general curriculum classroom, grade appropriate. The program focused on the social and emotional aspects of being a human, to help E.D. access his educational experience. He was to learn how to interact with his environment. He still received speech and OT. She could not recall that in 2016, there were no goals for sensory processing issues. (P-46.)

He was discharged from PT at the start of kindergarten. He would be pulled out of class several times per week to work on his social skills. It was a smaller ratio class, with a general education teacher and a special education teacher. It was a twelve-month, full year program so that students would not regress. She acknowledged there was no behavioral plan for E.D. in the Nest Program because behavioral skills were built into the program.

E.D. still needed assistance with reciprocal language, inferencing, and comprehension. One of his major issues was he had to be a dominant member within the classroom. He was having behavioral problems with transitioning. He had the need to complete every task before moving onto the next one. He would engage in parallel play, appearing as if he was participating in a group, but he was not. You would have to pay attention to him to realize he was not really communicating with the group, he just sat along with them. E.D. had problems internalizing and learning how to carry certain skills

over into his everyday life. He was having lots of meltdowns and shutdowns at home. They had problems going into public with him, which she asserted continues today. They had problems with his writing and holding things, and many more issues which she claimed continue today.

E.D. remained in the Nest Program in the NYC school district from kindergarten through second grade, until the family moved to New Jersey in July 2018. He did very well academically in the Nest Program. Academics were never an issue. Social and emotional help was addressed so that he could succeed in the classroom. K.D. saw improvement with E.D. participating in that program with the services he received. She believed that the Nest Program met his needs since most people think an autistic child is one who is flapping around and spinning and cannot speak and communicate and is completely disengaged. Autism is a large spectrum and E.D. is on the upper end. He appears physically normal, but has many social and inferencing issues.

K.D. asserted that E.D. lacks an innate ability to read people's body language or understand figurative language. He has movement issues and needs movement breaks. He had a bouncy chair in the Nest Program, to help him get through the day, while the rest of the class sat on balls. He was allowed to have a stress ball with him. The program had quiet zones. The structure of the program was to help E.D. learn to self-regulate and be taught skills for what he could do when he felt anxiety or stress. He has sensory issues at home, which are not being recognized as a problem in his current school at Marlboro. He needs a clear set of rules to follow. In his previous class in the Nest Program, he had different cups on his table, red, green, and yellow, to indicate when he was ready. There was a lot of adapting so that E.D. could access his educational curriculum.

E.D. needs structure and reminders. She has utilized behavior charts and daily routine charts and has timers everywhere. She explained that when he takes a shower, she reminds him before he gets in to wash his hair and wash his body. If he gets such prompts, he can complete a task, but he never remembers the prompts.

E.D. continues to be very literal. K.D. gave an example that he heard the comment from someone that "we kicked their butt" and he took it literally. She had to try to explain

that it means you are beating someone when he was going to tell the person that they were wrong in kicking someone's butt.

For the 2016/2017 school year, E.D. again was enrolled in the Nest Program in the NYC school district, for first grade. He had an IEP which was to be implemented as of May 2, 2016. (P-48.) He continued in a co-teaching classroom for special education instruction and received OT, speech, and social skills services. K.D. believed she was receiving parent guidance as part of the program, to learn strategies to carry over at home to prevent meltdowns and breakdowns. As she frequently did on cross-examination, K.D. could not recall that certain behaviors she claimed E.D. demonstrated and was receiving services for, were actually noted in reports as not being at issue. For example, she could not recall that the 2016 NYC IEP noted that E.D. did not demonstrate self-regulation issues while at school, yet she had claimed that to be a continuing problem for which he received services as part of the Nest Program. (P-48.) She could not recall that sensory testing completed in NYC school indicated that his processing was typical for a student his age.

For the 2017/2018 school year, E.D. was in the Nest Program for second grade. An IEP meeting was conducted, resulting in an IEP to be implemented as of April 20, 2017. (P-50.) K.D. agreed with the goals and objectives of that IEP, as it addressed academic concerns in reading and math. He was in the twelve-month Nest Program.

An IEP meeting was conducted in the NYC school district on March 23, 2018, resulting in an IEP to be implemented as of April 16, 2018. (P-64.) This was to be the IEP for the 2018/2019 school year, for E.D.'s third grade. His classification was autism. (P-64.) The services were implemented through the end of the 2017/2018 school year. Had the family remained in the NYC district, K.D. believed E.D. would have remained in the Nest Program and the same services would have continued. He was in a co-teaching classroom and received special education instruction, OT, speech, and social skills services. K.D. received parent training. She recalled that some of the goals and objectives during that school year were to work on inferencing skills, pragmatic and social skills, reading comprehension and OT to assist with organizational skills. E.D. was very dominant and trying to take over, so that was going to be worked upon in a group setting.

She asserted they were “still working on the same skills.” (T2 201: 21-22.) The IEP addressed academic concerns for reading, math, and social concerns. K.D. stated that pragmatic skills were to be addressed “how to interpret different people perspective taking, a lot of role modeling as to what can do.” (T2 214:10-12.) There were scripted scenarios for the students as to how to react in conversations with appropriate social responses.

The family purchased a home in the Marlboro district in July 2018. They moved into the home at the end of August, after renovations were completed. K.D. contacted the school at the end of July and scheduled a meeting in August to go to the school to register her children and bring registration documentation. She attended a new student orientation with her children and her mother, J.G., accompanied her. She spoke with the principal and assistant principal to advise them of E.D.’s autistic background and to alert them up front if anything happened. She was advised that E.D. was assigned to a co-teaching classroom with a general education teacher and special education teacher, and anticipated that to be his appropriate placement.

K.D. was contacted by a member of the Marlboro CST and an initial planning meeting was scheduled. She received written notification of the meeting, and attended same on September 5, 2018. K.D. was advised at the meeting that it was “more of a formality” because E.D. was coming into the district with an IEP and New Jersey requires them to reestablish evaluations within thirty days. (T2 219-220.) She was advised they only had E.D.’s NYC IEP and did not have any of the records and documents she dropped off at the school prior to the start of school. She assumed they got lost in the hustle of the beginning of the school year because she had only registered E.D. about a week prior. She “re-supplied” them with everything, but they only made a copy of a psychological report from 2017 and the ADOS from 2015. They did not want to make copies of the other records. K.D. was told they would get the other records from the district.

During that planning meeting, members of the CST indicated that they would be doing evaluations of E.D. for the services that were on his 2018/2019 NYC IEP. (P-74.) K.D. came to an agreement with them that since E.D. was new to the school and getting

acclimated with new teachers and his new environment, he would not have as frequent sessions for OT and speech, as he had pursuant to the NYC IEP. He was going to be pulled out of class for the evaluations, so they discussed that it would be more beneficial to E.D. to make a temporary agreement to cut services for that time frame. She recalled there may have been four speech sessions and they agreed to cut that down to two sessions, and that the OT services were also cut down. (R-1.)

K.D. advised the CST members during the planning meeting that E.D. was a bright boy and thrives on structure. He needs things laid out for him. She advised them they would see he was very dominant, and that his previous program worked on his pragmatic and social skills because he was not able to generalize daily behaviors with appropriate interactions with peers. She further advised the team that E.D. would probably volunteer all the time, as part of his dominant personality, which some may see as a strength, but really is a weakness for him. She told them they should not evaluate him in a one-on-one setting because they were not going to see this weakness. He needed to be seen by the evaluators in a larger group to see the issues she was describing. She deflected providing a direct response on cross-examination as to whether she was aware that standardized tests could only be administered one-to-one, stating she was “not aware of any protocols for any testing.” (T4 189.)

K.D. further advised the team that E.D. had sensory issues, speaking about his clothing and his need to bump into things and move a lot. He has a history of hitting his head, having a permanent lump on his forehead for all the times that he has fallen. He appears to be very clumsy, but it is because he has no spatial awareness. She acknowledged that none of the documentation from NYC school indicated that E.D. was constantly bumping into things and clumsy, tripping over his own feet.

K.D. told the CST members E.D. would do behaviors she called stimming. She explained stimming as E.D. blinking, making noises with his throat, with his lip, picking his lip, picking his chin, shrugging his shoulders, pulling at his shirt, clenching his hands, and that he likes to walk in circles. She told the CST that E.D. has a history of choking and punching and hitting and slapping others, including his siblings. K.D. acknowledged during cross-examination that the NYC school had never conducted a functional

behavioral assessment of E.D. She consented to the Marlboro CST evaluating E.D. for OT, speech, and the educational evaluation. No other evaluations or testing was requested by the team or her.

K.D. recalled during the planning meeting that Ms. McMahon and the social worker discussed whether a psychological evaluation should be completed. They stated that the August 2017 psychological evaluation for E.D. was recent enough. E.D. previously had his IQ tested. That testing was in 2013 and 2015.

K.D. was advised that she would receive a letter in the mail with the date of the IEP meeting. She received that notice less than a week before the meeting of September 26, 2018, because the notice is dated September 18, 2018. (P-79.) She thought she was supposed to get copies of the evaluations ten days prior to the meeting. She got the speech evaluation about a week and a half after the September 5 planning meeting. She got the OT and educational evaluations handed to her when she sat down at the September 26, 2018, meeting.

The meeting began ten minutes late. K.D.'s mother, J.G., participated by telephone and was on the speaker phone. Eleanor McMahon, the LDTC, indicated that the special education teacher was out of the building for training, and a fourth grade special education would be attending. That teacher did not arrive until after the recommendation was made by the evaluators to declassify E.D., and after K.D. and her mother expressed their disagreement with the decision. The special education teacher signed the attendance sheet and K.D. and her mother protested. They wanted his name removed as having attended the meeting. She was assured by Ms. McMahon that his signature would be removed from the attendance sheet.

As the meeting began on September 26, 2018, K.D. was handed copies of the OT and education evaluation. The occupational therapist reviewed her evaluation and indicated that E.D. did not qualify for services. K.D. could not follow along with the OT because they had just handed her the evaluation. She and her mother stated their disagreement with that determination. They listened to her, but when her mother, J.G.,

was speaking over the telephone, the others in the room were whispering with one another. In later testimony, K.D. complained that the CST members did not listen to her.

The speech therapist presented her report, stating multiple times that E.D. did not qualify for speech services. K.D. spoke about her concerns regarding the speech evaluation and her mother voiced her opinion.

Eleanor McMahon had completed the educational evaluation and reviewed that during the meeting. K.D. recalls Ms. McMahon stating that E.D. came in with more than two standard deviations and J.G. expressed that the test was a “false positive” because E.D. had a high IQ and should not be scoring below average. Ms. McMahon stated the decision was to declassify E.D.

Both K.D. and J.G. protested the declassification decision. They explained E.D.’s background and prior history and how the previous program he attended served him by working on issues so he could access his academics. K.D. wanted to speak to someone else besides the CST members there, and they offered her a parents’ rights book, which she declined because she had already received it at the planning meeting of September 5, 2018. The CST members reiterated that based upon their evaluations of E.D., he did not qualify for services. K.D. asserted she was under the impression that they would have “tested him a little bit more for the things that we had discussed in the beginning.” (T2 245:14-16.)

K.D. believed that the CST did not listen to her, nor to her mother. The other CST members would be speaking while she or her mother voiced their concerns. She had not been able to read the evaluations she was handed at the start of the meeting, when the evaluators began their review of their reports.

