



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 02828-20

AGENCY DKT. NO. 2020-31216

**NETCONG BOROUGH BOARD
OF EDUCATION,**

Petitioner,

v.

M.N. ON BEHALF OF Q.N.,

Respondent.

Cherie L. Adams, Esq., for petitioner (Adams, Gutierrez & Lattiboudere,
attorneys)

M.N., respondent, pro se¹

BEFORE **MARGARET M. MONACO**, ALJ:

Record Closed: October 16, 2020

Decided: November 13, 2020

STATEMENT OF THE CASE

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the implementing federal and state regulations. The Netcong

¹ Although respondent did not appear for the hearing, she participated in the matter before the hearing and submitted a post-hearing submission.

Borough Board of Education (the District) seeks an order denying respondent's request for independent evaluations.

PROCEDURAL HISTORY

On February 5, 2020, the District filed a Request for Mediation/Due Process seeking an order denying respondent's request for independent evaluations; specifically a comprehensive neuro-psychological evaluation; a comprehensive speech and language evaluation; a comprehensive educational evaluation; and an auditory processing evaluation.² The matter was transmitted to the Office of Administrative Law for a hearing, and the hearing was scheduled for May 27 and June 17, 2020, which was adjourned at the District's request with the consent of the parent (Ms. N.). During a telephone conference on April 23, 2020, the hearing was rescheduled for July 17, 2020 and Ms. N. was directed to file an answer. No answer was filed by the scheduled hearing date, and Ms. N. advised by e-mail dated July 15, 2020 that she would not be attending the hearing. The hearing was held, via Zoom, on July 15, 2020. Ms. N. did not attend the hearing, during which I permitted ex parte proofs by the District. Following the parties' receipt of the transcript of the hearing, the parties submitted post-hearing submissions in support of their respective positions on October 16, 2020, and the record was closed.³

FACTUAL DISCUSSION

At the hearing, the District offered testimony by the District's child study team (CST) coordinator and learning disabilities teacher consultant (LDTC) (Amy Henry); the school psychologist (Jamie Anastasio); and the District's speech/language pathologist (Danielle Painter). The sequence of events and the surrounding facts are undisputed. Based upon a review of the testimony and the documentary evidence presented and having had the opportunity to observe the demeanor of the witnesses and assess their

² The transmittal documents reflect that the Office of Special Education Policy and Dispute Resolution received the District's Request for Mediation/Due Process on February 6, 2020.

³ The majority of the parent's submission includes facts that were not offered at the hearing. Inasmuch as these facts are beyond the scope of the record, they will not be considered.

credibility, I **FIND** the following pertinent **FACTS** and accept as **FACT** the testimony set forth below:

Q.N. was in the third grade during the Spring of 2018. Q.N. scored a 763, Level 4, and “met expectations” on the Spring 2018 PARCC English Language Arts/Literacy Assessment. (P-1.) She scored a 56 in reading and a 37 in writing and “met expectations” in both areas. (Ibid.) Q.N. “partially met expectations” on the Spring 2018 PARCC Mathematics Assessment. (Ibid.)

Amy Henry (Henry) has been employed by the District for twenty-five years and currently serves as the District’s LDTC and CST coordinator. She holds a bachelor’s degree in special education and a master’s degree in learning disabilities, along with a special education teacher of the handicapped certificate, a general education or elementary school teacher certificate and a LDTC certificate.

