



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 04683-20

AGENCY DKT.NO. 2020 31493

C.D. ON BEHALF OF T.D.,

Petitioner,

v.

WARREN HILLS BOARD OF EDUCATION,

Respondent.

Ester Canty-Barnes, Esq., for petitioners (Rutgers Law School Education and Health Law Clinic, attorneys)

Margaret Fiori, third year law student appearing pursuant to R. 1:21-3(b) and **Marissa Kindberg**, second year law student appearing pursuant to R. 1:21-1(f) (8) for petitioners

Marc Mucciolo, Esq. for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: March 24, 2021

Decided: March 31, 2021

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioner, C.D. on behalf of her child T.D. (T.D.), requests respondent, Warren Hills Regional Board of Education (District) determine that T.D. is eligible for special education and related services, place T.D. in an out of district placement and provide T.D.

with compensatory education for failure to provide a fair and appropriate education (FAPE).

PROCEDURAL HISTORY

On May 13, 2020, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) under Docket No. EDS 04683-20. Petitioner filed a motion for emergent relief on September 21, 2020. Respondent filed opposition on September 28, 2020. Petitioner filed a reply to respondents' opposition on October 5, 2020. Petitioner's motion was denied on October 7, 2020. The hearing was held on October 21, 2020, November 24, 2020, December 3, 2020, December 21, 2020, December 22, 2020, and March 24, 2021. After which time I closed the record.

FACTUAL DISCUSSION AND FINDINGS

Testimony

Mary Louise Rowlin

Mary Louise Rowlin (Rowlin) is the supervisor of special education in Warren Hills. She was previously a special education teacher. She has the following certifications: elementary school teacher, special education teacher, supervisor, principal, and a certificate of eligibility. She is not trained to administer tests to students. She participates in some determinations of eligibility. In certain situations, she is involved in IEP meetings.

T.D. was brought to her attention in July 2019, when she received a letter from C.D. stating that T.D. had been court ordered to Bonnie Brae. T.D. was suspended in March 2019 for substance abuse. At that time T.D. had not been in the district long. In March 2019, T.D. was placed on home instruction. T.D. had a 504-Plan. T.D. had been home schooled through the seventh grade.

An Identification and evaluation planning (ID and Planning) meeting was scheduled for August 16, 2019. T.D.'s case manager Kimberly Tomasino was also at the meeting. This was the second request for eligibility for T.D. T.D.'s eligibility was discussed as was the 504-Plan at the March 2019 ID and planning meeting. Rowlin did not attend the March 2019 meeting.

At the August 2019 meeting C.D. stated that T.D. was drug free but no documentation was provided to verify that fact. Prior to being placed in Bonnie Brae, T.D. had substance abuse problems according to C.D. Prior to the August 2019 meeting, T.D. attended Daytop Village (Daytop) but he left that program. He next went to the New Hope school then Bonnie Brae.

T.D. went to school in Phillipsburg prior to coming to Warren Hills. The District relied on the evaluations from Phillipsburg. Those evaluations, and not knowing whether T.D. was drug free was the reason the District decided not to evaluate T.D. for special education services. This decision was appropriate because T.D. had been in the District for too short of a time to determine if the 504-Plan was working. The 504-plan information came from the testing at Phillipsburg. T.D. was only in district for nine weeks.

After the August 2019 meeting, T.D. was placed on home instruction at which was done at Bonnie Brae. He was given ten hours per week of home instruction.

In January 2020, there was a third ID and planning meeting held for T.D. Petitioner provided evaluations of T.D. done by Balaban and Associates. The evaluations were psychological, educational and speech and language. These were considered by the District. At this meeting C.D. stated that T.D. had been drug free since October 2019. Petitioner consented to the District doing a psychiatric and social assessment evaluations. The psychiatric evaluation was to be done by Dr. Fennelly. The decision to evaluate T.D. at this time was appropriate because there was new information including the home instruction notes and evaluations presented by petitioner.

C.D. came in for her part of the social assessment evaluation but did not give permission for T.D. to be evaluated for the social history assessment. Rowlin does not do the social history assessments. Students are typically interviewed for the social history assessments.