The social worker told K.D. that she would reach out to her supervisor, Dana Blair, who was the Director of Special Services. The social worker assured K.D. she would hear from Blair within the next two days, to determine if there were other ways E.D. could qualify for services. The social worker also told K.D. that the special education teacher’s name would be taken off the attendance sheet.

K.D. thereafter spoke to her mother, J.G. and decided J.G. was better able to discuss the circumstances with Blair so J.G. placed a call to Blair. K.D., nor her mother, heard from Blair within two days. She gave the district the benefit of the doubt, since it was the start of the school year. She did not think that the meeting had “ended” because she was told that the CST members would reach out to Blair.

A few days thereafter, she received the declassification letter, which was dated September 27, 2018, the day after the meeting. (R-6.) She called the school to talk to someone but never got a call back. She then called Blair and spoke to her, providing Blair the correct number for J.G., as Blair claimed to have called back J.G., but had the wrong number. J.G. spoke to Blair on the phone and then K.D. called Blair again. K.D. asserted that Blair told her that she reviewed E.D.’s records and did not think it would be correct to declassify him. They would monitor him for the year and maintain his placement in the co-teaching room with special education and would continue to receive related services. K.D. was told by Blair to disregard the declassification letter.

The following day, the social worker called K.D. and indicated the district wanted more testing done. K.D. was caught off guard because she had not discussed that with Blair the day prior on the phone. The social worker indicated she would communicate with Blair and get back to K.D. The next day Blair called K.D. and K.D. voiced her concerns that she did not want the testing done because they never had disclosed to E.D. that he had autism. “It was implied to me that they were looking for a neuro psych and my interpretation for a neuro psych was a diagnosis.” (T2 255:11-13.) K.D. told Blair they did not need another diagnosis. E.D. was under a lot of stress and anxiety in a new environment and it was not necessary to put him through more testing. She also asserted this was different than what Blair discussed with her two days prior. Blair insisted that was the conversation two days prior about additional testing, and suggested to K.D. to get a parent advocate or have her mother J.G. call in with her for a telephone conference. They arranged the telephone conference to occur the next day, Friday, October 5, 2018.

K.D. wanted to speak to someone above Blair and was told to contact the superintendent. K.D. called the superintendent. His secretary returned the call and

advised K.D. that after she had the telephone conference with Blair, if they did not come to an agreement, he would talk to her thereafter.

The telephone conference was conducted with Blair and another school representative, with K.D. and her mother, J.G. She asked Blair why more testing was needed. Blair indicated that the state of New Jersey has a more narrow scope of what autism is, and they needed to do their own testing for that diagnosis, implying that they did not believe the diagnosis of autism K.D. had provided to them. K.D. again voiced her concern about having E.D. tested and reiterated that when Blair never discussed more testing with her during their initial telephone call. Blair advised that there was miscommunication and if K.D. did not consent to more testing, the District was going to declassify E.D. Blair advised her that she was within her fifteen day window to file for due process. K.D. countered that Blair told her earlier that week to disregard the declassification letter. When pressing Blair to confirm she stated such, Blair abruptly ended the call. K.D. communicated via email with Blair and received a reply from her, with a link to the Parental Rights In Special Education (PRISE) information and attached the information pdf format. (P-L.)

K.D. again called the superintendent. She heard back from his secretary that he would talk to her only if Blair and two other individuals were present. One of those individuals was an attorney consultant. K.D. was unable to set up a meeting in time, taking into consideration the fifteen day time frame to file for due process. She was in fear of losing services that were in place and feared that E.D. would regress, and all the years of work would disappear. She clarified later in testimony that the superintendent meeting did get scheduled, but was cancelled because she filed for due process.

In further email communications with Blair, K.D. reiterated her concerns that Blair had told her to ignore the declassification letter and the special education teacher's name was still on the attendance list. Blair responded that "there may have been a misunderstanding" as it was her recollection that K.D. did not want additional testing. She denied telling K.D. that she could ignore the declassification letter. She advised K.D. the issues would be further discussed at mediation, since K.D. had taken legal action by filing for due process. (P-L.)

K.D. insisted that Blair told her twice that they should disregard the declassification letter. K.D. insisted it was never told to her that she could only disregard the declassification letter if other testing was done. She acknowledged never receiving anything in writing from Blair telling her to disregard the declassification. Despite testifying on direct-examination that Blair sent her an email advising K.D. that she could not ignore the declassification letter, K.D. claimed during cross-examination she would need to recollect her memory to confirm she received such a writing from Blair.

After she filed for due process, K.D. asserted that E.D.'s services were changed, by being decreased. She explained that his speech and OT services had decreased, from his prior NYC IEP. The speech therapist and occupational therapist continued to follow the goals from the NYC IEP. They were not following the schedule from the NYC IEP. They were following the temporary agreement she had entered into for his services to decrease, at the initial planning meeting of September 5, 2018. (R-1) That was the agreement were his services would decrease from September 6, 2018, to September 26, 2018. She had agreed to that because E.D. was starting in a new school and he would be pulled out of class for the evaluations. Her understanding was that his services would revert back to where they were supposed to be, from the NYC IEP. (P-74.) They did not.

In January 2019, E.D.'s pediatrician advised K.D. again that E.D. was diagnosed with autism spectrum disorder. In March 2019, K.D. took E.D. to the neurologist who re-established that E.D. is autistic and has autism spectrum disorder. E.D.'s services needed to continue for E.D.'s communication, social, and sensory issues, as well as his behavioral issues. She believed that if his services stopped, they would see a decline or regression in E.D.

K.D. is concerned about E.D.'s behaviors at home and when in public. He continues to need structure and know what his schedule is going to be. In an unstructured environment, he is unpredictable. He will be stressed, and anxiety ridden. If he does not know what to expect, he asks a repetitive cycle of questions. When shopping in supermarkets, he often puts himself in a corner. He is often in a shopping cart because he just does not move. She gave an example from the day prior when they went to the

supermarket. “And I thought we were going to do well. And he had started with his questions; why are we here? And I explained to him that we needed – we just came back from vacation – how we needed to buy dinner. And he contested what we should have for dinner. And then when we got in the supermarket; why do I have to be here? Why can’t – and he just shut down and sat on the floor and refused to move. At which, that point, I moved him into the shopping cart because I’m shopping with my other children as well, by myself. And we go on about our business.” (T3 17-18.)

In restaurants, E.D. constantly has meltdowns, especially if it is an unfamiliar restaurant. He will protest saying they cannot go. He will isolate himself. He will sit in the corner in a booth. He will sit down, then lay down, and put a jacket over his head. She acknowledged that no one from Marlboro has told her that they have observed E.D. sitting hunched in a ball at school, sitting with his hood over his head, or shutting down.

When they go to fun places, such as an indoor play center, he will shut down. He takes time to warm up to the environment. He engages in parallel play. He will actively participate in physical rough housing play with others, but when that movement stops, he will disengage. If you watch him closely, you will see that he may be with a group, but he is not part of the conversation. She explained they attended a Halloween school dance. He did not immediately want to go. When he got there, it took about twenty minutes for him to begin interacting, and that was when a group of students were chasing one another. When that stopped and they began conversing, E.D. stood with them but did not participate again until it became physical again with chasing one another.

At home E.D. engages in parallel play. On a recent vacation he was playing with his cousins in the pool when they were pushing each other. He then appears as if he is playing because he is still near the group. When you really watch him, you realize he is not engaging. In the pool, when the pushing stopped, he was then just repeatedly going under water.

E.D. requires constant reminders and prompts for showering, bathing, dressing, and eating dinner. He continues to have movement and sensory issues. He is constantly knocking things over, and tripping over his own feet. In the kitchen he is constantly tipping

in the chairs. He gets up and cycles around the kitchen and spins himself on the stools. They are constantly cleaning up spills from cups he knocks over.

She has safety concerns for her E.D., both inside and outside of the school. She explained that before he attended Marlboro, it was common for her to receive three to four phone calls every term from the NYC school nurse that E.D. had bumped his head, run into things, or he had fallen. K.D. asserted that Marlboro school staff had witnessed E.D. constantly bumping into things and being clumsy, because he came home from school one day in January 2019, with a bloody chin. The school never notified her that he had fallen. She had to reach out to the school to find out what had happened. She learned that he ran outside and fell on his face, and cut his face open. There was a report from the school nurse in October 2019, that resulted in them getting an x-ray. K.D. is not aware of any steps the District may have taken to safeguard E.D.

E.D. lacks spatial awareness. At home, if he goes outside to play and nobody is outside, he stands in the middle of the street. They must keep telling him to step back onto the sidewalk.

Historically, E.D. would appear to be playing with others or getting along, and then he would suddenly act aggressively. She has witnessed him choking and hitting and punching his siblings and cousins. He had an incident at Marlboro in December 2018, when she learned that he choked another student while on the bus. She heard about it from the vice principal, who indicated that E.D. would be disciplined. She challenged him being disciplined because he was autistic. She then spoke to E.D., who explained that he and the other student were calling each other names and the other student started yelling at him and would not stop. E.D. put his hands on the other student to get him to stop yelling. She reported this to the vice principal, who then indicated the two students would be interviewed about the incident. No discipline occurred thereafter.

Throughout the 2018/2019 school year, K.D. would email E.D.'s teachers and advised them about his issues at home with stimming behaviors and meltdowns and shutdowns. She did receive correspondence back from the teachers, indicating they did not observe such behavior in school. K.D. acknowledged she never observed E.D. in the

classroom at Marlboro, but first had to assert that the school never invited her to observe him, before answering the question to concede she did not observe him in the classroom. She acknowledged she did not have E.D.'s neurologist, nor any expert observe him in the classroom. She confirmed that although the neurologist stated in his letter that E.D. was diagnosed with autism, there was nothing in writing from the neurologist to confirm her claim that he wanted a neuro-psychological evaluation completed for E.D. for school. K.D. further confirmed that she was aware classification of a student in New Jersey is not about a diagnosis.

K.D. sent email correspondence to the school about an issue on class picture day. E.D. had difficulty that morning at home selecting the clothing he would wear and would not eat breakfast. K.D. emailed the teacher to explain he was having a difficult morning and asked if he could get changed after pictures were taken. On Halloween, he had issues in the morning about his costume and whether he should wear it to school or get changed at school. He went to school upset.

She advised the teachers of homework issues. She disagreed with how his homework was graded. She would advise the teacher in advance that they worked on his homework, but it was not complete. He would receive full credit for an uncompleted homework assignment, as his teacher explained he got full credit for the effort. K.D. noticed E.D. was abbreviating answers with the first initial of a word, and alerted his teacher. K.D. did not agree with the teacher that E.D. should get full credit for abbreviating answers.

E.D. only does well with concrete homework. Reading, writing, and multi-step math problems are a struggle for him. She reported his difficulty to the teachers. The teachers responded that they reviewed the homework in the morning with him, and he was able to explain it. K.D. asserted he only knew what to do because she worked with him on his homework all the time. His writing materials are repetitive. They are the same structure. He follows the same pattern because that is what he learned.

The teachers reported things that he was accomplishing in school, but E.D. could not recreate it at home, especially as to inferencing. He has an incredible memory for

anything factual or concrete. He cannot interpret or decipher information. She explained that he will read a book and is able to provide details from the beginning to the end, but he cannot summarize the book on his own. He needs redirection and guidance to do so.

