

FINAL DECISION

OAL DKT. NO. EDS09260-09

AGENCY DKT. NO. 2010-15026

P.B. and M.B. ON BEHALF OF T.B.,

Petitioners,

v.

WANAQUE BOARD OF EDUCATION,

Respondent.

Lori M. Gaines, Esq., for petitioners (Sussan & Greenwald, attorneys)

Paul E. Griggs, Esq., for respondent (Lindabury, McCormick, Estabrook & Cooper, attorneys)

Record Closed: May 24, 2010 Decided: June 16, 2010

BEFORE JESSE H. STRAUSS, ALJ:

STATEMENT OF THE CASE

Petitioners, P.B. and M.B. on behalf of their son T.B. (T.B. or petitioners or parents), filed for a due-process hearing against respondent, Wanaque Board of Education (District or respondent), alleging that the District's self-contained-classroom program for T.B. for the 2009-2010 school year was not appropriate to meet T.B.'s educational needs and that an out-of-district placement at Chapel Hill Academy is the appropriate educational program and placement.

The Individuals with Disabilities Education Act (IDEA or the Act), 20 U.S.C. ��1400 et seq., requires a public school district to provide its students with a free appropriate public education (FAPE). In issue is whether the proposed individualized education program (IEP) for 2009-2010 would provide T.B. with FAPE. The District contends that its proposed program offered him FAPE.

PROCEDURAL HISTORY

The parents filed the instant petition on July 6, 2009, and the Office of Special Education Programs of the Department of Education transmitted it to the Office of Administrative Law (OAL), where it was filed on August 6, 2009.

I adjourned the initial hearing date of August 17, 2009, at the request of both parties. At the hearing of September 1, 2009, the parties entered into an Interim Agreement whereby T.B. would attend the District's program for sixty days, during which time petitioners' expert would be given an opportunity to observe the program, and the District would send T.B.'s records to several designated private schools. The hearing resumed on December 18, 2009, and continued over four subsequent days. The record closed on May 24, 2010, at the conclusion of closing arguments.

FACTUAL DISCUSSION

Background

The parties are in agreement as to the educational, social and behavioral history of T.B. and that he is a hard child to fit. Accordingly, I FIND the following preliminary FACTS.

At an eligibility meeting of January 14, 2009, petitioners agreed with the District's proposal that T.B. be classified for special education and related services under the category of "emotionally disturbed" in light of his social and emotional issues in school. He is a fourth-grade student at a District elementary school.

T.B.'s time in a third-grade class lasted only seventeen days, when he was suspended for allegedly exposing himself to two female classmates. He then received home instruction for two hours per day and remained suspended pending an evaluation by the District's Child Study Team (CST). Its social assessment confirmed extreme social, emotional and behavioral difficulties in school, which were manifested in difficulties focusing, following classroom rules and routines, controlling his impulses (pushing, not sitting still, calling out, making noises, laughing at inappropriate times, hitting and pushing other students), relating appropriately to authority figures and accepting constructive criticism, interacting with peers, respecting rights and privacy, and working cooperatively in group situations. He had difficulty developing, maintaining and managing friendships and could not carry on effective conversations with others. His Gifted and Talented teacher, Paula Basedow, found T.B.'s behaviors to be more problematic than 94 percent of children his age. T.B. has fluctuating and disregulated moods. He struggles with a pervasive level of anxiety. He shows no remorse or feelings for his actions.

In October 2007 a "504 plan" was developed, as it was believed that T.B.'s motor and vestibular skills were affecting his school performance. He was having a hard time staying seated, controlling his impulses and moving about the school in a controlled manner.

T.B. exhibits superior intellectual abilities. He has an IQ between the 97th and 99th percentiles. Academically, he achieves numerous years above his actual grade level, which currently is fourth grade. His general cognitive ability, verbal comprehension and perceptual reasoning abilities are all in the very superior range.