Rowlin just recently was informed that T.D. was released from Bonnie Brae. He is currently enrolled in the online education program at Warren Hills. She was not present at the October 2019 meeting where petitioner's request for an evaluation was rejected. The January 2020 meeting was a planning meeting. The District did not want to solely rely on the Balaban reports. Rowlin was not part of the creation of the 504-plan for T.D. His eligibility for the 504-plan was due to his Attention Deficit Hyperactivity Disorder (ADHA). The revised 504 included the diagnosis of Oppositional Defiant Disorder (ODD) in addition to ADHD. Petitioner did not agree with the 504-plan. T.D. was not in the school building when the 504-Plan was revised. The 504-Plan was put in place to determine if T.D. is eligibility for special education.

Rowlin did not receive a report from the Children's Specialized Hospital regarding T.D. She did receive the evaluation of T.D. from Gregory the Great School. It stated that T.D. did not start work on his own and his homework was spotty. He lacked effort and had a lack of attention. T.D. was intelligent but lazy. He did not like school and lacked discipline. At Gregory the Great, preferential seating was part of the 504-Plan.

Rowlin had access to the evaluations done by Phillipsburg. The educational evaluation stated that T.D. completed little independent work, did not turn in his homework, and struggled with class skills. Reading comprehension and writing was a challenge for him. It stated that his ability to listen and learn was limited, which could be due to auditory processing difficulties. T.D.'s computational skills are limited, his ability to solve basic math facts is limited. His expression ability is limited as is his ability to quickly read and write. The Phillipsburg educational evaluation recommended T.D. have lower grade level reading, reading guide, graphic organizer, assistance with spelling. His math should be systematic and explicit. Rowlin did not review all the recommendations

of the Phillipsburg educational evaluation. T.D. was taking college prep classes. His processing speed was lower than his typical peers. The Phillipsburg evaluations did not find T.D. eligible for special education services. No one from Warren Hills was present for the Phillipsburg evaluations.

From September 2019 to March 2020, T.D. was receiving home instruction. The tutoring log does not show that T.D. receive ten hours of instruction weekly. The classes could have been cancelled because T.D. refused to attend. It appears that he received instruction in certain areas.

T.D.'s course summary at that time shows that he was exempt from forty-four of forty-nine assignments. Exempt means he was not in class.

On June 3, 2020, petitioner sent a letter to the District requesting an appropriate consent form for Dr Fennelly's evaluation. Rowlin was not aware that this was an issue. Petitioner did not receive a response from the District until July 2020. The District cannot alter Dr. Fennelly's consent form.

The social assessment evaluation is commonly done by interviewing the parent and the student. At the January 2020 planning meeting, petitioner was informed that the social assessment evaluation required an interview of her and T.D.

Earl Clymer

Earl Clymer (Clymer) is the Superintendent of Warren Hills. He was previously a principal, assistant superintendent, and special education teacher. His job is to ensure the effective and efficient operation of the District. He rarely gets involved with students. He became familiar with T.D. in the summer of 2019. At that time T.D. had been placed at Bonnie Brae. Clymer ensured that T.D. had instructions while he was at Bonnie Brae.

Clymer was told that Bonnie Brae would not allow T.D. to have a Chromebook supplied by the District. Home instruction at Bonnie Brae was arraigned for T.D. An instructor was to go to Bonnie Brae and give T.D. home instruction fifteen hours per week. The District offered to have T.D. transported to Warren Hills and Back to Bonnie Brae for instruction, but that offer was rejected. The District offered to pay T.D.'s tuition at a high school near Bonnie Brae, but that offer was rejected.

In the spring or summer of 2019, petitioner met with him to discuss an out of district placement for T.D. The November 2019 meeting with Bonnie Brae and petitioner was to determine what would be best for T.D. Grades and academics were discussed. He does not recall the results of the meeting. Bonnie Brae believed that T.D. should have been in its school. T.D. was isolated academically from the other students at Bonnie Brae. Clymer was made aware that petitioner believed that the consent order for Dr. Fennelly was overbroad.

T.D. was suspended for drug related matters. It is not typical for a student to be on home instruction for one year. Clymer did not know that there was no meeting to discuss T.D.'s placement after he was discharged. There was a schedule in place for T.D. to begin remote learning once he was released from Bonnie Brae. He does not know when the letter for virtual learning was sent to the parents.

Clymer knows that T.D. has ODD which can impact a child's learning. He was not directly contacted by the New Day School. Clymer would get sporadic updates about T.D. at Bonnie Brae.

Petitioner was not satisfied with the 504-plan. Once T.D. was released from Bonnie Brae they would meet to discuss the 504-plan. There were concerns about the time T.D. spent with the home instructor. Clymer was not informed when T.D. was released from Bonnie Brae. It was anticipated that Bonnie Brae would do a behavior plan for T.D. Behavior plans can be used for special education or general education students.