It is her belief that E.D. has cognitive issues. She conceded there are no cognitive issues referenced in the prior school records from NYC.

K.D. disagrees with the grading system at Marlboro. E.D. receives sixty-five percent of his grade for testing. The other thirty-five percent is subjective grading. She claimed this information was listed on the school's website. She believed that classroom participation, homework and "all that other stuff" making up the thirty-five percent was subjective. (T4 at 208:11-13.)

E.D. came home upset one day in approximately October 2018. He indicated that the speech teacher told him he did not need the services he was getting. K.D. questioned the speech teacher, who denied having told E.D. that. K.D. wanted E.D.'s complaint forwarded to a supervisor, but never heard that it was done.

E.D. had problems during the school year losing things at school. He lost his glasses, his water bottle, and several sweatshirts. She reported the losses to the teachers, who assisted in relocating the items. The glasses were never found.

In April 2019, he came home one day very upset, angry, throwing objects, and saying he hated school and did not like his teachers. He said his teacher spoke to him and told him he was being fresh. He could not elaborate, except to say maybe it was because he was tipping his chair or twirling his pencil. He could not be consoled for about half hour to an hour. He had a meltdown at home. She reached out to his teachers asking for clarification. She had been reporting to the teachers in April that he was having issues at home with sleep, meltdowns, shutting down, claims that he hated school, and he did not have friends. She previously asked to be advised by the teachers if they observed any such issues and she was not contacted by them. When she did contact them, they would deny seeing any such behaviors in school.

When K.D. asked through emails to the teacher about what occurred in school that made him come home so upset, the teacher apologized that he reacted as he did. The general education teacher had questioned E.D. about being fresh with the OT therapist, not wanting to do his work in the OT's room. The OT therapist described his behavior as being uncharacteristic. He had refused to do the task that was presented to him. K.D. inquired about what task he had been working on, and was concerned when told what it was. She did not think it was a task related to a goal from the NYC IEP for OT.

In April, K.D. was told by E.D.'s bus driver that he was written up for emptying his backpack on the bus. (P-5.) The driver indicated that it occurred repeatedly, and would delay the bus because E.D. would have to repack everything before he could get off of the bus. K.D. reached out to the school to find out what was occurring. E.D. reported to her that others were taking things out of his backpack. The school was going to pull the video from the school bus. K.D. did not indicate anything further about this matter in her testimony as to what occurred and the outcome.

K.D. does not want E.D. declassified. She expressed concerns for him for the following school year, as a fourth grader. He was recommended for advanced courses for fourth grade, and she opted not to put him in accelerated courses. She was concerned because in fourth grade he would start switching classrooms and has movement and sensory issues. He will be bumping into others and objects in the hallways for sensory input and due to his lack of spatial awareness. She did concede that even if he were classified, he still would have different teachers and would be walking in the hallways. She asserted it will be unstructured and unpredictable for him with different teachers in fourth grade who have different sets of rules. The classwork will become more difficult, requiring more inferencing and predicting. It will not be as concrete or black and white. He rough houses with others to play and she is afraid he will get hurt.

E.D. cannot generalize anything he learns into real life application. He is good at telling you what he should do when you speak to him, but he cannot apply it to real life situations. He needs the services and supports to remind him, redirect him, and prompt him to keep him in check and on the right path.

K.D. is certain that E.D. will regress. He did well for the 2018/2019 academic year because he continued to receive services during the pendency of due process. The other students will progress socially on their own. He will not have things scripted for him without services, to know how to act appropriately. The teachers are missing his stimming behaviors, which he must be doing in school because he is “non-stop” stimming at home. His stimming will become more obvious to other students as they get older, and he will become a target. He will become more frustrated. Without services, he will “fall apart.” By the time the school recognizes what is going on, it will be too late. K.D. asserted that if E.D. is declassified, he will lose the skills they have built upon in order to access the educational system.

She did acknowledge that the NYC IEP for 2018/2019 did not indicate that E.D. had a history of choking, hitting, or punching others. (P-64.) There were no reports of him having sensory issues, because that was built into the Nest Program. She conceded that the IEP stated “Based on the results [E.D.] scored just like the majority of others in the sensory quadrants.” (P-64.)

K.D. requested independent evaluations through her counsel, during the pendency of her due process claim. She acknowledged that she did not want E.D. tested further at the time of the September 26, 2018, evaluation meeting and immediately thereafter because it would be too stressful on E.D. She denied that he would be stressed by the testing that was subsequently requested.

Leah A. McGuire, Ph.D., testified for the parents/student. She has a Ph.D. in psychology from Columbia University. She is licensed in psychology in New York, New Jersey, and Pennsylvania. She completed two years of doctoral training in the specialty of neuropsychology. She is a nationally certified school psychologist, but not specifically certified in New Jersey as a school psychologist.

She is employed as an adjunct professor at Columbia University, currently teaching a course entitled Neuropsychological Assessment. She also teaches masters and doctoral level psychology students how to test, diagnose, and make appropriate placements and appropriate interventions as to what supports may be needed for

someone. She is an ad hoc reviewer for School Psychology International, which is a journal. She reviews submitted articles and determines whether they are published in the journal. (P-W.)

Dr. McGuire is self-employed with a private practice in neuropsychology, with her office located in New Jersey. (P-W.) She exclusively works with school aged children and adolescents. She works with children diagnosed with autism. She completes evaluations of children by reviewing all previous evaluations, reviewing data from parents, teachers, and CST members, and reviews the child's medical records. She conducts testing for IQ, memory and learning, achievement, and executive functioning, which includes social functioning. She completes observations during the evaluation to look for the absence of typical behaviors and presence of atypical behaviors.

She has previous employment experience in a variety of settings, having worked with in-patient and out-patient individuals, in school settings, day and residential treatment settings, hospitals, and private practice. She has done testing, diagnosing, and collaborating with the NYC DOE to ensure children were getting the right placement and services. She worked in a private high school, with many students with high functioning autism, with anxiety being a component of that population. She has conducted individual and group therapies, and consulted with colleagues in different fields, such as speech and language, and reading specialists, to formulate the needs a kid might have. She was employed in a public school for K through grade twelve. She completed functional behavior assessments. She worked in a day and residential treatment center, which had a program focused on autism, with children ranging from low functioning to very high functioning autism. She has done parent training. She participated in IEP meetings with districts.

She testified previously one time in an administrative law proceeding in New York state, and was qualified as an expert. Dr. McGuire was qualified as an expert in neuropsychological diagnosis and evaluation, and qualified as an expert to complete a diagnosis of autism.

Dr. McGuire was presented as an expert witness to support petitioners' request for an independent neuropsychological evaluation to be completed. She based her determination that there was a need for an independent neuropsychological evaluation, in accordance with E.D.'s diagnostic history "per qualified professionals and based on the inappropriate use and interpretation of data from administered tests in the documents reviewed (see below) [referring to a list of the Marlboro evaluations] to make this determination." (P-V at 1.) Given his "diagnostic history per qualified professionals" and based upon the Marlboro district having incorrectly used and interpreted data from administered tests as a rationale for removing "the rights and protections that a child with disabilities requires" by declassifying E.D., Dr. McGuire opined that "it is critical" that E.D. receive an independent neuropsychological evaluation. (P-V.)

She elaborated during testimony that her recommendation is that E.D. needs the neuropsychological evaluation to assess him for symptoms of autism, to see where there are areas of strength, where there are areas of need, and to determine what appropriate interventions are needed for him to be able to access his education. The person to complete such an evaluation is a neuropsychologist, because that is an individual qualified to integrate all test results from the different areas evaluated and look at the cognitive functioning, such as memory and learning. The neuropsychologist understands all the different areas evaluated and can communicate with the other evaluators and connect them as a team so they can work as a united front.

The neuropsychologist would go into the classroom to observe E.D., and would interview the medical providers, such as the pediatrician, the parents, other evaluators, the service providers, and then integrate those findings. The neuropsychologist would be able to determine what services E.D. needs to get through the day and access his education. A member of the CST is not qualified to provide a diagnosis of autism.

J.D., mother of E.D. submitted to Dr. McGuire "a ton of documents" described as "a mountain" including old IEP's, testing done through the NYC Nest Program, medical records, and the more recent testing from Marlboro. (T3 160:14-21.) She specified only four documents in her report under the heading "Records Reviewed" although she stated she did review all documentation submitted to her by J.D., to formulate her letter report

of April 29, 2019. (P-V.) She confirmed that when writing a report, it is important to be accurate in terms of listing the records that she reviewed. She did not list all the records she reviewed for E.D. because they were not relevant for the letter report.

She confirmed that the diagnosis of autism spectrum disorder has certain criteria that must be met, which are detailed in the Diagnostic and Statistical Manual of Mental Disorders. (DSM-5) Dr. McGuire acknowledged there needs to be a source of information as to how a child meets the criteria for an autism diagnosis, such as by direct observation, observed symptoms that are reported, or through impairments that come up through formal testing measures. She described multiple testing tools and methods to assess an individual for the criteria required for an autism diagnosis, including rating scales. She referred to the ADOS-2 as the “gold standard” for testing. The DSM-5 specifies that the list of criteria that must be met for an autism diagnosis, may come from historical information, while other criteria, such as “clinically significant impairments in social, occupational or other important areas of current functioning” which cannot be found solely upon historical information for the evaluator to determine if that criteria is met.

Dr. McGuire acknowledged that the DSM-5 refers to autism as “spectrum disorder” because the functioning of an individual in the spectrum can present very differently compared to others. There is no set of interventions that must be provided to someone merely because they have a diagnosis of autism spectrum disorder. She recognized that a diagnosis of autism does not automatically mean that student requires special education.

Dr. McGuire confirmed she never met E.D. She did not personally evaluate him. She asserted she was aware of whether he makes eye contact or not through previous evaluations she reviewed describing his eye contact. She confirmed she never observed E.D. in the classroom setting, and only has knowledge of his functioning in that setting from the reports. She was aware of his attention issues from the information obtained from the mother, from speaking to the mother, and from other reports J.D. provided to her. She acknowledged that none of the Marlboro evaluations contained information that E.D. was currently having an attention issue.

Dr. McGuire did not administer any rating scales for E.D. She did not ask that his teachers complete any ratings scales. She did not administer an ADOS-2 to E.D. She did not review any videos of E.D. She detailed in her testimony symptoms that students with high-functioning autism can show. She acknowledged she never saw E.D. exhibit any symptoms. She confirmed that the additional testing for areas of deficits to be assessed, was based upon deficits reported to her by the parents.

Dr. McGuire did not receive a psychological evaluation completed by Marlboro. She recalled seeing an ADOS-2 report in the records she received, indicating a prior diagnosis of autism from 2015. (P-40.) She agreed that an ADOS administered in 2015 might not accurately reflect a child's functioning in 2018.

She confirmed that the ADOS was administered by a CST member, even though she testified that CST members are not qualified to diagnose autism. The ADOS evaluator broke standardization of the administration of the test. Dr. McGuire offered that valid results could be derived from a standardized test that is administered in a non-standardized way, if the evaluator is trained to do so. The evaluator is permitted to break standardization if they recognize they did so, and they give the behavioral observations as to why they did it, such as permitting additional time to complete a task if the child was working diligently otherwise. She did confirm that if the standardization is broken in such a fashion, the test is still given in a standardized, one-on-one manner with the child. She further confirmed that the standardized score is given, which is to compare the child to same aged peers having been tested in the same standardized manner, but the evaluator would need to place an asterisk or otherwise note what deviation occurred.