T.B.'s social skills, however, fall forty to fifty percentile points below his cognitive skills. He has demonstrated a relative weakness on activities that require sustained attention, concentration, and mental control and on activities that involve processing simple visual material. Ingrid Green, who conducted a psychological evaluation for the District, concluded that T.B. has difficulty complying with tasks that do not engage him intellectually. "The frustration that [T.B.] experiences in school is also related to his difficulties with peer relationships and perspective-taking. These factors negatively affect his ability to fully participate in classroom instruction and the general learning process." In the District's neuropsychiatric consultation, Dr. Jerome Goodman described T.B. as a "maverick child" and as "the square peg who balks about trying to fit into the round hole." Dr. Goodman had a diagnostic impression of developmental coordination disorder, mild conduct disorder of unspecified nature and mild expressive language disorder. He recommended that T.B. could be classified as "other health impaired" because he does not fit into the category "specific learning disability" or "social maladjustment." He further suggested that this category should not be used for segregating T.B. from classmates.

In January 2009, the CST presented petitioners with an IEP that called for T.B. to be placed in the District's new Behavioral Disabilities Classroom (BDC). His parents deferred agreeing to this placement until they had completed their own private evaluations, and they requested that T.B. continue on home instruction. At the conclusion of the private evaluations, the parents requested that T.B. be placed in a private out-of-district school. The CST concluded that, in order to provide T.B. a FAPE in the least restrictive environment (LRE), he should be placed in the BDC at his home school.

Although petitioners disagreed with the District's proposed IEP for T.B. and filed a due-process petition, they entered into an Interim Agreement with the District. With trepidation, the petitioners agreed to try T.B. in the BDC in September 2009, on a trial basis. The BDC was envisioned to provide an integrative approach of behavioral, academic and social instruction to meet the individual student's needs. In the fall of 2009 it consisted of five students—one first grader, three third graders and T.B. as the only fourth grader. Three of the children were classified as "emotionally disturbed" and two had Asperger's syndrome, an

autism-spectrum disorder. T.B. is taught by special education teacher Elaine Hetherington. Jason Grabelsky, a certified school social worker, is T.B.'s case manager and serves as the social-skills instructor in the BDC. T.B. also works with certified school occupational therapist Paula Capella. Additionally, classroom aide Mr. Tapalski is also present in the BDC. Hetherington testified that T.B. was on a ninth-grade fluency level for reading, a seventh-grade to the beginning of eighth-grade level for comprehension, and a fifth-grade level for spelling. He and the others in the class each receive individual instruction based on their academic abilities. Although the five students are organized into different groups, they interact with one another throughout the day in non-academic matters. Although T.B. receives all of his academic instruction in the BDC on an individual basis, he attends homeroom, lunch, recess, and Specials (art, music, gym, Spanish) with his regular education fourth-grade class, where he is accompanied by either Grabelsky or the classroom aide, who provides social or behavioral instruction or redirection. Grabelsky keeps his distance from T.B. outside the BDC and, when necessary, engages in behavioral redirection of the entire group so as not to stigmatize T.B. Grabelsky holds a social-skills group session in the BDC with its five students three to five times a week. T.B. also receives individual social-skills sessions at least once per week from Grabelsky, although there is often a session every day. They work on reciprocal conversational skills, increasing focus and time on task, following rules, and behaving fairly toward others.

The parties do not dispute the findings of the private occupational-therapy evaluation. Sharyn Rudofsky found that T.B. had deficits in muscle strength and endurance, gross motor coordination, fine motor manual control, manual coordination and processing sensory information. These deficits affect his ability to sit for long periods, remain alert and maintain participation with peers. She recommended occupational therapy no less than twice a week using a sensory-integration frame of reference.

Testimony

Jeanne Tighe testified for petitioners as an expert in speech-language pathology, social skills, pragmatic language and the development of speech and language programs for students with speech, language and/or social disabilities. Pragmatic language involves reading nonverbal cues such as facial expression, body posture, gestures and tone of voice. Social skills and social interaction greatly involve communication. She confirmed that T.B. lacked an understanding of social boundaries and nonverbal communication, which impeded successful interaction with other people. She found that his social abilities were significantly discrepant with his intellectual abilities and his social performance fell substantially below his cognitive skills. Tighe observed that T.B.'s ability to problem-solve was not functional and not realistic. It was not supportive of the goal that a student learn to function in society as a productive adult. She concluded that T.B.'s social deficits needed to be "the priority in [T.B.'s] educational learning" and added

[T.B.] is going to acquire academic skills no matter what we do. He has shown us that he has very much on his own made incredible strides in what we would generally consider curriculum. However, what we see here is that [T.B.] is not learning on his own social reasoning, social problem solving skills, the things that go into being able to interact in a group, interact in society. So therefore, that's what [T.B.] needs to be taught. That needs to be the priority in his educational program.