T.D.'s 504-plan did not have a behavior plan. It did not have one to one assistance. The behavior plan was to be done due to issues T.D. had with instruction at Bonnie Brae.

Kimberly Tomasino

Kimberly Tomasino (Tomasino) has been the high school psychologist in Warren Hills for the past four years. She does psychological evaluations, frequently using the Wexler, Vineland and BASC 3 tests. She does not do educational testing in Warren Hills.

Tomasino became familiar with T.D. in February 2019, one month after he enrolled in Warren Hills. She was the case manager assigned once the referral for T.D. was received. She briefly met with T.D. She communicated with the guidance counselor and requested updated 504-Plan. T.D. had a typical ninth grade program with general level and college prep classes. She knew that T.D. had been home schooled for a time and went to private school. He was diagnosed with ADHD.

The ID and eligibility meeting was on March 13, 2019. A plan for T.D. was created at this meeting. The plan considered teacher information, student information, parental input, grades, conduct and attendance. T.D. was suspended because of drug use two days prior to the date of the meeting. The Child Study Team (CST) determined that evaluations were not warranted due to the prior evaluations of T.D. done by Phillipsburg in 2018. At that time, petitioner was concerned with whether T.D. had dyslexia. The Phillipsburg evaluations did not reflect any concern with T.D.'s reading. Since T.D. had been in Warren Hills for a short time the CST felt monitoring him in the general education classes was appropriate. After the March 2019, meeting T.D. did not return to Warren Hills.

Tomasino reviewed the psychological assessment done by Phillipsburg. The Wexler test was administered to T.D. His IQ score was ninety-one, which is in the average range. His verbal ability and problem solving were in the average range. His

processing speed was seventy -five, which is a lower score. Base on the testing, T.D. would need additional time for testing and material broken down for him.

Tomasino reviewed the educational evaluation with the LDTC. T.D.'s scores for this evaluation were in the average range, a few scores were in the upper limit of the low average range. T.D.'s diagnosis of ODD was discussed at the March 2019 meeting.

The district was concerned because T.D. left Daytop. Tomisano did not follow up with Daytop, but she did receive a grade report from them for T.D. She had not seen the Daytop discharge summary which requested T.D. have a psychiatric follow up. The CST believed that T.D.'s problems were related to substance abuse.

Tomasino reviewed the psychological evaluation done by the Children's Specialized Hospital prior to the August 2019 meeting. Petitioner was at the meeting with a person from a care management organization (CMO). CMO's work with families in crisis or there are mental health problems. The August 2019 meeting was in response to petitioner's request for evaluations. At this time the District knew that T.D. had been in Daytop and Carrier Clinic for substance abuse. T.D. was in the process of being placed at Bonnie Brae. No evaluations were done. The District wanted to determine if the behavior crisis of T.D. was related to substance abuse. Bonnie Brae seemed to be the appropriate place for T.D. It was determined that T.D. did not have a disability that affected his educational performance. T.D. was placed with a home instructor at Bonnie Brae.

A representative from Bonnie Brae was present at the August 2019 meeting. There was initially follow up with Bonnie Brae after the August 2019 meeting. There was a call with petitioner, a call with Bonnie Brae staff and a home instructor was sent to Bonnie Brae to work with T.D. Tomasino did not look at the tutoring log for T.D. but she was aware that he was not cooperating. She became aware that T.D. was not meeting regularly with the home instructor. The home instructor's report is part of T.D.'s record.

Tomasino did not know that petitioner asked for evaluations to be done while T.D. was at Bonnie Brae. Tomasino does not know of any 504-plan meeting after March 2019.

Prior to the January 2020 meeting petitioner provided a psychological evaluation to the District, which was evaluated by the LDTC. The evaluation was discussed by the CST. The evaluation showed that T.D. had a disability. The CST wanted to sort out the academic need from substance abuse. At the January 2020 meeting, petitioner requested the psychological evaluation be accepted and an eligibility determination be made for T.D. Information from T.D.'s teachers at Gregory the Great and Warren Hills and parental concerns were reviewed to determine if the 504-Plan was not meeting T.D.'s needs. T.D. was at Bonnie Brae at the time of the meeting. The CST proposed full evaluation updates for T.D. It was agreed that T.D. would have a psychiatric evaluation and a social history assessment. Tomasino was not aware of a mental assessment of T.D. done by Bonnie Brae. Tomasino knew that petitioner requested T.D. be educated at Bonnie Brae. She had not seen the letter from the District to Bonnie Brae.