She explained that there are two main scores on the last page of the ADOS-2. (P-40.) The first score in Social Affect Communication was an overall score of nineteen, which classifies him with autism on the ADOS-2 scale. The second, comparison score, was a ten, which qualified E.D. for an educational classification of autism. That score ranges from one to ten with one being minimally severe, to ten being the highest severity level of autism.

Dr. McGuire reviewed a neurologist report for E.D., with a diagnosis of pervasive developmental disorder. (P-6.) She also saw a neurologist had diagnosed E.D. with pervasive developmental disorder, with a code from the DSM-5 diagnostic manual, which now corresponds to autism spectrum disorder. She affirmed that the neurologist report simply concludes the diagnosis of pervasive developmental disorder, without listing criteria for autism. (P-6.) She identified the document as a “summary of an evaluation” and assumed he had to have evaluated E.D. for symptoms because one does not come up with a diagnosis. She conceded it was not a comprehensive written evaluation of E.D. (P-6.)

There was a document in the records she reviewed provided by the mother, from a pediatrician indicating that E.D. was diagnosed with autism. Dr. McGuire confirmed the pediatrician simply stated the diagnosis and agreed the documentation did not contain any criteria to confirm such a diagnosis. She did see classification records, like the IEP’s, indicating the child was classified as autistic.

Dr. McGuire did see an IQ test result in the documents from the mother, from approximately 2015, which she referred to during her testimony as being an IQ of 137. She recalled there was another report or evaluation from 2017 which also referenced that score. Best practices in her field of work would be to re-administer an IQ test every two to three years. If a major change or big event has happened in a child’s life, the IQ should be tested sooner than two years. The IQ test provides a baseline measure of what can be expected from an individual. She agreed that an IQ does become stable, usually around six years of age or older, it stays “pretty consistent.” (T4 13-14.) There will be circumstances where reassessing an IQ is appropriate, such as when one is tested but motivation, attention, or language issues, might impact the ability of the person being tested to demonstrate their full knowledge. Those issues do change over time. For example, if attention was an issue, and things were done to affect one’s attention, that person should be reassessed to see what their true IQ would be.

IQ testing is usually done during a psychological evaluation. The psychologist will also observe behaviors of the student during the testing and reference them with the child’s IQ results. Dr. McGuire opined that without a psychological report, it would be

difficult to evaluate a child's abilities, to see if the IQ is high, and whether other evaluations show high functioning abilities. If the IQ represents a low functioning child, then low functioning abilities are expected to be seen.

Pursuant to her letter report, Dr. McGuire confirmed having reviewed the Marlboro OT re-evaluation (R-4), the speech and language re-evaluation (R-3), and the educational evaluation (R-5), all completed in September 2018. She also reviewed the speech progress report of March 2019. (R-14 at 4-5.)

Regarding E.D.'s educational evaluation, she found it to be "correct" but too brief in its focus. The chart contained in the educational evaluation on page four, outlined his performance on reading measures. (R-5.) She stated that his skills fell within the average, normal range. With the added knowledge that E.D. has a superior IQ, and he was scoring in the average range for reading, it must be "super frustrating" for him. She explained that the scores from his educational evaluation should not deviate from the IQ score. She explained that when there is a fifteen point difference from the IQ score to the academic testing done, it is considered one standard deviation. Although his academic testing was good, you should expect higher results if his IQ was 137. Some of E.D.'s scoring was more than two standard deviations difference from that IQ. His comprehension score would be three standard deviations from his suspected IQ of 137. If she were testing a child and received such results, she would conclude that a bit more looking into his reading should occur. Although he might be reading accurately compared to his peers, he may be having difficulty with what he is reading. She suggested that behavioral observations usually help to tease it out a bit more.

She reviewed the psychological-educational report that had been completed for E.D. by GLC in 2015 during cross-examination. (P-36.) She was aware that the WPPSI-IV IQ test administered during that evaluation has ten core sub-tests, with only six administered to him. She agreed that the subtest scores ranged from a low of seven for block design which would be low average, to a score of nineteen, very superior, for picture memory. She agreed that having one sub test score in the very superior range generally would not amount to a full scale IQ score being 137, in the very superior range. She confirmed there was an error where the evaluator noted the very superior range of

intelligence overall was 137th percentile. Instead, a score of 137 represents a ninety-ninth percentile range. Based upon these potential errors, and best practices in her field, E.D. should have had a current IQ test done by the District.

She further confirmed there was no reason to suspect that E.D. had a cognitive disability. Based upon the historical behavioral background information from his family and the papers she reviewed, he was at or above expected cognitive levels.

She reviewed E.D.'s math scores which were charted on page five of the educational evaluation. (R-5 at 5.) In applied math problems he scored in the ninety-eighth percentile, causing her to exclaim "What a rock star." (T3 at 186) Then other math performance scores were "within normal limits" so for a super brilliant guy, she would want a better picture of what was going on.

E.D.'s writing abilities scores were charted on page six of the educational evaluation. (R-5 at 6.) Dr. McGuire suggested that execution of writing itself must be "really tricky" for E.D., relative to his cognitive skills. The issue could be teased out through additional testing. Overall, the educational evaluation was a good start and gave a good brief overview, but it does not tell her much, as an evaluator. Behavioral observations should be done to evaluate any areas of weakness because the report is from a computerized program, not specifically tailored to E.D., to see where the support might be needed.

Regarding the speech and language reevaluation completed by Marlboro, Dr. McGuire pointed out that an outdated version of the CASL test was used. (R-3 at 6.) That test was replaced in 2017 with the CASL-2. The Marlboro report was dated as having been completed in September 2018. The scores for E.D. demonstrated that he performed typically for a kid of high-functioning autism and that his cognitive language abilities were wonderful for him. She did suggest that additional sub-testing could have been completed for him with a classification of autism.

The Marlboro S/L re-evaluation tested E.D. for pragmatic and supra-linguistic speech, using two subtests. There are three additional subtests for those areas which

were not included. Dr. McGuire indicated that evaluators typically administer only a few subparts in the CASL, as opposed to all parts. For an autism referral, it would have been helpful to include the three additional tests, but it is not so unheard of for an evaluator to pick and choose a few.

Dr. McGuire is not a licensed speech therapist, has not obtained her certificate of clinical competency, and is not an audiologist. She did acknowledge that the speech evaluator from Marlboro reported that E.D. was very positive about his functioning in the school and had observed him twice in the classroom. That evaluator listed her behavioral observations in her report and no difficulties were observed. Dr. McGuire further confirmed the speech evaluator obtained input from the classroom teacher and the parent.

Dr. McGuire was familiar with the Social Language Development Test, but does not use it in her practice. She was not trained in it. (R-3.) She acknowledged that the test does look at areas that might be considered typically problematic for students with autism, such as social language skills, making inferences, interpersonal negotiations, multiple interpretations of words and meanings, and supporting peers. She acknowledged that E.D. scored average to superior in all areas, falling at or above expected levels, some in the superior range.

Regarding the CASL, three subtests were not administered. She could not recall what those three subtests targeted, except one testing for double meaning. She conceded that testing for multiple interpretations was the same as double meaning, and was glad to see that multiple interpretations was part of the Social Language Development Test, administered by the speech evaluator at Marlboro.

She acknowledged the CASL was a well-respected instrument in 2017. She agreed that there is a one year grace period when a test changes, before the evaluator is required to change over to the new version. She did not know the exact month when the CASL-2 was issued, so she agreed that the evaluator possibly administered the CASL version during the one year grace period. During re-direct, she recalled ordering her CASL-2 program around Christmas 2016, and receiving it in March 2017, around spring

break for her students. If the district tested E.D. with the CASL in September 2018, it would have been outside of the one year grace period. What concerned her more was that not all the tests used on the CASL are still utilized on the CASL-2. The norms are totally different to his age within a certain time frame. She gave an example that if you compared her height to the normal heights in the 1920's, she would be the super tallest person in the world, but if you looked at norms now, she would be of average height.

She agreed that CASL assesses expressive and receptive language and that E.D.'s functioning was average or better. She confirmed that issues with non-literal language and pragmatic judgement are areas associated with autism. They were tested for E.D. through the CASL and he scored in the superior range for non-literal language.

Dr. McGuire agreed during her testimony that there was nothing in the S/L reevaluation to question the validity of the results from a psychometric perspective, as she had noted in her expert report. (P-V.) All the scores matched up. She agreed it looked like a sound evaluation, done by a qualified person, assessing areas commonly associated with autism. (R-3.)

She did not agree that his average to superior language scores indicated that he did not need speech therapy. She recognized that based upon the tests given, E.D. did not meet the criteria for speech and language services in New Jersey. She was uncomfortable with the CASL scores because an old test was used. She had reservations about his pragmatic judgment scores being solidly average, because it was an outdated test.

Regarding the Marlboro OT re-evaluation, Dr. McGuire suggested that there was an error in the scores recorded on the chart on page three regarding the BOT-2. (R-4.) She explained that different evaluators feel comfortable referencing different types of scores, whether they be the scaled scores, the standard scores, or a percentile ranking. She typically does not include raw score data, because it is not very meaningful. She thought there might be a translation issue on the chart because it references a scaled score of thirty, for Fine Manual Control, but scaled scores range from one to nineteen, which equals a standard score of fifty. The chart indicates that the fiftieth percentile is

average, however a standard score of fifty is in the first percentile, a very low score. She was not certain in reviewing the OT report chart which scores were correct for E.D. because the scaled score to standard score, to percentile scale in the descriptive category does not match up. It must be a careless error. If the student was average at the fiftieth percentile, then the standard score should have been 100. She was certain the test had to have been administered correctly, as such a test is easy to administer. She was pointing out the discrepancy that there was no correspondence between scaled, standard, and percentile ranking in the descriptive area. If the numbers were accurate, the testing results would be helpful and demonstrate whether OT services were needed. She would want to talk to the occupational therapist to get the correct scoring, before she interpreted the report. (R-4.) The evaluator should also have referenced what the mean score is and what the standard deviation is.

Dr. McGuire confirmed she was not a trained occupational therapist, nor had she administered the BOT testing. She felt comfortable criticizing the BOT-2 results that were recorded by the OT evaluator. She was shown a document during cross-examination, which she identified as a page from the BOT-2 manual used to convert raw scores to scaled scores. She recognized that the scaled scores ranged from one to thirty-five. She indicated that the BOT-2 is not used to determine a diagnosis of autism.

She confirmed that there were no reported difficulties for E.D. utilizing scissors. There were no reported difficulties or problems with buttoning, unbuttoning, unzipping or turning doorknobs.

Dr. McGuire testified that additional testing by a neuropsychologist should be done, as described in her report and during her testimony. The evaluations by Marlboro were a good start, but more could be done to “tease out” additional information, such as classroom observations. She suggested the District could have also done a functional behavioral assessment. She agreed that if additional testing was done on anyone, not just E.D., that it would be very comprehensive, and the evaluator would get more information about anyone’s functioning by administering all those same assessment tools. She was aware that a CST is not required to do the additional testing she recommended. She further acknowledged that the CST is to determine whether eligibility criteria are met

and what the student's educational needs are, during a re-evaluation. She agreed that those determinations could be made by a CST with less testing than what she described.