On April 29, 2019, Ms. N. sent an e-mail to Henry requesting that Q.N., who was then in the fourth grade, be evaluated by the CST. (P-2.) On May 6, 2019, Henry sent an Invitation for Initial Identification and Evaluation Planning meeting to Q.N.’s parent, which scheduled a meeting for May 20, 2019. (P-3.) The meeting was held on May 20, 2019, and Henry, Ms. N., school psychologist Jamie Anastasio (Anastasio) and a general education teacher attended the meeting. (P-4.) At the meeting, Henry completed an Initial Identification and Evaluation Planning – Proposed Action notice (P-4), and Henry sent an Initial Identification and Evaluation Planning – Evaluation Not Warranted notice to Q.N.’s parent on May 21, 2019. (Ibid.) The notices memorialize that, as a result of the meeting, the District “proposed that an evaluation is not warranted to determine if the student has a disability” and that “[i]t was determined that the student is not suspected of having a disability which adversely affects the student’s educational performance, and is not in need of special education and related services, or speech-language services only.” The May 21, 2019 notice documents that the procedures, tests, records or reports and factors used in determining the action included a review of student’s records and current progress; Q.N.’s grades and PARCC assessments; and parental input. (Ibid.) It further documents that Q.N. “will be moved to . . . [a Response to Intervention (RTI)] plan to incorporate strategies that can be put into place to address current behaviors being seen

in class,” which “are currently hindering the student’s ability to work to her potential,” and that “[c]ounseling will be offered within the school to address any concerns and assist with strategies.” (*Ibid.*) RTI is a program in the school that allows a student to receive additional support from teachers in areas in which the student is deficient or struggling. This assistance takes place in the general education classroom by the teacher. Henry, who attended the meeting, described that the parent and staff discussed the parent’s request for evaluations; they obtained information from teachers regarding Q.N.’s performance; the CST determined that an evaluation was not warranted at that time; and the District offered RTI and counseling to Q.N. Anastasio, who attended the meeting, explained that the CST “decided not to evaluate [Q.N.] because she was performing on par with her same aged peers in her classroom, and all the data showed that she was within the average range.”

Ms. N. later provided the District with a note from Dr. Nicole Guanci, M.D., who diagnosed Q.N. with unspecified depressive and anxiety disorders on May 28, 2019. (P-5.) On May 29, 2019, a Section 504 Determination and Accommodation Plan (504 Plan) was created for Q.N. (*Ibid.*) The 504 Plan provided several accommodations to assist with Q.N.’s academic progress, including providing Q.N. with advance notice of transitions, extended time on classroom assessments, breaks and redirection back to task as needed; additional time for classroom assignments, tests and/or quizzes; and homework help opportunities after school. (*Ibid.*) It also provided that Q.N. would have access to counseling with the school psychologist on an as needed basis; she would be in a small group for all State assessments; she would be allowed to have preferential seating close to the source of information; and the timeframe, type and/or amount of homework would be modified as needed. (*Ibid.*)⁴

Q.N.’s final grades for the 2018–19 school year ranged from 79 through 95, falling within the average and above average range. (P-6.) She achieved an 85 in language arts; an 83 in reading; a 94 in spelling; a 79 in mathematics; a 90 in science; and a 95 in social studies. (*Ibid.*)

⁴ Q.N.’s 504 Plan was amended on September 6, 2019 to accurately reflect her diagnosis of unspecified depressive and anxiety disorders. (P-7.)

On October 2, 2019, Ms. N. provided Henry with a second request to have Q.N. evaluated by the CST. (P-8.) In response to the parental request, on October 4, 2019, Henry sent an Invitation for Initial Identification and Evaluation Planning meeting to Q.N.'s parent, which scheduled a meeting for October 17, 2019. (P-9.) A meeting was held on October 17, 2019, and Henry, the parents, a general education teacher and the 504 officer attended the meeting. (P-10.) Although not reflected on the attendance sign-in sheet, Anastasio testified that she also attended this meeting. On October 17, 2019, the parent was provided with an Initial Identification and Evaluation Planning–Proposed Action notice. (Ibid.) That notice memorialized that, as a result of the meeting, the District “proposed that an evaluation is warranted to determine if the student has a disability” and that “[i]t was determined that the student is suspected of having a disability which adversely affects the students educational performance, and is in need of special education and related services, or speech-language services only.” (Ibid.) The areas of suspected disability included communication impaired and specific learning disability. (Ibid.) The District proposed, and Ms. N. consented to, an educational evaluation, a psychological evaluation, a speech/language evaluation and a social history. (Ibid.) Henry, who attended the meeting, described the factors considered in making this determination. She testified, “We re-looked at all of the scores and everything that she had gained, but we also really weighed in on mom’s request, and mom really felt there was something else going on and asked that we please look into that.” Henry noted that “mom had concerns with her comprehension and . . . processing [s]o in those two areas we decided to check to see if there was a specific learning disability, as well as to see if there was any kind of communication impairment.” The CST determined to do an educational evaluation and psychological evaluation to determine if there was a specific learning disability, a speech and language evaluation to determine if there was a communication impairment, and a social history.