Tomasino reviewed the consents for the evaluations in February 2020. She did not arrange the psychiatric evaluation until she had the parental consent.

The Psychiatric evaluation was not done. Dr. Fennelly was scheduled to do the psychiatric evaluation. Dr Fennelly cancelled the evaluation because petitioner would not sign his consent form. Tomasino received this information regarding the consent in June 2020. She forwarded the concern to Dr. Fennelly. He wanted his consent form used. She did not know that Dr Fennelly's consent form included treatment. Petitioner re-sent the consent that she signed to the District in June 2020. From June 2020 to August 2020, the District had no communication with petitioner. In June 2020 and July 2020, the District tried to resolve the consent issue with Dr. Fennelly. The District lost contact with Dr. Fennelly.

The Phillipsburg educational evaluation showed that T.D. was average in most areas. T.D. has low processing speed. The Warren Hills CST did not suspect an area of

disability. The evaluation shows that T.D. struggled to use class time effectively, following through on assignments and expressing his ideas in writing. Tomasino did not speak to the 504-plan coordinators. The Warren Hills 504-plan did not provide supplemental service for T.D. T.D. scored 85 on academic fluency on the educational evaluation. Tomasino does not consider T.D.'s academic fluency limited. In writing, T.D. has limited ability on task that require the ability to convey ideas in writing. The evaluation recommended that math instruction be systematic and explicit which can be done in a general education class. Cumulative review is done in general education math classes. Reading, a study guide, story plot and graphic organizer were recommended which can be done in a general education class. T.D. would be in Algebra I class. His math scores are not consistently low.

At the time of the referral, the CST looked at the impact of learning disabilities and ADHD. The 504-Plan was based on his ADHD. There was no evidence of T.D. having ODD at Warren Hills. Toni Loffredo sent Tomasino an email regarding T.D.'s 504-Plan which included T.D. having a tutor from the National Honor Society, after-school peer tutoring, and two sets of books. Tomasino does not know if this was implemented. Tomasino met with T.D. He kept his head down and did not make eye contact.

T.D. had missed assignments but that was not unusual for a student who had changed schools in the middle of the school year. A student's suspension does not mean that he has a disability. T.D. was on home instruction based on the length of his suspension. On February 21, 2019, petitioner requested a behavioral assessment for T.D. because of his behaviors at Gregory the Great and at home. There was no evidence of erratic behavior at Warren Hills. Tomasino does not know if T.D. had an I&RS plan.

Petitioner appeared for the social assessment. Social assessments include interviews with the student. This was not specifically stated to petitioner at the January 2020 meeting. Petitioner did not give her consent for T.D. to be interviewed for the Social Assessment. The Social Assessment was not completed, although it could have been done entirely from petitioner's perspective.

Tomasino agreed not to evaluate T.D. in March 2019. His ADHD and ODD were addressed in the 504-plan. The decision not to evaluate T.D. in August 2019 was because the concern was that his issues were related to substance abuse.

The independent psychological report of Dr. Plasner was reviewed with the CST. His report is extensive and used tests that the District does not typically use. The District did not agree with his diagnostic impression that T.D. had a social communication disorder or specific learning disorder. Plasner stated that T.D. meet the criteria for Multiple disabled. The District disagrees. The District does not disagree that T.D. has an adjustment disorder and a complex background, but it does not believe these meet the criteria for classification for special education services. Dr Plasner recommended direct services for T.D. The District felt that the mental health supports instituted in August 2019 was enough. There were inconsistencies in Dr. Plasner's report. Much of the information came from petitioner. The District denied petitioner's request for evaluations on two occasions. Dr Plasner sent a form to the home instructor for information regarding T.D. he did not receive a response.

Tomasino knew that T.D. was at Bonnie Brae but did not know when he was released. Tomasino was not present for the October 2019 meeting with petitioner. She was not aware that petitioner requested T.D. be evaluated at that meeting. The District did not place T.D. at Bonnie Brae.

While a student at St Philip and James school (SPJS), T.D. received Title One services in reading, writing and math. The 504-plan for Warren Hills states that as of February 19, 2019, T.D. was failing CP Algebra1, CP Env. Sci and Sales and marketing. T.D. had been a student at Warren Hills for a short period of time. During that time, he had been tardy, and the school had weather related closings.