Dr. McGuire referred to the evaluators from Marlboro as being "unqualified individuals" in her letter report. (P-V at 2.) She acknowledged during cross-examination that she did not review the evaluators' resumes. She acknowledged that the Marlboro speech evaluator has "a lot of credentials" referring to the letters after her name, referencing her being a licensed speech and language provider and audiologist. Dr. McGuire referred to her own report, reading the portion "unqualified individuals to declassify," then testified that she did not say that the evaluator was unqualified. Rather, she read from her report: "The use of data obtained from limited testing and diagnostic interpretations made by unqualified individuals to declassify a student is not psychometrically sound practice." (P-V at 2.) She explained that the speech evaluator was not qualified to do the diagnostic interpretations within the school setting. She assumed a diagnosis was made, but after reviewing the speech and language re-evaluation, she conceded that the evaluator did not provide a diagnosis in her report, nor did she "remove" a diagnosis. (R-3.)

She confirmed that the occupational therapist also did not make a diagnostic interpretation in her evaluation. (R-4.) Dr. McGuire confirmed that the occupational therapist was qualified to administer the testing that she did to E.D., within the school setting. She further recognized that the occupational therapist is licensed and thus qualified to do testing outside of the school setting.

Dr. McGuire further conceded that the educational evaluator did not make a diagnostic interpretation in her evaluation. (R-5.) Dr. McGuire agreed that the educational assessor held a master's in education and is a LDTC, and thus qualified to administer the testing that she did with E.D.

Dr. McGuire ultimately admitted that her own report was wrong when she referred to "unqualified individuals". She acknowledged she should not have stated that about the Marlboro evaluators.

She indicated that there was nothing discussed about E.D.'s motivation by any of the Marlboro evaluators. She did confirm that the speech evaluator identified E.D. as being focused and attentive. (R-3.) The OT evaluator noted he cooperated throughout the evaluation. (R-4.) The education evaluator stated that E.D. had accompanied her cooperatively and that he was very cooperative during the testing session. (R-5.) The educational evaluator also noted that E.D. had activity level typical for his grade and responded carefully and promptly and generally persisted with difficult tasks. (R-5.) Dr. McGuire denied that all of those notes indicated E.D.'s behavior during the testing. She did recognize that none of the evaluators commented that E.D. displayed behavioral problems during their observations of him in class.

Dr. McGuire confirmed that E.D. did not score below average range in any of the testing she reviewed in the speech evaluation, OT evaluation, and educational evaluation. (R-3, R-4, and R-5.) His scores were at or above where they should be. She also had reviewed E.D.'s report card for the third marking period of the 2018/2019 school year. (R-15.) She agreed that his report card is excellent, with all grades in the nineties. She confirmed there were no comments reported by his teachers for any difficulties.

Dr. McGuire stated in her report that the Marlboro evaluators did not utilize instruments that were established and designed to assess for commonly occurring functional impairments, and for the presence and absence of symptoms associated with autism spectrum disorder. She stated: "To declassify a child with autism based on the aforementioned measures would be a misuse and mis-representation of the obtained data." (P-V.) She explained that by taking away E.D.'s classification, the District negated his diagnosis.

She believed her recommendations for additional testing, and to have a neuropsychological evaluation completed, were warranted, because E.D. was not tested to accurately determine deficits that are commonly associated with a high-functioning autism case. There should have been specifics noted in the behavioral observations such as whether there were any self-stimulating behaviors. The mother's history indicates that E.D. is consistently clearing his throat, rocking, grimacing, things that would be shocking to her if they were not observed by the evaluators. There is no note of even looking for

such behaviors, making her question if they knew what to look for. She does not know how he can be accessing anything with all those physical behaviors going, opining it must be exhausting and distracting for him.

If she were evaluating E.D., and he came in with suspected autism, she would comment on the presence or absence of symptoms associated with autism. Such things should be noted, even if they did not occur, to know whether the evaluator observed the child for such suspected behaviors. She is familiar with seeing colleagues' reports come across her desk from OT and speech which have behavior observations which are very clear about what is and is not present.

There was nothing noted about eye contact in the evaluations. There was nothing noted if he was able to engage in reciprocal conversations. Some of these things could be teased out so nicely in a classroom observation or behavioral observation. She would have loved to have seen a report that mentioned he had excellent eye contact, no self-stimulating behaviors, or that he spoke explicitly. Most of the reports have a statement regarding effort or motivation, but not specific observations looking for behaviors the mother reported to be occurring at home before and after school. She acknowledged that it would be impossible to list everything that was not observed. However, she insisted that the evaluators should have at least remarked about the absence of behaviors associated with high functioning autism and behaviors the mother reported.

She was concerned that there are so many areas reported to be deficits that were not looked at by the evaluators. A bigger picture was needed so that E.D. could get the supports that he needs. He presents with a history of a lot of deficits and the District needs to see where he currently is. Children with autism are seventy percent more likely to have an additional diagnosis, such as anxiety or ADHD. If he has autism, you should be looking for other things as well. She questioned whether he has another diagnosis, and if so, would the combination of disabilities impact his ability to function in school and be safe socially.

She reviewed the NYC IEP and did not see anything in there to show that he had sensory processing issues in school. There were no goals and objectives for sensory

processing. There was nothing in the Marlboro evaluations about sensory processing issues. No tics or self-stimming behavior was reported to be observed by the Marlboro evaluators. She conceded that any issues related to sensory processing were reported from the mother.

She asserted that the areas of deficit that needed further exploration were for study skills, safety, and to enable E.D. to engage in safe behaviors for daily living skills. She affirmed that a neuropsychology report should have been completed.

Credibility analysis

A fact finder is obligated to weigh the credibility of witnesses. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness’ interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

The Marlboro evaluators and teacher who testified, did so in a direct and calm manner. They explained their positions thoughtfully, and how they completed their evaluations. There was no tone of anger or distrust towards the petitioners. None of them possessed a stake or interest in the outcome of the proceeding, so there was no motive or bias detected, despite them knowing that their evaluations were being challenged. They all expressed their opinions with a concern for the child’s well-being, yet held strong in their belief that E.D. was not eligible for classification. I deem their testimony credible.

E.D.’s grandmother, J.G., was presented as a fact witness. Her background in special education was highlighted and often referred to by her, as if to bolster her opinions

and beliefs, and discredit those who evaluated her grandson. Her testimony was broad and rambling, with incomplete phrases and thoughts. She often deflected answering questions directly, during both direct and cross-examination, proceeding on tangents to emphasize her opinions as to why the CST was so wrong in their findings. Her credibility was disabled by her own contradictory and conflicting testimony. For example, when asked a basic question whether E.D. sleeps over at her home, she answered yes, then no, asserting that he wakes up early, and launched into an explanation about his sleeping habits and issues. Her concern for her grandson is recognized and appreciated, as well as her somewhat reluctant admission that she probably could not be objective if evaluating her own grandson.

K.D., mother of E.D., likewise repeatedly deflected answering questions on cross-examination, adding commentary on issues she wished to address or highlight, which was not responsive to the questions. Her concern for her son being declassified, in a new school district, after having years of services since early intervention, pre-school, and K through second grade, is certainly appreciated and recognized to cause her anxiety and stress in navigating the sudden change in academic circumstances. However, the years of receiving such services for E.D. seemed to cloud her ability to listen to the evaluators and reflect on their explanations. She was focused, as was her mother, on her consternation over details such as the meeting starting ten minutes late while she waited with her eighteen-month-old child, and the back and forth as to when a teacher did or did not respond to an email.

Both J.G. and K.D. were so hyper-focused on the staff not recognizing every possible behavior that could be indicative of autism, that they failed to acknowledge that E.D. could actually be doing so well in the classroom, despite it being a difficult transition period. I do not doubt that J.G. and K.D. have witnessed many of the behaviors they detailed about E.D. What hampers the credibility of their testimony is that they report such behaviors as being constant and obvious. They then pivot, disputing the credibility of the staff members who do not see such behaviors, asserting they are untrained and that one must watch very closely to detect the nuanced behaviors, such as parallel play and self-stimming behaviors, such as clearing his throat.

Doctor McGuire testified in a relaxed and somewhat lighthearted manner, with a genuine concern for E.D. To her credit, she admitted that she was mistaken in labeling the Marlboro evaluators as being “unqualified individuals.” She admitted upon further review and questioning, that the speech evaluation was sound. Yet when she returned to testify on re-direct, she again criticized the evaluation. She outlined the Marlboro evaluations and a progress report in her expert report letter, as the only records she reviewed to reach her conclusion. She then testified that she reviewed extensive documentation from E.D.’s mother that was so voluminous it was the size of a mountain. Her letter report did not clearly assert her reasoning and support for the blunt conclusion that a neuropsychological evaluation was critically needed. She was forthright and did not avoid answering unfavorable questions during cross-examination, but did express frustration in not being able to expound upon her answers as if to temper the unfavorable responses being elicited. Her professional candor in correcting and retracting her own statements and assertions, is respected. That ultimately confirmed that her expressed opinion could not be deemed persuasive and unflinching.

The following facts were undisputed by the parties, and I thus **FIND** and adopt as **FACTS**: J.D. and K.D. are the parents of a minor child, E.D., born September 25, 2010. They reside in Marlboro, New Jersey. E.D. was enrolled as a third grade student at the elementary school in Marlboro Township (the District), for the 2018/2019 academic school year. He transferred into the District from the NYC public schools, where he was a classified student, in the category of autism. He received early intervention services in the state of New York, pre-school services, and then special education and related services in NYC public schools, in the Nest Program, from Kindergarten through second grade. An NYC IEP dated March 23, 2018, was to be utilized for the student’s third grade 2018/2019 academic school year.

Based upon a careful review of the documentary evidence and having considered the testimony of multiple witnesses presented by the parties, I further **FIND** as **FACTS** the following: E.D.’s neurologist indicated in 2012 that E.D. was previously diagnosed with pervasive developmental disorder, later deemed to be known as autism spectrum disorder, but did not specify the criteria for such a diagnosis. E.D.’s pediatrician indicated that E.D. was previously diagnosed with autism, but no specific criteria for such a

diagnosis was provided. An ADOS-2 completed by a school psychologist in 2015 determined that E.D. qualified for an educational classification of autism, although cautioned that some results were achieved by not following strict protocol and some standardization had been compromised.

An initial re-evaluation planning meeting was conducted by the Marlboro IEP CST on September 5, 2018. The CST members requested to complete an OT, speech, and educational evaluation for E.D. His mother, K.D. consented to same. She did not request any additional testing. The CST did not request additional testing at that time.

K.D. agreed that starting "9/6/18" with an end date of "9/26/18," E.D. would be in a co-teaching third grade class with a general education teacher and a special education teacher for all subjects. He would receive related services for speech, pulled out two times per week for a twenty-five minute group session; speech in-class once per week for twenty-five minutes; and OT, pulled out two times per week for twenty-five minutes in a group. These services were different from the NY IEP of March 23, 2018, which provided for OT two times per week for thirty minutes; speech three times per week for forty-five minutes, and one speech session per week for thirty minutes; and had parent counseling and training two times per year.