Alexis DeVita, a social worker with Morris County Educational Services, completed a social evaluation and authored a report regarding her evaluation. (P-12.) Her evaluation consisted of an interview with Ms. N. on December 5 and 11, 2019, and her report was considered by the CST as a social assessment.

Henry conducted an educational evaluation and authored a report dated December 13, 2019 regarding her evaluation. (P-13.) As part of her evaluation, Henry considered input from Q.N.'s teacher and parents and conducted a classroom observation of Q.N. Henry documented in her report that Q.N.'s English and Language Arts (ELA) teacher reported that Q.N. worked well with a partner or in a group when instructed; her grades in ELA fluctuate; she seemed to have some difficulty with comprehension and written assignments; she was sometimes resistant to doing work in class; she was hesitant when completing an assignment or answering a question; and she did not always have what she needed to be successful in class. Henry administered the Woodcock Johnson IV Tests of Achievement and Tests of Oral Language (WJ-IV). She administered the WJ-IV consistent with test protocols. Henry explained that she typically administers the WJ-IV when conducting a learning assessment, and the WJ-IV tests all areas needed to determine if there is a specific learning disability. It is a recognized, standardized test that is normative based and used to assess a student's actual levels of achievement in reading, math, written language and oral language. The results of Henry's testing revealed that all of Q.N.'s scores fell within the average range. Q.N.'s basic reading skills and listening comprehension were in the average range. Q.N.'s oral expression, reading comprehension, math calculation and math problem solving fell within the low average range. Q.N.'s reading fluency and written expression were in the above average range. In Henry's professional opinion, the test results were valid and reliable.

Anastasio conducted a psychological evaluation of Q.N. on December 19, 2019 and authored a report regarding her evaluation. (P-15.) Anastasio has been employed by the District for two years as the school psychologist. She holds a bachelor's degree in psychology, a master's degree in school psychology and a school psychologist certificate. She is qualified to administer a multitude of assessments, including psychological, educational, behavioral and developmental assessments. As part of her evaluation, Anastasio conducted a cognitive assessment (i.e., an I.Q. test) and reviewed student records. She also had an informal interview with Q.N., conducted behavioral observations during testing, and spoke with Q.N.'s teachers during the initial planning meeting. Anastasio followed her normal procedures with respect to her assessment of Q.N. She administered the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-

V), which is a standardized I.Q. test that measures the student's cognitive and functional abilities. On the WISC-V, Q.N. had a full-scale I.Q. of 92, which falls in the average range. On the five domains that go into the full-scale I.Q. score, Q.N. scored in the average range on verbal comprehension, visual spatial and processing speed, and she scored in the very low range in fluid reasoning and working memory. Anastasio described that Q.N. did "very well with words in vocabulary" and she was "able to articulate herself well." She did "well with putting pieces together in her mind to figure out answers on her own, and she is able to do pencil and paper tasks with scanning, using her eyes easily." Anastasio stated that "[f]luid reasoning and working memory were weaknesses for her." Regarding fluid reasoning, "she has trouble applying rules in different areas." Regarding working memory, which was lower, "she has more trouble holding onto information in her mind and using it right away." Anastasio summarized that Q.N. "has an overall intelligence in the average range" and "[s]he is a little lower in working memory . . . and non-verbal reasoning [s]o she may need some support with extra directions or notes that she can refer to." Based on the evaluation plan, one of the areas being reviewed was whether Q.N. had a specific learning disability. Anastasio explained that to determine if such a disability exists, Q.N.'s full scale I.Q. is compared with her educational scores to ascertain whether a discrepancy exists between the scores. She testified, "[i]n the case of Q.N., there was no discrepancy since she scored within the average range on most of the indices in the educational assessment," and "none of them was a big enough discrepancy to qualify her as specific learning disability." In Anastasio's professional opinion, Q.N. may need some reminders such as notes for her working memory, and she may have more trouble with following directions and applying rules in different settings for her fluid reasoning, but this can be addressed through a 504 Plan, and the 504 Plan and RTI strategies put in place were sufficient to address any of Q.N.'s relative weaknesses.