Tighe opined that T.B.'s incredible cognitive potential would be compromised in terms of eventual employment and independent living if he is unable to interact successfully with others. By T.B.'s own statements, he does not understand other people, and he is not trying to understand them. Tighe recommended for T.B. a three-pronged social-skills learning approach based on the Madeline Hunter model for education. As T.B. does not naturally pick up on appropriate social skills through observation, he will need to be directly taught social skills. He will need to practice these social skills with support from a teacher or trained staff member, in small-group, controlled contexts (guided practice). The final step is "independent practice," where the goal is to bridge the skills to real-life group contexts so as to help T.B. develop independence in their application. His behavioral difficulties are tied into his social difficulties and are the primary problem in peer-group situations. Although he seeks out social interactions with his peers, he does so in ways that are inappropriate, and he usually fails. Tighe opined that the BDC would not be behaviorally appropriate for T.B. and would not successfully remediate his problems and teach him the kinds of behaviors and skills that he needs to learn in order to function in a group setting, because he would complete all academic instruction in the isolation of a one-to-one setting. Although the BDC would provide

T.B. with direct social-skills instruction, it would not provide him with the important supported application of the social skills in small, contrived, group settings. He lacks the social and behavioral skills to function in a mainstream setting, and a return to a mainstream setting would exacerbate his social and behavioral difficulties.

Tighe recommended that T.B. be placed in an out-of-district program that could provide him with appropriate behavioral intervention, a peer group that would allow him opportunities to practice social skills, daily social-skills instruction coupled with guided social-skills practice throughout the day, and social instruction that is a priority of T.B.'s educational programming. These services would be provided in a small-group academic setting rather than in a one-to-one environment. Significantly, Tighe responded to the obvious concern of whether placing T.B. in a school with students who all have some form of learning disability or behavioral issues would be less effective than placing him in a public-school environment where, for at least part of the school day, he would have the opportunity to interact with or observe his typically developing peers. Her answer was that T.B. had not successfully learned social skills by exposure to and observing typical peers. This approach had not worked in the past, and the BDC would not expose T.B. to typical peers for academic instruction.

Dr. Ellen Fenster-Kuehl testified on behalf of petitioners as an expert in the areas of psychology, psycho-educational evaluation, and the development of educational programs for students with disabilities. She observed T.B. in her office as well as on two occasions in the BDC and in Specials. She found him to be incredibly out of control, "fidgety" and anxious, exhibiting negative behaviors for which he had been punished by his teachers in the past, even though such movements were due to neurological issues. Many of her findings were consistent with those of the District's evaluators and teachers set forth above. Although he can be taught the difference between right and wrong, he has not internalized that learning and applied it to his own interactions or given it any value. She also confirmed Tighe's observations of writing and drawing difficulties. Fenster-Kuehl found T.B.'s emotional difficulties to be at such a heightened level that he met the diagnostic criteria for "mood disorder" because of his mood swings and lack of remorse. She recommended intensive psychotherapy in school for this emotional disorder.

Fenster-Kuehl was complimentary of the BDC and the efforts of Grabelsky and Hetherington. She found the BDC to be organized and run by people who appear to be functioning at high levels of their profession with regard to T.B.'s needs. She observed Hetherington's bearing to be calm, clear, structured, positive and professional. She was encouraging without being overly effusive, and she resisted any emotional reaction when T.B. showed impulsivity or impatience. She gently redirected T.B. when he would go off task. Both Hetherington and Grabelsky used appropriate and proven behavioral methods in their interactions with T.B. She concluded that T.B. was receiving a high level of services in his self-contained classroom and in the mainstream setting. Nevertheless, Fenster-Kuehl also concluded that the District's program was not appropriate for T.B. because of the one-on-one academic instruction and his placement with all younger children in the BDC. Consistent with the conclusions of Tighe, Fenster-Kuehl did not believe that this classroom setting would provide T.B. with the group experience he needed in order to improve his own understanding of others and social skills. Simply, it lacked guided social skills practiced in group settings. T.B. was not spending enough time with children his own age in order to get in vivo, naturalized practice in terms of the skills that he needs. Also, he still lacked the social skills to successfully participate in mainstream classes. As with Tighe, Fenster-Kuehl recommended an out-of-district placement with a strong emphasis on both behavioral and social training where all staff had such skills—a school where T.B. would be treated like all other children, all having the same behavioral controls in place, so T.B. would not stand out as being the "bad seed." He would be part of the student body rather than isolated as with the District's program. Only through group instruction would T.B. learn to sit in a classroom among peers and how to conform to the rules of a classroom.