Tomasino knew that T.D. had been suspended from his prior school for disciplinary reasons but does not recall reviewing nursing records for him. T.D.'s financial literacy

teacher wrote that in vocabulary, T.D. defined four of twenty words and did four out of thirty study guides, but he had a seventy-eight on his quiz.

On his Genesis report for the week of March 4, 2019, T.D. had a 10.10 percent in CP Algebra, a 15.70 percent in CP Environmental Science, 55.60 in Sales and Market and 66.30 percent in Financial Literacy. T.D. had been in Warren Hills for seven to eight weeks at that time. At the time of the report, T.D. did not have any attendance or discipline issues.

T.D. missed several assignments. Once he turned in the assignment it would be graded. In January 2020 the math teacher stated T.D. was not turning in his work. Petitioner asked one of the teachers if T.D. progressing. The teacher stated that since she received so little work from him, that he was not progressing. T.D. was exempted from class participation as well as other things. He had a significant amount of exemptions.

T.D. was evaluated by Children's Specialized Hospital. His executive function was significantly elevated. T.D. was withdrawing verbally and having difficulty with adaptive skills. This information came from petitioner. The evaluation found that T.D. has difficulty making friends and does not join group activities. He has difficulty maintaining consistent levels of attention. T.D.'s difficulty with executive functioning and impulse control could be substance abuse related.

The Learning Consultant at Warren Hills reviewed the Educational evaluation from Balaban and Associates. The CST disagreed that T.D. had a learning disability and believed that T.D. should be evaluated. Three evaluations were provided by petitioner. This was based on information from petitioner and the home instructor. At the time of the January 2020 meeting, T.D. had been drug free. At the January meeting, other health impaired and emotional disturbance classifications were considered. The District proposed educational, psychological, psychiatric, and social assessments for T.D.

The social history assessment was to be an interview with petitioner and T.D. Petitioner would not consent to T.D. being interviewed or for the District to speak to anyone at Bonnie Brae. Petitioner consented to the Social History Assessment but may not have known that part of the assessment was an interview with T.D.

Presently T.D. is a remote access student at Warren Hills. Remote instruction is not the best type of instruction for T.D. Tomasino was not aware that petitioner asked that T.D. be placed at New Dawn Academy.

T.D. was in Daytop, Carrier Clinic and Bonnie Brae due to substance abuse. T.D. left Daytop and missed several assignments with the home instructor while he was at Bonnie Brae. In January 2020, the District was willing to have T.D. evaluated. Petitioner never requested a speech and language evaluation.

The Phillipsburg evaluations determined that T.D. was not eligible for special education services.

Noha Soliman

Noha Soliman is a speech language pathologist. She evaluated T.D. on November 11, 2019. She administered the Clinical Evaluation of Language Fundamentals (CELF-5) the Test of Language Development Intermediate (TOLD-4) and the Goldman Fristoe test of Articulation, second addition to T.D. Her findings were that T.D. had age appropriate language skills with difficulty in pragmatic language and his receptive skills. He cannot be classified as communication impaired for eligibility for special education.

T.D.'s weakness in pragmatic language includes his ability to understand and define homonyms. The word class test is a subset of the CLEF tests which showed a weakness in his receptive language which impacts his comprehension in all classes. It impacts his ability to edit, make inferences, and understand analogies in word problems. His word class score was five he scored in the low Moderate range. His pragmatic

language score was .04, which means 99.6 percent of students his age has better pragmatic language skills. Pragmatic language is the ability to use language appropriately, how to behave and speak in different situations. Difficulty with pragmatic language has a negative impact on daily functioning. There is trouble explaining meanings, comprehending, and respecting authority. It affects the ability to make and keep friends. The pragmatic profile was filled out by petitioner.

A portion of the TOLD test is multiple meanings. The person is given a word with different meanings and asked to give as many meanings as they can. T.D. scored a seven on multiple meanings. He was in the sixteenth percentile of students his age. Soliman's recommendation is that T.D. will benefit from speech language therapy with a focus on receptive and pragmatic language. If he does not get help with his pragmatic skills, he will have difficulty in school. T.D.'s low score in pragmatic language is a major portion of the difficulties he has academically and personally.

Soliman did not observe T.D. in a classroom setting. She evaluated him in Bonnie Brae with his home instructor. The evaluation took place in an office at Bonnie Brae. At that time T.D. was angry because he woke up early and stated that he was only there because his mother wanted him to be there.