Danielle Painter (Painter) has been employed by the District for four and a half years as the speech language pathologist. She holds a bachelor's degree in speech language pathology, a master's degree in communication sciences and disorders, a standard speech language specialist certificate and a speech language pathologist's license. She is qualified to administer standardized tests that assess a student's language, fluency, articulation and voice. Painter conducted a speech and language evaluation and authored a report dated December 13, 2019 regarding her evaluation. (P-

11.) Painter's evaluation consisted of two standardized assessments, along with an informal assessment of Q.N.'s voice and fluency. She also reviewed information from the initial meeting and Q.N.'s report card, and she had informal conversations with Q.N.'s ELA teacher. Painter administered the Test of Auditory Processing Skills-Third Edition (TAPS-3), which assesses what a child understands from what they hear. Index Standard Scores ranging from 85 to 115 are considered within normal limits. On the TAPS-3, all of Q.N.'s index scores except for auditory memory fell within the average range. She achieved an overall standard score of 91, and standard scores of 97 for phonological skills, 83 for auditory memory and 98 for auditory cohesion. Painter explained that Q.N.'s "auditory memory standard score was just below the average range . . . , but it was within the 13th percentile and not below 1.5 standard deviations, which would be used to qualify her as a communication impairment." Painter also administered four sub-tests of the Clinical Evaluation of Language Fundamentals-Fifth Edition (CELF-5). The four sub-tests (i.e., word classes, formulated sentences, recalling sentences, and semantic relationships) make up the core language score. Painter explained that the core language score "is a measure of language ability, and the tests that make up the core language score index are used because their combined score best identifies average language users from those with a language disorder." On the CELF-5, Q.N. achieved a core language score of 89, which fell within the average range (85-115). Painter explained that, because Q.N.'s core language score did not reveal a 1.5 standard deviation, she did not meet the criteria of communication impaired. In order for Q.N. to have a language impairment, her standard scores would have to be 1.5 standard deviations below the mean, which would have been 77.5 on the CELF-5 and below the 10th percentile on the TAPS-3. Painter testified that, had Q.N.'s core language score fell in the below average range, she would have continued testing to see if a further language impairment was present. Painter found no need for additional testing since Q.N. scored in the average range.

After the completion of the evaluations, a meeting was held with the parent to discuss the evaluations and to determine eligibility. On December 19, 2019, Henry sent an Invitation for Initial Eligibility Determination meeting to the parent. (P-14.) An eligibility meeting was held on January 15, 2020. The parents, Henry, Anastasio, Painter, the 504 officer and Q.N.'s two teachers attended the meeting. (P-16.) As documented in the Initial Eligibility Determination-Not Eligible notice to the parent dated January 15, 2020,

the CST determined that Q.N. was not eligible for special education and related services, or speech-language services only. (Ibid.) The stated procedures, tests, records or reports and factors used in determining the action included the results of the evaluation reports, current progress reports and student records. (Ibid.) Henry described the findings that lead to the CST's determination. She testified, "in reference to [Q.N.'s] evaluations, all scores were in the average range [s]o therefore, there was no disability present [and] [w]e also determined that there was nothing adversely affecting her educational performance, and she was not in need of special education and related services." Henry, Anastasio and Painter agreed with the determination that Q.N. was not eligible for special education and related services or speech services. Although Q.N. was found ineligible for special education services, the CST recommended some additional accommodations to be placed into Q.N.'s 504 Plan and Q.N. was also recommended to continue with RTI. These recommendations and changes to the 504 Plan were discussed at the eligibility meeting.