Fenster-Kuehl acknowledged that, ideally, we want children to be able to be with and model the behaviors of typically developing children. This environment would not exist in a private school where all the children had various behavior and social issues. However, there would be the benefit of T.B. knowing that he was not alone with his difficulties. Also, Fenster-Kuehl suspected that T.B. had Asperger's syndrome, an autism-spectrum disorder. One with such a condition needs instruction in social learning over and over again because he cannot attain social skills through watching and observing what others do. Fenster-Kuehl

agreed with Tighe's assessment that the District's program failed to accomplish the most important, middle step of the Madeline Hunter three-pronged approach, namely, to provide T.B. with guided, supervised, in vivo opportunities to practice social skills in small, contrived situations.

Audiologist Dr. Lorraine Sgarlato-Inducci conducted a private central-auditory-processing evaluation of T.B. She found that he presented with a moderate-to-severe auditory-processing deficit that decreased his ability to recognize and understand auditory information.

T.B.'s mother was of the opinion that T.B. has digressed socially and behaviorally since joining the BDC. He had begun to throw tantrums and often refused to go to school or do his work. He was removed from his mainstream gym class for two weeks for making "a throat-splitting gesture" to two female students. Despite his acknowledged social and behavioral problems and his classification, the District chose to use a typical disciplinary measure to address T.B.'s inappropriate behavior.

Petitioners seek to have T.B. placed in the Chapel Hill Academy in Lincoln Park, N.J. It is an out-of-district placement for students who have learning, behavioral and emotional difficulties. The school is approved by the State of New Jersey and accredited by the Middle States Association.

District representatives observed the Chapel Hill program and did not agree that it would be an appropriate placement for T.B. Hetherington testified that she observed children at Chapel Hill in classrooms of about eleven running around during free time, jumping on furniture and calling out in the classroom with no behavioral management. She was told of a school-wide money-system behavioral program. She also observed some students removed from the classroom and placed in a restraining room. She observed no direct instruction in a math lesson, although she acknowledged that she did not know what had been presented the previous day. She expressed concern that the students were lower functioning than T.B., yet there was no differentiated instruction occurring. She described the children at Chapel Hill as very physical, causing concern for T.B.'s safety because his behaviors did not involve the violent types she observed there.

Grabelsky also observed the Chapel Hill school, and expressed safety concerns for T.B. in that the children engage in aggressive behaviors that T.B. does not exhibit. Ingrid Green, the District's psychologist, testified that the District had placed several students at Chapel Hill who became involved in incidents of physical aggression at Chapel Hill. District social worker Carol Hesse also expressed concern for T.B.'s safety at Chapel Hill. The District had previously referred five students to Chapel Hill who acted out physically and were more aggressive than T.B. She did acknowledge, however, that Chapel Hill does a good job in addressing behaviors. She did not believe that Chapel Hill would academically challenge T.B., and she thought he would become frustrated there.

Fenster-Kuehl has also been to the Chapel Hill school. She was impressed that it has a multi-graded organization of classes such as grades three, four and five on one floor, so that a child can be with other children who are at or close to his age and grade level, but still can move easily from one academic activity to the next. Social-skills training continues throughout the day, with several counselors on each floor. Further, at Chapel Hill, students earn points for positive behaviors but do not lose them, whereas the District uses a program of negative reinforcement, where points are deducted for negative behaviors. Fenster-Kuehl believed that the Chapel Hill method would be more successful for T.B. She was also impressed that the Chapel Hill behavioral plan was school-wide, because it is important for T.B. to know that everybody is treated the same way.