A speech and language reevaluation of E.D. was completed by Debbie Staloff, speech-language specialist for the Marlboro District, who authored a report, dated September 13, 2018. An occupational therapy educational reevaluation was completed by Debra Kurzman for the Marlboro District, who authored a report, dated September 13, 2018. An educational evaluation was completed by Eleanor McMahon, who authored a report signed September 24, 2018.

The CST met on September 26, 2018, with K.D. personally present and her mother, J.G., grandmother of E.D., participating by telephone. The members of the CST advised K.D. and J.G. they determined through their evaluations that E.D. did not qualify for special education and related services, and he was not eligible for same. K.D. and her mother expressed their disagreement with the determination at the meeting, and thereafter to the director of special services, and to the superintendent.

A declassification letter determination was authored on September 27, 2018, by School Social Worker, Natalia Diaz, and received by K.D. a few days thereafter.

The CST suggested soon thereafter that additional testing could be completed, but K.D. did not consent to same. The District asserted its decision to declassify would remain as their determination. K.D. filed for due process, seeking to re-classify E.D.

During the pendency of the due process petition, E.D. remained enrolled in the co-teaching third grade class, with the related services outlined in the agreement signed by the K.D. at the initial evaluation and planning meeting on September 5, 2018. The services provided during the pendency of this matter, were geared toward the goals delineated in the NYC IEP of March 23, 2018, the most recent IEP before the determination to declassify E.D. was made by the Marlboro district.

None of the Marlboro evaluators, service providers, nor E.D.'s classroom teachers, reported any difficulties with E.D. during the 2018/2019 school year. K.D. reported continuing numerous behavioral issues at home and when in public by E.D., and problems with homework and her disagreement with the District's method of grading.

The child's progress report as of the third marking period for the 2018/2019 third grade year, reflected grades ranging throughout all the marking periods from a low of ninety to a high of ninety-nine. The grade scale reflects that an "A" is "excellent" for grades ranging from ninety to 100.

During the pendency of the due process petition, an independent neuropsychological evaluation was requested by the parents for the child. The District denied same and seeks to confirm its denial. Petitioners seek to have E.D. continued as classified, autism spectrum disorder, and receive appropriate special education and related services.

LEGAL ANALYSIS AND CONCLUSION

The federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq., was enacted to ensure that children with disabilities have access to a free appropriate education (FAPE). 20 U.S.C. § 1412(a)(1). FAPE includes special education instruction and related services designed to meet the needs of the child. 20 U.S.C. § 1401(9); N.J.A.C. 6A:14-1.1, et seq. The primary method of ensuring delivery of FAPE is through an IEP. 20 U.S.C. § 1414(d)(1)(A). An IEP outlines the child's present levels of academic achievement and functioning, outlines measurable goals and the services to be provided, and establishes objective criteria for evaluating the child's progress. N.J.A.C. 1414(d)(1)(A)(i); C.H. v Cape Henlopen School District, 606 F.3d 59, 65 (3d Cir. 2010).

If a student transfers to a new school district with an IEP from another state, the new district's CST shall conduct an immediate review of the evaluation information and the IEP, in consultation with the parents, "without delay," and provide comparable programming from the current IEP until a new IEP is implemented. N.J.A.C. 6A:14-4.1(g). The appropriate school district staff "shall conduct any assessments determined necessary" for a new IEP to be developed within thirty days of the date the student has enrolled in the new district. N.J.A.C. 6A:14-4.1(g)(2).

If a change in a child's IEP is sought, whether by the parents or the school district, the burden of demonstrating that the change in placement is appropriate, is upon the school district. Lascari v Board of Education of the Ramapo Indian Hills Regional High School District, 116 N.J. 30, 44 (1989). Here, the District seeks to declassify E.D., asserting that he does not meet the eligibility criteria to be classified as disabled, nor is he in need of special education and related services to access his educational curriculum.

Pursuant to IDEA, "a child with a disability" is one who has a disabling condition, such as autism, and needs special education and related services. 20 U.S.C. §1401(3)(A). In New Jersey, a student is eligible for special education and related services by satisfying a three part test, by demonstrating: 1) the student meets the criteria for one or more of the disabilities defined in N.J.A.C. 6A:14-3.5(c)1-14; 2) the disability

adversely affects the student's educational performance; and 3) the student must be in need of special education and related services. N.J.A.C. 6A:14-3.5(c); H.M. v Haddon Heights Board of Education, 822 F. Supp. 2d 439, 449-450 (D.N.J. 2010).

The District asserts that although E.D. was previously diagnosed with autism spectrum disorder, the diagnosis alone does not immediately classify him as "autistic" for purposes of IDEA. This disability classification is defined as:

"Autistic" means a pervasive developmental disability which significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to emotional disturbance as defined in (c)(5) below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.

N.J.A.C. 6A:14-3.5(c)(2).

A neurologist previously diagnosed the student in this matter, E.D., with pervasive developmental disorder, now referred to as autism spectrum disorder. The exact date of the diagnosis is not known, but the neurologist summarily stated in a 2012 letter that the child had been so diagnosed. The specific criteria utilized to reach that diagnosis is not known. Likewise, petitioner, K.D.'s testimony that the child's pediatrician confirmed that the child had been diagnosed with autism, did not provide the underlying information to support the diagnosis. The ADOS-2 report relied upon by plaintiff was authored by a school psychologist in 2015, who did not testify to authenticate the report and its findings. The petitioners' expert, Dr. McGuire, offered her expert opinion that the ADOS-2 is the "gold standard" for testing, yet acknowledged that the evaluator cautioned that some of the results were achieved by not following strict protocol, and that some standardizations

had been compromised. Dr. McGuire stated her belief that a member of a CST would not be qualified to diagnose autism.

The child came to the Marlboro District with an NYC IEP, classified as autistic. Marlboro was required to act without delay and formulate comparable programming until a new IEP could be implemented. The student was enrolled in Marlboro at the end of August 2018, and the initial planning meeting was conducted by the CST on September 5, 2018. K.D. was present at the meeting and the CST formulated comparable programming pursuant to the incoming NYC IEP, with a similar placement for E.D. in a co-teaching classroom with a general education and special education teacher. The mother consented to reducing the duration and number of sessions for the related services of OT and speech, compared to the NYC IEP schedule. The mother agreed the recommended evaluations to be completed would be for OT, speech, and an educational evaluation. She did not seek any other testing, nor did the other members of the CST recommend additional testing, based upon their review of the NYC IEP, and in consultation with the mother. I **CONCLUDE** the District acted without delay and the CST formulated a comparable placement for the student, pending the completion of the re-evaluations.

The District relies upon their evaluations to support its contention that E.D. does not meet the criteria to be classified “autistic”. They further rely upon subsequent academic performance and observations of the child, to support their position that he is not eligible. The District contends that even if E.D. was classified as autistic, there has been no demonstrated need for special education and related services due to the disability, nor has it been demonstrated that the disability impacts E.D.’s ability to access the educational curriculum.

Debbie Staloff, S/L Specialist for the Marlboro District, was qualified as an expert speech and language therapist. She attended the September 5, 2018, planning meeting where it was agreed that she would complete a S/L reevaluation. She conferred with the student’s mother, K.D., who consented to the evaluation and consented to a reduction in speech therapy time and sessions.

As part of her evaluation, Ms. Staloff conferred with K.D. regarding her areas of concern. She conducted two classroom observations of E.D., with no noted deficits or expressed frustration if not called upon. She spoke to E.D.'s teachers who confirmed he kept up with the pacing and content of the curriculum and was socially adjusted to the new school and engaging well with his peers. She conducted two standardized tests: the Social Language Development Test for Pragmatic Language Skills, and the CASL test, which targeted receptive and expressive information, pragmatic language judgment, and figurative language. E.D. scored within the average range in all areas, with above average results for some skills, on both standardized tests. Based upon the results, E.D. did not meet the criteria to qualify for speech and language services in school because the scores needed to be below the tenth percentile on two standardized tests, as well as demonstrate functional need and education impact, neither of which the student demonstrated.

Dr. McGuire attempted to discredit the S/L evaluation, asserting the CASL was outdated, although may have been administered within a one year grace period. She had opined in her report that the Marlboro evaluators were "unqualified" but admitted that was incorrect and found that the S/L reevaluation was a sound evaluation and assessed E.D. in areas commonly associated with autism.

Ms. Staloff provided speech therapy services to E.D. during the 2018/2019 school year. Although he did not like being pulled out of his class for speech services, he was cooperative. Progress reports issued by Ms. Staloff during the year noted he had shown an understanding of figurative language expressions and was able to apply the sessions in the classroom. He was monitored during push in sessions for his generalization of skills and was observed to be able to carryover skills to the classroom. He complied with the completion of tasks within time constraints given.

An OT educational reevaluation was completed by Debra Kurzman for the Marlboro District, who authored a report, dated September 13, 2018. She was qualified as an expert for OT assessments. She determined it would not be necessary to conduct a sensory evaluation of E.D., because the prior NYC IEP indicated that a sensory profile had been completed and he scored in the majority range. She observed E.D. in his

classroom and did not find any concerns about his classroom functioning. She assessed him in the therapy room for physical neuromuscular skills, fine motor skills, and visual motor/visual perception skills. He transitioned seamlessly from his classroom to the therapy room. During the process, she noticed that the student liked movement breaks, such as jumping on the trampoline.

Ms. Kurzman administered two standardized tests: the BOT-2 and Beery VMI. E.D. scored comparable to peers and above average on manual coordination. He demonstrated excellence in gross motor eye hand coordination tasks.

Dr. McGuire initially attempted to call into question Ms. Kurzman's BOT-2 scoring indicating that the standard scores were reported higher than the range for such scores, yet recognized on cross-examination that she was incorrect in her belief as to what the range of scores was. She agreed that Ms. Kurzman was qualified. She affirmed that E.D. did not score below the average range on any OT assessments. Her main contention regarding the OT evaluation was that Ms. Kurzman charted BOT-2 scores, listing the raw scores, standard scores, and percentile rankings, and appeared to have carelessly recorded the scores under the wrong headings.

Eleanor McMahon was qualified as an expert in conducting educational evaluations. She is an LDTC for the district and completed the educational evaluation report on September 24, 2018. She attended the planning meeting and it was agreed she would conduct the educational evaluation. No concerns were raised regarding the student's cognitive functioning, emotional functioning, nor was it asserted that E.D. had any learning disabilities. She began her evaluation with E.D. by engaging him in conversation and observing him, finding him to be cooperative, polite, and comfortable. His conversational proficiency and activity level were typical for his grade level.

She administered the Woodcock-Johnson Standardized Test and found E.D.'s scores average to high average in reading; high average to very superior in math, and high average in the area of writing. She determined this indicated that E.D. was accessing the general educational curriculum as expected for his age at grade level or above. She confirmed that even if a psychological evaluation with updated IQ were completed, it

would have no bearing on his eligibility because he was not demonstrating any observed condition creating an educational impact or the need for special education programming.

She confirmed having reported that the reading comprehension scores indicated that reading was “an area of relative weakness,” meaning that the weakness was “only present” when comparing E.D.’s performance in reading to his performance in the other areas of mathematics and written language. She emphatically testified and reported that his scores were within the average and high average range for reading and did not indicate that he would have difficulty in that area.