The 504 Team met in January 2020 to add additional accommodations to Q.N.'s 504 Plan based upon the CST's findings. The parent agreed with these changes and signed the 504 Plan on January 22, 2020. (P-7.) Based on her evaluation, Painter believed that accommodations existed and were added to Q.N.'s 504 Plan that were helpful to Q.N., such as text to speech during testing, redirection to the task at hand, preferential seating and the use of a highlighter for important information when reading text.

On January 22, 2020, Ms. N. sent an e-mail to Henry requesting independent evaluations; specially, a comprehensive neuro-psychological evaluation, a comprehensive speech and language assessment, a comprehensive educational evaluation by a reading specialist, and an auditory processing evaluation. (P-17.) On January 27, 2020, Henry sent a letter to the parent advising that the request for an independent evaluation was being denied because "[i]t is the professional opinion of the district that the evaluations performed by our . . . [CST] are an accurate and complete representation of Q.N.'s ability and therefore no further testing is needed to determine eligibility." (P-21.) On February 5, 2020, the District filed a Request for Mediation/Due Process challenging the parent's request for independent evaluations. (P-18.)

Q.N.'s report card for the first two marking periods of the 2019–2020 school year reflects the following grades for marking period one and marking period two, respectively: language arts (81 and 95); reading (82 and 75); spelling (89 and 91); mathematics (83 and 85); science (80 and 88); and social studies (70 and 86). (P-19.)

In Henry's professional opinion, other than the assessments administered as part of the initial evaluation, additional testing was not necessary to determine Q.N.'s eligibility for special education and related services. Henry reviewed Q.N.'s grades for the remainder of the 2019–2020 school year and spoke to Q.N.'s teacher. This information did not suggest to Henry a need for additional assessments. The teacher reported that Q.N. was performing on par with the rest of her peers, Q.N.'s reading level was assessed in January 2020, and her level on the Developmental Reading Assessment was on par with her peers. In Henry's professional opinion, additional testing was not required at this time, and the evaluations conducted by the CST were appropriate and accurately reflected Q.N.'s status at that time.

In Anastasio's professional opinion, she did not believe that additional testing was required because in her opinion the testing performed by the CST "covered all the areas of the parents' concerns"; "it showed information that would determine [Q.N.] wasn't eligible"; and the District's evaluations "support that she is functioning well compared to her same aged peers."

In Painter's professional opinion, she did not believe that any additional assessments were required in order to assess Q.N.'s eligibility for special education and related services, and no further speech language assessment was necessary or appropriate.

LEGAL DISCUSSION AND CONCLUSIONS

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

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

See 34 C.F.R. 300.502(b)(1)(providing that “[a] parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency subject to the conditions in paragraphs (b)(2) through (4) of this section.”) Upon receipt of a parent’s request for an independent evaluation, the district shall either provide the independent evaluation or request a due process hearing not later than 20 calendar days after receipt of the parent’s independent evaluation request. N.J.A.C. 6A:14-2.5(c)(1)(i) and (ii). See 34 C.F.R. 300.502(b)(2). The requested “independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made.” N.J.A.C. 6A:14-2.5(c)(1). See 34 C.F.R. 300.502(b)(3).

The undisputed evidence demonstrates that the District timely filed a request for a due process hearing challenging the parent’s request for independent evaluations. Ms. N. sent an e-mail to Henry requesting independent evaluations on January 22, 2020; the District sent a letter to the parent on January 27, 2020, advising that the request for an independent evaluation was being denied, along with the basis for that denial; and the District filed its Request for Mediation/Due Process on February 5, 2020, which, according to the transmittal documents, the Office of Special Education Policy and Dispute Resolution received on February 6, 2020. In other words, the District’s Request for Mediation/Due Process was filed within fourteen or fifteen days of receiving the parent’s request for independent evaluations.