Diane Somers, the director of Chapel Hill, also testified. She took issue with the observations of District personnel at the school. She said that screaming in the hallways was not a typical occurrence, and that, when a student exhibits improper behavior, the counselors work with the student in the moment in an effort to help de-escalate the student and teach him calming skills he can use himself. She described her school not as one primarily for students with behavioral disabilities, but rather as one primarily for students with emotional difficulties. As to safety concerns for T.B., Somers stated that she would remove from the school any student who posed a safety threat to other students. Regarding behavioral management, there is a school-wide program in place that is employed throughout the day. Counselors are assigned to each floor for immediate intervention and counseling and to provide security for students. She denied that there are

restraint rooms. She believes that Chapel Hill can provide an academically challenging environment for T.B. It follows the same New Jersey Core Curriculum Content Standards that are in place in the public schools. Somers explained that the school has Asperger's students, some students with mood disorders, and some students who are functioning above grade level and have IQs in the gifted range. Each class of up to twelve students has a certified teacher of the handicapped or teacher of students with disabilities, a teacher assistant trained in behavior management, motivation and classroom teaching, and additional staff as needed. Since Chapel Hill has multi-graded classes, T.B. could receive his academic instruction in a group setting with students older than he. Social issues of the students are addressed throughout the day, spanning from help engaging in social conversations to help working through social difficulties as they arise. In addition to social instruction infused throughout the day, students also participate in direct social-skills classes.

Discussion

The District's neuropsychiatric consultant most aptly described T.B. as a "maverick child" and as "the square peg who balks about trying to fit into the round hole." T.B. presents an astounding intellect overlaid by a host of serious social and behavioral challenges. T.B.'s issues are a conundrum—an intricate and difficult problem. Conventional wisdom dictates that a child should receive his education in the least restrictive environment, in this case with typical peers. This approach has proven unsuccessful because of T.B.'s behaviors. Ideally, social and behavioral deficits should be addressed in an environment where a child can pattern after typical peers who exhibit proper social and behavioral skills. Ideally, a student should also be afforded an opportunity to maximize his intellectual potential. Here, the District has attempted, in the academic isolation of the BDC surrounded by younger students with social and behavioral issues, to allow T.B. to advance academically at his own pace, which would not be possible and had been unsuccessful in a mainstream classroom. The District has designed a program for T.B. to allow him to pursue academics at his own accelerated pace while exposing him to typical peers only in Specials.

The dilemma is to create a program that emphasizes T.B.'s most critical needs while minimally affecting his other needs. Tighe has persuasively identified, with Fenster-Kuehl's corroboration, what T.B.'s program needs to foremost address and why. She points out that T.B. will learn curriculum and "acquire academic skills no matter what we do." However, his cognitive potential will be compromised in terms of independent living if he is unable to interact successfully with others. Tighe and Fenster-Kuehl compellingly and persuasively make the argument that, presently, the priority for T.B.'s programming should be the direct teaching of social reasoning and social problem-solving skills that go into being able to interact in a group. Those skills need to be taught because he does not naturally pick up on appropriate social skills through observation. I agree with them that T.B. requires the three-pronged approach based on the Madeline Hunter model that the District's program fails to provide.

After carefully considering the testimonial and documentary evidence presented and having had an opportunity to observe the demeanor of the witnesses, I make the following FINDINGS of critical FACTS.

The District's BDC is staffed by skilled and able professionals. It provides T.B. with academic opportunities that would not be available in a mainstream class. The program also provides T.B. with direct social-skills instruction. T.B.'s academic program, as set forth in his IEP, is personalized and differentiated to T.B.'s needs and intellectual/cognitive levels. The program fails, however, to provide an environment where he can practice these social skills in a small group while academics are being taught, for example, learning to wait his turn, to respect the opinions of others, and to work cooperatively in a group activity. He requires a peer-group experience to improve his social skills. This component is essential for T.B.'s development of and use of social skills in the real world. T.B. requires a different environment from that provided by the District in order to practice his social skills in a small-group setting. He, however, has not yet acquired the social skills to participate in mainstream classes, and he paradoxically is not able to learn social skills by patterning his typically developing peers. As Fenster-Kuehl pointed out, if he could pattern this way, he already would have done so.