Dr. McGuire found the educational evaluation to be an accurate and good brief overview, yet lacking behavioral observations. She confirmed that Ms. McMahon was qualified to administer the testing that she completed.

Ginger McGurl, E.D.’s third grade general education teacher, testified about his behavior, functioning in class, and grading. He was referred to as a wonderful student, a model student, well behaved, and very academically bright. He was described as an enthusiastic participant in class. She did not find him to need supports or modifications, and did not need specialized instruction in class. His report cards ranged from grades of ninety through ninety-nine across all subject areas throughout three terms. She planned to recommend him for advanced placement in fourth grade.

Socially, Ms. McGurl described E.D. to be like a typical third grade boy. He worked well with his peers, and choose to work with a buddy or group rather than working alone. She denied observing any self-stimming behaviors and never noticed any unusual or atypical behavior from him.

Dr. McGuire, the neuropsychological expert for petitioners, opined that an independent neuropsychological evaluation should be completed. She based her opinion on the mother’s reported behaviors of the child. She reviewed E.D.’s records from his mother, but never met E.D. She did not evaluate him. She did not observe him in any setting. She conceded she erred in stating that the Marlboro evaluators were “unqualified individuals.”

It was not clear specifically what other testing petitioners were seeking or Dr. McGuire was recommending to be completed. She mentioned that a functional behavior assessment would have been a nice addition to the other testing that was done, yet did not expand upon why. The NYC IEP noted there was no need for a behavioral intervention plan. She suggested additional classroom observations should be done by a professional, and that the evaluators should have specifically stated behaviors that were not observed, instead of having no reference at all. Her recommendation for the independent neuropsychological evaluation was to maximize E.D.'s academic, social, and emotional success at home and school. She conceded that a CST is not required to evaluate and test a student for that purpose.

K.D. and J.G. testified a length regarding E.D.'s behaviors and that they had to be occurring in the classroom. Neither observed him in the classroom setting. They both acknowledged academics were never an issue. K.D. discounted Marlboro's grading system. J.G. proffered that the testing results from Marlboro were "false positives" or "very skimpy" and did not show "the true picture." Both believed that the teachers were not trained to look carefully and closely for signs of E.D.'s autistic behaviors and that others would just perceive him as being clumsy or just clearing his throat or coughing when it really would be indicative of self-stimming or other tics.

K.D.'s concern for E.D. being dominant in the classroom was overborn by the firsthand knowledge of the classroom teacher and the observations by the evaluators. The child was observed at school, in the cafeteria and during recess to be interacting and actively engaged in play with his peers and not dominating. He was observed to console or otherwise offer assistance to other students. I do not disclaim the mother's observations of the daily living circumstances with her son and issues in public, such as tantrums and frustration with having to wait at a restaurant and covering his head or tucking into a ball in the corner of a booth in a restaurant. It is the description of the behaviors as being constant and obvious which strains credibility. However, even if such behaviors were as elevated at home and in public as described by E.D.'s mother, they have not been observed by teachers and staff.

K.D. asserted that the incident on the bus when E.D. choked another student, his unpacking of his backpack on the bus, his losing items at school (all apparently located by the teachers except his glasses), and coming home from school with a bloody chin after having fallen, demonstrated his behavioral issues, inability to read others, and having sensory issues and spatial relationship concerns. These incidents occurred throughout the course of the 2018/2019 school year. Such issues were not repetitive or constant school behavioral issues. Her credibility was particularly strained insisting there is a cognitive issue to be addressed, yet that was not even a historical issue in the NYC district.

The first-hand accounts from the teacher and the evaluators, regarding E.D.'s functioning in school, describe the child as a typical third grade boy who socializes appropriately with his peers and excels in his academics. This is supported by the results of the standardized tests that were administered and the evaluations conducted by the Marlboro District. He does have a prior diagnosis of autism spectrum disorder. However, there has been nothing to demonstrate that the disorder has "significantly impacted his verbal and nonverbal communication" in school, or that autism has significantly impacted his social interactions in school, causing an adverse effect on his educational performance. N.J.A.C. 6A:14-3.5(c)(2). I **CONCLUDE** that the District has demonstrated that E.D. does not meet the criteria to be classified as autistic, pursuant N.J.A.C. 6A:14-35(c)(2). I **CONCLUDE** that the required first prong of three part test for eligibility for special education and related services has not been satisfied. N.J.A.C. 6A:14-3.5(c).

Even if E.D. was deemed to meet the classification of the disability of autism, the District has established that the disability has not impacted his ability to access his education. No dominating behaviors were observed in the classroom. None of the teachers witnessed any sensory issues or that E.D. was clumsy or engaging in any self-stimming behaviors. There was no evidence of any cognitive issues. The speech and OT therapist confirmed the student expressed displeasure in having to attend the pull out sessions, and he did not want to miss class. The one time that he was discourteous and uncooperative to the OT therapist was described as uncharacteristic for him. Even missing class for those related services did not impact his academic grading during the 2018/2019 school year, as he received all A's on his report card as of the third marking

period, and the teacher intended to recommend placement in advanced fourth grade. I **CONCLUDE** that the District has sustained its burden of demonstrating that there is no demonstrated need for special education and services due to E.D.'s diagnosis of autism spectrum disorder. I further **CONCLUDE** that the District has demonstrated that E.D. is able to access the educational curriculum, and excels in his academics. I therefore **CONCLUDE** that the District's determination to declassify E.D. shall be affirmed.

When a reevaluation is completed, the IEP team shall have a meeting to determine whether the student continues to be a student with a disability. Notice of the meeting, and copies of the evaluation report(s) shall be given to the parents at least ten days prior to that meeting. N.J.S.A. 6A:14-3.8(f)(1). The notice of the meeting was dated September 18, 2018. The reevaluation meeting occurred on September 26, 2018. K.D. had attended the planning meeting of September 5, 2018, and was an active participant. She personally attended the reevaluation meeting on September 26, 2018, and her mother participated by telephone. She received the speech reevaluation more than ten days prior to the determination meetings. K.D. did not receive the OT and educational evaluations until she was at the meeting.

A procedural violation of IDEA is actionable only if it has impeded the child's right to FAPE; significantly impeded the parents' opportunity to participate in the decision making process; or has caused a deprivation of educational benefits. 20 U.S.C. 1415(f)(3)(E); H.M. v Haddon Heights Bd. of Educ., 822 F. Supp. 2d at 444.

K.D. expressed that she was unable to read through the reports while the evaluators were delivering their findings. She initially testified that the CST members listened to her concerns, but later testified she felt as if the staff did not listen to her complaints. Both K.D. and her mother testified about their expansive backgrounds in dealing with special education issues with family members, their employment histories and dealings with special education professionals, and each attended numerous courses and seminars. They both were able to participate in the meeting and both voiced their objections, although they believed the other CST members were not listening to their opposition. K.D. was subsequently offered additional testing to be completed, but she affirmatively declined same. It has not been demonstrated that the child's right to FAPE

was impeded, nor that the parents were significantly impeded in the opportunity to participate in the decision making process. K.D. was actively involved in the process, with her mother, from the start of the planning meeting through the determination meeting. It has not been demonstrated that the receipt of the notice of meeting and two evaluations with less than ten days notice caused a deprivation of educational benefits. I **CONCLUDE** that the procedural error in failing to provide notice and reports within ten days of the meeting, did not adversely impact or otherwise prejudice petitioners, to reverse the declassification.

Federal and state regulations provide that parents are entitled to obtain an independent educational evaluation of their child, at the public's expense, when a public agency conducts an evaluation and the parent disagrees with that evaluation. 34 CFR §300.502(b)(1). "Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is a disagreement with the initial evaluation or a reevaluation provided by a district board of education." N.J.A.C. 6A:14-2.5(c). "The request for an independent evaluation shall specify the assessment(s) the parent is seeking as part of the independent evaluation request." Id.

Here, petitioners seek an independent neuropsychological evaluation, and vaguely asserted additional testing to "tease out" the behaviors of the student by engaging in further observations of the student in the classroom and other settings. K.D. asserts E.D. has cognitive issues. The NYC IEP stated that the previous WPPSI-IV found E.D. to be functioning in the superior range of intelligence, with an IQ score of 137. The NYC IEP indicated that visual memory, understanding patterns, and E.D.'s language skills were "all above age expectations" and "felt to be an accurate reflection of E.D.'s cognitive functioning." (P-64.) There were no historical reports or records presented to demonstrate E.D. has cognitive functioning issues.

K.D. was offered additional testing of E.D. after the determination meeting. She declined it. The due process request she filed did not request an independent evaluation. It was not until after that petition was filed, and petitioners retained counsel, that it was asserted an independent evaluation was requested. Notwithstanding the tardiness of the request, the independent neuropsychological evaluation sought, would test for areas that

were not historically at issue in the NYC IEP, nor requested by the mother at the initial reevaluation planning meeting. The NYC district, and petitioners, were historically satisfied with the high IQ score and consideration of E.D. as high functioning. The main areas of concern were that E.D. tended to be a dominate member in his group and he needed to improve his ability to understand abstract and figurative language. The NYC IEP did not address the mother's claimed tics, self-stimming, sensory issues with spatial relationship management, nor sudden aggressive behavior. The NYC IEP noted E.D.'s "steady progress" working on areas of dominance and pragmatic skills.

Petitioners contend they are entitled to an independent evaluation if they are contesting the District's reevaluations, but the relief is not automatic under the circumstances as to how the request was asserted here. Additional testing was offered, but declined by the parent. The due process petition was filed. The tardy request for an independent evaluation cannot be honored, particularly for the type of test asserted to be "critically" needed, based upon hollow claims of cognitive deficits. I **CONCLUDE** that the request for an independent neuropsychological evaluation shall be denied.

Several other areas of relief were addressed and argued in petitioners' Post Summation Brief, which were not asserted in the petition, nor in the respondent's petition. All such other claimed forms of relief, not otherwise addressed within this decision, are denied.

ORDER

It is **ORDERED** that petitioners request to reclassify the student for eligibility for special education and related services is **DENIED**. The District's declassification of the student is **AFFIRMED**.

It is further **ORDERED** that the District's request to deny petitioners' request for an independent neuropsychological evaluation of the student, is **GRANTED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2019) 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 (2019). 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.