The pivotal issue presented is whether the District has proved, by a preponderance of the credible evidence, that its evaluation of Q.N. was appropriate.

N.J.A.C. 6A:14-3.4 addresses the evaluation process. The regulation instructs that “[t]he [CST], the parent, and the general education teacher of the student who has

knowledge of the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the school district's programs shall . . . [r]eview existing evaluation data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers, and consider the need for any health appraisal or specialized medical evaluation." N.J.A.C. 6A:14-3.4(a)(1). On the basis of that review, the CST must identify what additional data, if any, is needed to determine whether the student has a disability; the present levels of academic and functional achievement and related developmental needs, and educational needs of the student; and whether the student needs special education and related services. N.J.A.C. 6A:14-3.4(a)(2).

N.J.A.C. 6A:14-3.4(f) provides guidance concerning an initial evaluation and directs in pertinent part:

An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. An initial evaluation shall include at least two assessments and shall be conducted by at least two members of the child study team in the areas in which the child study team members have appropriate training or are qualified through their professional licensure or educational certification and other specialists in the area of disability as required or as determined necessary. Each evaluation of the student shall:

1. Be conducted in the language or form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so;
2. Apply standards of validity, reliability, and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment;
3. Include, where appropriate or required, the use of a standardized test(s) that shall be:
 - i. Individually administered;
 - ii. Valid and reliable;

- iii. Normed on a representative population;
and
- iv. Scored as either standard score with standard deviation or norm referenced scores with a cutoff score;

4. Include a functional assessment of academic performance and, where appropriate, a functional behavioral assessment, an assessment of the language needs of a child who is an English language learner, assessment of the student's communication needs, and assessment of the need for assistive technology devices and services. Each of the following components shall be completed by at least one evaluator:

- i. A minimum of one structured observation by one evaluator in other than a testing session;

- (1) In the case of a student who is suspected of having a specific learning disability, one evaluator shall observe the student's academic performance in the general education classroom; . . .

- ii. An interview with the student's parent;
- iii. An interview with the teacher(s) referring the potentially disabled student;
- iv. A review of the student's developmental/educational history, including records and interviews;
- v. A review of interventions documented by the classroom teacher(s) and others who work with the student; and
- vi. One or more informal measures, which may include, but not be limited to: surveys and inventories; analysis of work; trial teaching; self-report; criterion referenced tests; curriculum-based assessment; and informal rating scales
. . . .

Against this backdrop, at the hearing the District presented its CST coordinator and LDTC, who attended the initial identification and evaluation planning meeting and conducted the educational evaluation. Also testifying on the District's behalf were the professionals who conducted the psychological evaluation and the speech and language

evaluation. These witnesses authored reports detailing their respective evaluations and attended the eligibility determination meeting on January 15, 2020. In short, I found the testimony by the District's witnesses to be detailed, credible, persuasive and reliable. All of the witnesses were trained and experienced professionals who were appropriately qualified in their respective areas of expertise. For her part, Ms. N. elected not to participate in the hearing. As a result, she offered no expert or other testimonial evidence, and no documentary evidence, to challenge or rebut the testimony by the District's witnesses, the veracity of their reports or the appropriateness of the evaluations, including the nature, scope, reasoning or conclusions of the evaluations.