The District's IEP not only fails to provide for the small-group interaction during academic instruction, it fails to provide measurable goals and objectives to address T.B.'s distinct social weaknesses, namely, in the

areas of hyperactivity, impulsivity, difficulty with social boundaries, perspective-taking, ability to pick up on social cues, difficulty with homework completion, difficulty maintaining attention to task, difficulty following routines, difficulty following directions, exhibiting inappropriate attention-seeking behaviors, handwriting difficulties, and difficulty with written expression. The IEP lacks the intensive counseling needed to address T.B.'s emotional or mood problems. The goals are general and do not indicate what is going to be done to help T.B. develop the skills articulated. The goals are not measurable.

Rudofsky's occupational-therapy assessment demonstrates how intertwined T.B.'s deficits in this area are with his emotional and behavioral deficits. Therefore, T.B. needs occupational therapy twice a week as she recommended instead of just once a week as set forth in T.B.'s IEP, and that therapy should involve a sensory diet to address his distractibility, hyperactivity and impulsivity. The IEP has no occupational-therapy goals in it.

Chapel Hill Academy is organized so that it would provide T.B. with an immersion of social skills taught throughout the school day while giving him the opportunity to practice these skills with support from a skilled staff person in small-group, controlled contexts. This is so because Chapel Hill has multi-graded classes. T.B. could receive his academic instruction in a group setting with students older than he, thereby offering him the opportunity to challenge his academic skills. Simply, Chapel Hill can offer T.B. an essential element of the acquisition of social skills that the District's program cannot. Chapel Hill has a school-wide behavioral plan that should minimize the risk that T.B. would suffer harm from more aggressive students.

LEGAL ANALYSIS AND CONCLUSIONS

The Individuals with Disabilities Education Act (IDEA or the Act), 20 U.S.C. § 1400 et seq., requires New Jersey to effectuate procedures that ensure that all children with disabilities residing in the state have available to them a FAPE consisting of special education and related services provided in conformity with an IEP. 20 U.S.C. § 1401(9), 1412(a)(1). A purpose of the IDEA is

to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.

[20 U.S.C. § 1400(d)(1)(A).]

Under 20 U.S.C. § 1412(a)(1), any state qualifying for federal assistance under the IDEA must adopt a policy that assures all children with disabilities the right to a free appropriate public education. *Hendrick Hudson Cent. Dist. Bd. of Educ. v. Rowley*, 458 U.S. 176, 180-81, 102 S. Ct. 3034, 3037, 73 L. Ed. 2d 690, 696 (1982). State regulations track this requirement that a local school district must provide FAPE as that standard is set under the IDEA. N.J.A.C. 6A:14-1.1. New Jersey follows the federal standard requiring such entitlement to be "sufficient to confer some educational benefit," although the State is not required to maximize the potential of handicapped children. *Lascari v. Ramapo Indian Hills Reg. High Sch. Dist.*, 116 N.J. 30, 47 (1989) (citing *Rowley*, supra, 458 U.S. at 200, 102 S. Ct. at 3048, 73 L. Ed. 2d at 708). Third Circuit decisions have further refined that standard to clarify that such educational benefit must be "meaningful," "achieve significant learning," and confer "more than merely trivial benefit." *T.R. v. Kingwood Tp. Bd. of Educ.*, 205 F.3d 572 (3d Cir. 2000); *Ridgewood Bd. of Educ. v. N.E. for M.E.*, 172 F.3d 238 (3d Cir. 1999); *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 183-84 (3d Cir. 1988), cert. den. sub. nom. *Cent. Columbia Sch. Dist. v. Polk*, 488 U.S. 1030, 109 S. Ct. 838, 102 L. Ed. 2d 970 (1989). The Third Circuit has reemphasized the importance of the inquiry into whether the placement proposed by a district will provide the student with "meaningful educational benefit." *I.H. v. State-Operated Sch. Dist. of Newark*, 336 F.3d 260 (3d Cir. 2003). The quantum of educational benefit necessary to satisfy the IDEA varies with the potential of each pupil. N.E., supra, 172 F.3d at 247.

I CONCLUDE that the District has failed to provide T.B. with a free appropriate public education. Its program is not individualized to T.B.'s unique needs and is not designed to provide him with meaningful

educational benefit.