June 10, 2020

DATE

ELAINE B. FRICK, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

/dm

APPENDIX

WITNESSES

For petitioners/parents and student:

J.G., grandmother
K.D., mother
Leah McGuire

For respondent, the District:

Debra Kurzman
Debbie Staloff
Eleanor McMahon
Ginger McGurl

EVIDENCE

For petitioners/parents:

- P-1 NYC Early Intervention Program-Parental Consent for Evaluation, dated March 9, 2012, by Gingerbread Learning Center (GLC)
- P-2 GLC Early Intervention (EI) Summary, undated (2 pages)
- P-3 GLC EI Occupational Therapy (OT) evaluation March 19, 2012 (6 pages)
- P-4 GLC EI Speech/Language (S/L) evaluation March 19, 2012 (6 pages)
- P-5 GLC EI Psychological evaluation March 19, 2012 (6 pages)
- P-6 Letter, dated April 2, 2012, from Dr. Steven B. Schwartzberg, Neuroscience Associates of New York, regarding E.D. clinical diagnosis
- P-7 Individualized Family Service Plan (IFSP) April 11, 2012, from NYC EI program (16 pages)
- P-8 GLC EI Physical Therapy (PT) evaluation April 25, 2012 (3 pages)
- P-9 PREMARKED, NOT ENTERED
- P-10 PREMARKED, NOT ENTERED
- P-11 PREMARKED, NOT ENTERED

- P-12 PREMARKED, NOT ENTERED
- P-13 NYC EI IFSP 1st review, IFSP eff. Start date: October 14, 2012 (3 pages)
- P-14 NYC EI IFSP 1st annual, IFSP eff. Start date: April 14, 2013 (4 pages)
- P-15 Children at Play Psychological Evaluation April 9, 2013, by Caroline D'Alessio, M.S. (6 pages)
- P-16 Children at Play Social History evaluation September 25, 2010, by Phyllis Africano, LMSW (5 pages)
- P-17 Children at Play Education evaluation, April 10, 2013, by Joan Levinson, Ed.M., SAS (5 pages)
- P-18 Thursday's Child letter April 22, 2013, by Jacqueline O'Donnell, MS, Ed.
- P-19 Children at Play OT evaluation April 30, 2013, by Shannon Grady-Tarentino (5 pages)
- P-20 Children at Play PT evaluation April 30, 2013, by Christine McCaffrey, PT
- P-21 Letter dated April 30, 2013, from Dr. Steven B. Schwartzberg, Neuroscience Associates of New York, regarding E.D. clinical diagnosis
- P-22 Children at Play S/L evaluation May 6, 2013, Gina Vitucci, MA, CCC/SLP (4 pages)
- P-23 Individualized Education Program (IEP) New York City (NYC) Department of Education (DOE), date of IEP meeting: June 11, 2013 (18 pages)
- P-24 GLC Educational Annual Review May 12, 2014 (3 pages)
- P-25 GLC Provider Annual Report-Speech May 12, 2014 (2 pages)
- P-26 GLC Provider Annual Report-OT, May 14, 2014, GLC Provider Annual Report-PT, May 15, 2014 (2 pages)
- P-27 GLC Social History Update, May 20, 2014 (2 pages)
- P-28 IEP NYC DOE, date of IEP meeting: June 13, 2014 (19 pages)
- P-29 New York State Education Department IEP Form, date of IEP meeting: August 6, 2014 (9 pages)
- P-30 Dr. Nila Y. Patel prescription for OT and PT, August 20, 2014
- P-31 ASD Program Inquiry Form for Parents and Providers by NYC DOE, November 9, 2014
- P-32 Social History Update GLC , January 14, 2015 (2 pages)
- P-33 Teacher Report GLC, January 16, 2015 (3 pages)
- P-34 GLC Provider Graduate Report PT, January 16, 2015

- P-35 S/L Therapy Progress Report January 24, 2015, NYC DOE (3 pages)
- P-36 Psychological-Educational Report Turning 5, Gingerbread/Small World Preschool, February 5, 2015 (4 pages)
- P-37 Psychoeducational Evaluation Report NYC DOE, February 5, 2015, reevaluation (4 pages)
- P-38 GLC Graduate Report-OT February 8, 2015 (2 pages)
- P-39 GLC Provider Annual Report-PT, April 21, 2015 (3 pages)
- P-40 Autism Diagnostic Observation Schedule 2 Report GLC, evaluation dates: April 14, 2015 and April 22, 2015 (7 pages)
- P-41 GLC Progress Report-Speech 3rd quarter and annual, April 30, 2015 (2 pages)
- P-42 GLC Provider Annual Report-OT, May 7, 2015 (2 pages)
- P-43 NYC DOE Prior Written Notice (Notice of Recommendation) May 14, 2015 (3 pages)
- P-44 GLC Social History Update May 21, 2015
- P-45 MARKED, NOT ADMITTED
- P-46 IEP-NYC, projected date IEP is to be implemented: September 9, 2015 (24 pages)
- P-47 PREMARKED, NOT ENTERED
- P-48 IEP-NYC, projected date IEP is to be implemented: May 2, 2016 (17 pages)
- P-49 MARKED, NOT ADMITTED
- P-50 IEP-NYC, projected date IEP is to be implemented: April 20, 2017 (17 pages)
- P-51 Eden II Programs Psychological Evaluation August 8 , 2017 (8 pages)
- P-52 NOT ADMITTED
- P-53 PREMARKED NOT ENTERED
- P-54 PREMARKED NOT ENTERED
- P-55 PREMARKED NOT ENTERED
- P-56 PREMARKED NOT ENTERED
- P-57 PREMARKED NOT ENTERED
- P-58 PREMARKED NOT ENTERED
- P-59 PREMARKED NOT ENTERED
- P-60 PREMARKED NOT ENTERED

- P-61 PREMARKED NOT ENTERED
- P-62 PREMARKED NOT ENTERED
- P-63 PREMARKED NOT ENTERED
- P-64 IEP NYC, projected date IEP is to be implemented: April 16, 2018 (16 pages)
- P-65 PREMARKED NOT ENTERED
- P-66 PREMARKED NOT ENTERED
- P-67 PREMARKED NOT ENTERED
- P-68 PREMARKED NOT ENTERED
- P-69 PREMARKED NOT ENTERED
- P-70 PREMARKED NOT ENTERED
- P-71 ENTERED AS R-1: Marlboro Township BOE "Notes Following an IEP Team Meeting to Develop an IEP" dated September 5, 2018
- P-72 ENTERED AS R-2: Marlboro Township Public Schools Reevaluation Planning-Additional Assessment Warranted, September 5, 2018 (4 pages)
- P-73 PREMARKED NOT ENTERED
- P-74 IEP-NYC, projected date IEP is to be implemented: April 16, 2018; date of meeting: March 23, 2018 (16 pages)
- P-75 PREMARKED NOT ENTERED
- P-76 ADMITTED AS R-5: Marlboro Township Public Schools Educational Evaluation, September 12, 2018 (9 pages)
- P-77 ADMITTED AS R-4: Marlboro Township Public Schools OT Educational Reevaluation, September 13, 2018 (6 pages)
- P-78 ADMITTED AS R-3: Marlboro Township BOE S/L Re-evaluation (8 pages)
- P-79 Marlboro Township "Invitation for Reevaluation Eligibility Determination and IEP Development (if feasible)" September 18, 2018 (2 pages)
- P-80 ADMITTED AS R-6: Marlboro Township Reevaluation Eligibility Determination – Declassified, September 27, 2018 (3 pages)
- P-81 PREMARKED NOT ADMITTED
- P-82 PREMARKED NOT ADMITTED
- P-83 PREMARKED NOT ADMITTED
- P-84 PREMARKED NOT ADMITTED
- P-85 PREMARKED NOT ENTERED

- P-86 Ms. McGurl letter to parents, October 31, 2018
- P-87 ENTERED AS R-7: Marlboro Township BOE S/L Progress Report, November 2018 (3 pages)
- P-89 PREMARKED NOT ENTERED
- P-90 PREMARKED NOT ENTERED
- P-91 ENTERED AS R-9: Marlboro Township BOE S/L Progress Report, January 2019 (4 pages)
- P-92 PREMARKED NOT ENTERED
- P-93 PREMARKED NOT ENTERED
- P-94 PREMARKED NOT ADMITTED
- P-95 PREMARKED NOT ENTERED
- P-96 PREMARKED NOT ENTERED
- P-97 PREMARKED NOT ENTERED
- P-98 PREMARKED NOT ENTERED
- P-99 PREMARKED NOT ENTERED
- P-100 PREMARKED NOT ENTERED
- P-A ENTERED AS R-10: Report Card Marlboro Township school year: 2018-19 marking period 2
- P-B PREMARKED NOT ADMITTED
- P-C PREMARKED NOT ADMITTED
- P-D PREMARKED NOT ADMITTED
- P-E PREMARKED NOT ENTERED
- P-F PREMARKED NOT ENTERED
- P-G PREMARKED NOT ENTERED
- P-H Page 1: Speech & Language Happenings page signed by Debbie Staloff, undated; page 2: Spinning Toward My Speech Goals worksheet, undated; and page 10: Learning Box worksheet regarding bus scene
- P-I PREMARKED NOT ENTERED
- P-J PREMARKED NOT ADMITTED
- P-K PREMARKED NOT ADMITTED
- P-L Emails with heading "Phone Conference" (7 pages)
- P-M PREMARKED NOT ADMITTED
- P-N PREMARKED NOT ADMITTED

- P-O PREMARKED NOT ADMITTED
- P-P Page 14: Snow day homework page
- P-Q Pages numbered 5-8: Emails
- P-R PREMARKED NOT ENTERED
- P-S PREMARKED NOT ENTERED
- P-T PREMARKED NOT ADMITTED
- P-U PREMARKED NOT ADMITTED
- P-V Neuropsychological Evaluation by Leah A. McGuire, Ph.D., April 29, 2019
- P-W Curriculum vitae for Leah A. McGuire, Ph.D. (4 pages)

For respondent, the District:

- R-1 Notes Following an IEP Team Meeting to Develop an IEP, dated September 5, 2018
- R-2 Reevaluation Planning – Additional Assessment Warranted, dated September 5, 2018; Consent for Additional Testing; Meeting Attendance Sign-In Sheet; Parental Rights in Special Education (PRISE) (4 pages)
- R-3 Marlboro Township BOE, Department of Special Education, Speech and Language Re-Evaluation, dates of evaluation: September 6, 7, 13, and 13 [sic], 2018, by Debbie Staloff, M.S., CCC-SLP/A (8 pages)
- R-4 Marlboro Township Public Schools, Occupational Therapy Educational Reevaluation, date of evaluation September 13, 2018, by Debra Kurzman, M.Ed., MSOT, OTR/L, date of report September 21, 2018 (5 pages)
- R-5 Marlboro Township Public Schools, Education Evaluation, date of evaluation, September 12, 2018, by Eleanor McMahon, M.Ed. (9 pages)
- R-6 Marlboro Township Public Schools, Reevaluation Eligibility Determination- Declassified, dated September 27, 2018, by Natalia Diaz, School Social Worker; Meeting Attendance Sign-In Sheet, meeting date September 26, 2018 (3 pages)
- R-7 Progress Report 2018/2019 School Year, November 2018; Speech and Language Progress Report, November 2018 (4 pages)
- R-8 Marlboro Township Public Schools Report Card, School Year: 2018-19, Marking Period 1

- R-9 Progress Report 2018/2019 School Year, January 2019; Speech and Language Progress Report, January 2019 (4 pages)
- R-10 Marlboro Township Public Schools Report Card, School Year: 2018-19, Marking Period 4 [sic] (Note by ALJ: document reflects Marking Period 2)
- R-11 Debbie Staloff resume (3 pages)
- R-12 Eleanor B. McMahon resume (3 pages)
- R-13 PREMARKED, NOT ENTERED
- R-14 Progress Report 2018/2019 School Year, April 2019; Speech and Language Progress Report, March 2019 (5 pages)
- R-15 Marlboro Township Public Schools Report Card, School Year: 2018-19, Marking Period 4 [sic] (Note by ALJ: document reflects Marking Period 3)
- R-16 PREMARKED, NOT ENTERED
- R-17 PREMARKED, NOT ENTERED
- R-18 MARKED, NOT ENTERED
- R-19 MARKED, NOT ENTERED