Turning to the evidence, the record establishes that the District convened an initial identification and evaluation planning meeting on October 17, 2019, which was attended by members of the CST, the parents, a general education teacher and the 504 officer. Based upon its review of records regarding Q.N.'s performance and consideration of the parent's concerns, the CST determined that evaluations were warranted to determine if Q.N. had a disability that adversely affected her educational performance and in need of special education and related services, including the nature and scope of the evaluation. Specifically, in response to Ms. N.'s expressed concerns regarding Q.N.'s comprehension and processing, the CST proposed to conduct an educational evaluation and a psychological evaluation to ascertain whether Q.N. suffered from a specific learning disability, and a speech and language evaluation to determine if a communication impairment existed. It also proposed to conduct a social history. Significantly, the record is bereft of any evidence suggesting that the parent objected to any of these evaluations or assessments or that the parent requested any additional evaluations or assessments, including two of the evaluations (i.e., neuro-psychological evaluation and auditory processing evaluation) that the parent now seeks. Indeed, at the conclusion of the identification and evaluation planning meeting on October 17, 2019, Ms. N. provided her written consent for the District's proposed evaluations, which were ultimately conducted.

The evidence further demonstrates that the District's evaluation of Q.N. was appropriate and complied with the requirements set forth in N.J.A.C. 6A:14-3.4(f). The District conducted multi-disciplinary assessments that were geared to address the areas of suspected disability as expressed by the parent's concerns, and the assessments were

sufficiently comprehensive to assess in all areas of suspected disability. The assessments were conducted by members of the CST, who were appropriately qualified to conduct the assessment. The evaluators utilized a variety of assessment tools during their evaluations, including standardized assessments, informal assessments and observations. They also obtained information from Q.N.'s teachers and parent. Student records were reviewed and considered, including Q.N.'s grades and 504 Plan that contained interventions and strategies utilized by the teachers to assist Q.N. The educational evaluation included an observation of Q.N.'s academic performance in the general education classroom. The psychological evaluation also included behavioral observations of Q.N. during testing and an informal interview with Q.N. Ms. N. was interviewed as part of the evaluation and a social history was taken. The evaluations included the use of objective standardized tests that were individually administered, valid and reliable and administered in English by trained personnel in accordance with protocols and procedures. And, standardized tests that were administered (e.g., WJ-IV) were normed on a representative population and scored as either standard score with standard deviation or norm referenced scores with a cutoff score.

The evaluators' reports were comprehensive and provided information as to Q.N.'s current level of functioning. Regarding the educational evaluation, Q.N.'s scores on the WJ-IV fell within the average range. Regarding the psychological evaluation, Q.N. had a full-scale I.Q. of 92 on the WISC-V, which falls in the average range. Anastasio further credibly explained that based upon Q.N.'s I.Q. score and her average scores on most of the indices in the educational assessment there was not a severe discrepancy that would qualify her for specific learning disability, and that the 504 and RTI strategies put in place were sufficient to address any relative weaknesses that Q.N. had. Regarding the speech and language evaluation, Q.N.'s index scores except for auditory memory fell within the average range on the TAPS-3. On the CELF-5, which is a test "designed for the identification, diagnosis and follow-up evaluation of language and communication disorders in student 5 to 21 years old" (P-11), Q.N. achieved a core language score of 89, which fell within the average range. Painter credibly explained that Q.N. would not meet the criteria of communication impaired because her scores on the CELF-5 did not reveal a 1.5 standard deviation and that, in order for Q.N. to have a language impairment, her standard score would have to be 1.5 deviation below the mean which would have

been 77.5 on the CELF-5 and below the 10th percentile on the TAPS-3. Painter's informal assessments of Q.N.'s voice and fluency revealed that Q.N.'s vocal quality was normal for her age and her speech had no indication of dysfluencies. (P-11.) Q.N.'s reported grades further reflect that Q.N. was within the average range and on par with the rest of her peers.

Consistent and credible testimony was offered by the evaluators that additional assessments were not necessary to determine if Q.N. was eligible for special education and related services. As noted, Ms. N. did not offer any evidence to dispute or counter the District's evidence, which is undisputed. No evidence was introduced to show that the District's evaluations were inappropriate or that any additional evaluation was necessary or appropriate. In the parent's post-hearing submission, she notes that all of the subtests on the CELF-5 were not completed and alleges that Q.N. was not "tested in some of the suspected area of disability." Succinctly stated, the parent's allegation that Q.N. was not appropriately tested is unsupported by competent proof and is further overborne by Painter's credible testimony explaining the reason that she did not conduct further testing.