Education is about much more than simply rendering academic instruction. *Babb v. Knox County Sch. Sys.*, 965 F.2d 104, 109 (6th Cir. 1992). Where basic self-help skills and social skills are lacking, education starts at that point. *Battle v. Commonwealth of Pa.*, 629 F.2d 269, 275 (3d Cir. 1980). Education includes academic, emotional, social, communication, health, physical, and vocational needs. *Seattle Sch. Dist., No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996). As with T.B., the child in B.S. was exceptionally bright, but needed special care to address her behavioral disabilities.

I am mindful that the IDEA requires that disabled children, to the maximum extent appropriate, should be educated with children who are not disabled, i.e., they should be mainstreamed. 20 U.S.C. § 65533; 1412(a)(5)(A). The District has, in good faith, attempted to strike a balance between providing T.B. in the BDC with individualized academic instruction and social-skills instruction he cannot successfully receive in a mainstream setting and trying to mainstream him for Specials. Contrary to the contention of the District, however, T.B.'s IEP does not meet his needs. It simply is not appropriate for T.B. because it deprives him of what I am convinced is the essential tool necessary to integrate proper social skills and behaviors into his academic learning environment, that is, group academic learning where he must recognize the rights and space of others (guided practice). I am also mindful of the argument that placement in a school of all disabled children runs counter to the preference for a least restrictive environment and deprives T.B. of the opportunity to pattern off of typical children. Petitioners' experts have persuasively explained why the scales must tip in favor of a placement at a facility such as Chapel Hill. The need to practice social and behavior skills in a group academic setting is paramount at this stage to patterning off of typical students, particularly when it has been demonstrated that T.B. is incapable of picking up the cues from typical students. A program where there is access to typically developing peers can only be the least restrictive environment if the child's needs are being met there. The District has not, and probably cannot, create a program that would allow T.B. to pursue an accelerated academic regimen in a group setting. Its program, although structured to challenge T.B.'s superior intellect, fails to confer meaningful benefit on T.B. in terms of the needed opportunities to practice social and behavior skills while receiving academic instruction. T.B.'s ability to successfully use his superior intellect to further education, employment and independent living will be impeded if he is unable to practice social and behavior skills as he learns.

The District's IEP is not appropriately programmed for T.B.'s social needs, academic needs, behavioral needs, emotional needs, occupational-therapy needs, and auditory-processing needs. It lacks complete goals and objectives in these areas.

I further CONCLUDE that T.B. can only receive meaningful educational benefit if placed in a small school specially designed to educate students with both behavioral and social emotional difficulties. I further CONCLUDE that Chapel Hill Academy is organized so as address all of T.B.'s difficulties and would be an appropriate placement. Although the classes are larger than the District's BDC, Chapel Hill can provide T.B. with small-group instruction in a multi-graded system, much trained adult supervision and assistance, behavioral training, social training using the three-pronged approach, and enough mental-health professionals on staff all day who are immediately available to provide emotional assistance. It also has a consistent behavioral intervention system that applies to the entire student body. It incorporates social skills into the curriculum every day. Although Chapel Hill may not be offering the level of individualized academic programming that is offered in the BDC, the trade-off with the guided-practice component is more important at this stage and more likely to confer meaningful educational benefit that the BDC cannot provide. T.B.'s superior intellect will permit him to acquire academic skills regardless of whether he is taught one-on-one or in a multi-graded group setting.

ORDER

Based on the foregoing, it is hereby ORDERED that the relief sought by petitioners is GRANTED.

It is further ORDERED that petitioners and the District meet within thirty days of this Order to create a new IEP for T.B. that will place him at the Chapel Hill Academy, for so long as such placement remains appropriate, where, in addition to educational and social-skills and behavioral-skills training, he will be

provided with intensive psychotherapy, a program to address written expression, direct occupational therapy no less than twice a week using a sensory-integration frame of reference, and auditory therapy using The Listening Program and Interactive Metronome.

It is further ORDERED that the District be responsible for all charges attributable to T.B.'s placement in the out-of-district school, including costs of transportation.

This decision is final pursuant to 20 U.S.C.A. §§ 1415(i)(1)(A) and 34 CFR §§ 300.514 (2009) 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.A. §§ 1415(i)(2); 34 CFR 300.516 (2009).

6/16/10

DATE JESSE H. STRAUSS, ALJ

id

APPENDIX

HEARING DATES

September 1, 2009

December 18, 2009

February 8, 2010

February 9, 2010

March 15, 2010

May 24, 2010

LIST OF WITNESSES

For Petitioners:

Ellen Fenster-Kuehl

Jeanne Tighe

M.B.

Laura Somers

For Respondent:

Jason Grabelsky

Elaine Hetherington

Paula Capella

Ingrid Green

Carol Hesse

Victoria Laugalis Wilson

LIST OF EXHIBITS IN EVIDENCE

For Petitioners:

P-1 WISC-IV Record Form, February 9, 2007

P-2 Gifted Child Clinic Evaluation Report, February 9, 2007

P-3 Visual and Visual Perceptual Analysis, August 27, 2007

P-4 Social Evaluation, September 29, 2008 (duplicate of R-3)

P-5 Psychological Evaluation, September 22, 2008 (duplicate of R-2)

P-6 Educational Evaluation, October 3, 2008 (duplicate of R-5)

P-7 Neuropsychiatric Consultation, October 16, 2008 (duplicate of R-4)

P-8 Draft IEP, December 18, 2008

P-9 Eligibility Conference Report, January 14, 2009

P-10 IEP, January 14, 2009 (duplicate of R-7)

P-11 BASC-Second Edition Self-Report of Personality Report, September 30, 2008

P-12 Occupational Therapy Evaluation by Sharon Rudofsky with CV, February 7, 2009

P-13 Speech and Language Evaluation by Jeanne Tighe with CV, February 3, 2009

P-14 Psychoeducational Evaluation by Ellen Fenster-Kuehl with CV, February 24, 2009

P-15 Draft IEP, June 8, 2009 (duplicate of R-1)

P-16 Letter from Lori Gaines to Isabel Machado, January 15, 2009

P-17 Letter from Lori Gaines to Anthony Scarillo, May 7, 2009

P-18 Letter from Lori Gaines to Jeffrey Merlino, May 27, 2009

P-19 Letter from Lori Gaines to Paul Griggs, September 9, 2009

P-20 Letter from Lori Gaines to Paul Griggs, September 15, 2009

P-21 Letter from Lori Gaines to Paul Griggs, September 24, 2009

P-22 Letter from Lori Gaines to Paul Griggs, September 30, 2009

P-23 Letter from Lori Gaines to Paul Griggs, October 5, 2009

P-24 Letter from Lori Gaines to Paul Griggs, October 7, 2009

P-25 Letter from Lori Gaines to Paul Griggs, October 8, 2009

P-26 Letter from Lori Gaines to Paul Griggs, October 13, 2009

P-27 Letter from Lori Gaines to Paul Griggs, October 22, 2009

P-28 Central Auditory Processing Assessment by Dr. Lorraine Sgarlato-Inducci with CV, October 3, 2009

P-29 School Observation Report by Dr. Ellen Fenster-Kuehl

P-30 Chapel Hill Academy brochure

P-31 Interim Agreement

For Respondent:

R-1 Individualized Education Program—Initial (Draft), June 8, 2009

R-2 Psychological Evaluation, September 22, 2008

R-3 Social Evaluation, September 29, 2008

R-4 Neuropsychiatric Consultation, October 16, 2008

R-5 Educational Evaluation, October 3, 2008

R-6 Occupational Therapy Update, October 23, 2008

R-7 Individualized Education Program—Initial, January 14, 2009

R-8 Classroom Daily Logs prepared by special education teacher Elaine Hetherington and social worker Jason Grabelsky (Nos. 1-77), September 3, 2009-December 10, 2009

R-9 Log of interactions with M.B. by Jason Grabelsky (1-6), September 2, 2009-December 10, 2009

R-10 Letter from Paul E. Griggs to Lori M. Gaines, Esq., September 11, 2009

R-11 Letter from Paul E. Griggs to Lori M. Gaines, Esq., September 25, 2009

R-12 Letter from Paul E. Griggs to Lori M. Gaines, Esq., October 7, 2009

R-13 Letter from Paul E. Griggs to Lori M. Gaines, Esq., October 9, 2009

R-14 Report Card, November 11, 2009

OAL DKT. NO. EDS09260-09