Based upon a review of the totality of the evidence presented, I **CONCLUDE** that the District has established, by a preponderance of the credible evidence, that the District complied with all legal requirements for conducting evaluations, that the evaluations it performed were appropriate and constitute an accurate and complete representation of Q.N.'s abilities, and that no additional evaluations are necessary or warranted. Accordingly, I further **CONCLUDE** that the parent's request for independent evaluations should be denied.⁵


ORDER

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

⁵ It is observed that, according to the parent's submission, she "registered [her] daughter [on] August 7th for school in Texas to begin classes on the 12th." Although this statement raises an issue regarding whether the instant proceeding is moot, it is unnecessary to resolve this issue in view of the above conclusions.

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.

November 13, 2020
DATE


MARGARET M. MONACO, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

jb

APPENDIX

List of Witnesses

For Petitioner:

Amy Henry
Jamie Anastasio
Danielle Painter

For Respondent:

None

List of Exhibits in Evidence

For Petitioner:

- P-1 PARCC English Language Arts/Literacy Assessment Report, 2017–2018, and PARCC Mathematics Assessment Report, 2017–2018
- P-2 E-mails to and from Ms. N. and Amy Henry dated April 29, 2019
- P-3 Invitation for Initial Identification and Evaluation Planning meeting from Amy Henry to parent/guardian of Q.N. dated May 6, 2019
- P-4 Initial Identification and Evaluation Planning—Proposed Action from Amy Henry to parent/guardian of Q.N dated May 20, 2019; Initial Identification and Evaluation Planning-Evaluation Not Warranted from Amy Henry to parent/guardian of Q.N. dated May 21, 2019; and Meeting Attendance Sign-in Sheet for meeting on May 20, 2019
- P-5 Section 504 Determination and Accommodation Plan; date of meeting on May 29, 2019
- P-6 2018-19 Report Card
- P-7 Section 504 Determination and Accommodation Plan; date of meeting on September 6, 2019, and Section 504 Determination and Accommodation Plan signed by parent on January 22, 2020
- P-8 Correspondence from Ms. N to Ms. Henry dated October 2, 2019

- P-9 Invitation for Initial Identification and Evaluation Planning meeting from Amy Henry to parent/guardian of Q.N. dated October 4, 2019
- P-10 Initial Identification and Evaluation Planning—Proposed Action from Amy Henry to parent/guardian of Q.N dated October 17, 2019; Consent for Initial Evaluation; and Meeting Attendance Sign-in Sheet for meeting on October 17, 2019
- P-11 Speech and Language Evaluation report by Danielle Painter, M.A. CCC-SLP, dated December 13, 2019, and CELF-5.
- P-12 Social Evaluation report by Alexis DeVita, MSW; date of evaluation on December 5 and 11, 2019
- P-13 Educational Evaluation report by Amy Henry, M.A., LDT-C, dated December 13, 2019, and testing documentation
- P-14 Invitation for Initial Eligibility Determination and IEP Development (if feasible) from Amy Henry to parent/guardian of Q.N dated December 19, 2019
- P-15 Psychological Assessment report by Jamie Anastasio; date of evaluation on December 19, 2019, and testing documentation
- P-16 Initial Eligibility Determination-Not Eligible from Amy Henry to parent/guardian of Q.N dated January 15, 2020 and Meeting Attendance Sign-in Sheet for meeting on January 15, 2020
- P-17 E-mails to and from Amy Henry and Ms. N. dated January 22 and 23, 2020 and correspondence from Ms. N. to whom it may concern
- P-18 Letter from Cherie L. Adams, Esq. to the Office of Special Education Programs dated February 5, 2020 and Request for Mediation/Due Process
- P-19 2019–20 Report Card
- P-20 No exhibit admitted
- P-21 Letter from Amy Henry to parent/guardian of Q.N dated January 27, 2020

For Respondent:

None