Soliman's evaluation was based on conversations with the parents as well as Dr Plasner. Soliman had no communication with the CST. Her pragmatic language score was based on the report from the mother and the evaluation. T.D.'s evaluation lasted for two hours. Her report does not say that T.D. needs speech services.

Deborah Weyland

Deborah Weyland (Weyland) is a learning disabilities teacher consultant (LDTTC). A LDTTC analyses academic performance, identifies learning disabilities offers suggestions on instructional and educational programs and provides educational therapy. She has conducted over three hundred learning evaluations.

Weyland was contacted to do an independent evaluation to determine the level of achievement and assist with educational planning for T.D. The evaluation was done at Bonnie Brae. T.D. had been previously diagnosed with Disruptive Mood Dysregulation, Unspecified Disruptive/Impulse Control and Conduct Disorder. He takes Intuniv for impulsivity and Lamictal for affective instability /impulsivity.

T.D. was receiving home instruction five days a week three hours per day. She reviewed emails from the home instructor. T.D went to school until the third grade. He was home schooled from third to the seventh grade. He went to SPJS for the eighth grade. T.D. struggled at SPJS. He received Title One (Basic Skills) services twice a week in reading, writing and math.

T.D. was administered the Weschler Intelligence Scale for Children fifth edition (WISC-V). It found that T.D. had average abilities with a weakness in processing speed and fluency speed. His fluid reasoning was average, and he had stronger visual skills.

T.D. was evaluated at Children's Specialized Hospital in June 2018. The Vanderbilt ratings scale was administered at this time. It found reading, written expression problematic. He did not give attention to detail on the test or sustain attention. He did not do the work in most subjects.

In T.D.'s ninth grade state assessment, his Language Arts and Algebra performance did not meet expectation. He performed at level one which is the lowest level. At Warren Hills T.D. had a 504-plan due to ADHD. In March 2019, the 504-plan was revised to include the diagnosis of ODD. T.D was in an outpatient drug program in March 2019.

Weyland's first evaluation with T.D. was cancelled because he had been found with cocaine at Bonnie Brae. When she first met with T.D. he declined to participate, but he later came in and spoke to her. He was laid back in speaking to her. He would zone out.

Weyland's diagnostic impression was that T.D. receive special education services under the classification as multiple handicapped to receive special education. He has a language-based disability in reading rate, reading fluency, math fluency, math calculation and math composition. He would benefit from a small group multisensory instruction program with verbal feedback. Lecture format teaching is not good for T.D. He needs a word processing program to assist with punctuation, grammar, and syntax. He has difficulty with his memory and needs repetition and practice in difficult situations. T.D. should not be in a multiple disabled class. Weyland did not discuss placement in her report. She addresses the type of program T.D. needs. She does not know the type of programs at Warren Hills. Some of Weyland's recommendations can be done with a 504-Plan.

T.D. had drug issues at Gregory the Great and Warren Hills. His time at Warren Hills was brief, January 2019 to April 2019 with two suspensions. The WIAT test average range is wide. It showed spelling was average but other tests would be below average.

The educational assessment of T.D. that was done by Phillipsburg has many comparable findings to her evaluation. That assessment used the Woodcock Johnson test. It showed that T.D.'s ability to listen, remember and repeat a sentence were below average. He needed extra time because his difficulty with reading rate and sentence fluency. His math calculation and math fluency were limited. He had limited ability to convey ideas on paper.

Phillipsburg educational assessment had similar recommendations to Weyland's evaluation, but they involved T.D. doing tasks that would draw attention to himself. It would be difficult to implement all the recommendations of the Phillipsburg educational assessment in a general education classroom.

The Title One teacher, Ms. Spencer at Phillipsburg wrote that T.D. was receiving math, reading, and writing service twice a week, he did not comply with his assignments, but his oral responses show that he comprehends.

Weyland was surprised by the number of petitioner's requests for evaluations that were denied. The District must identify and provide service to students that live in the District. The District has the obligation to evaluate students with disabilities.

The Phillipsburg evaluations do not indicate T.D. had a drug issue. T.D. has an average I.Q. He has a weakness in expressive vocabulary, expansive vocabulary, and fluency.

Weyland would not evaluate a student that was actively using drugs. Phillipsburg did not find T.D. eligible for special education services.

Joseph Plasner

Joseph Plasner is a licensed psychologist. He also has a certification as teacher of the handicapped. He has a master's degree in educational psychology, and school psychology and child development. He taught in public schools for fourteen years and was a school psychologist in public schools for fifteen years. He case managed twenty students a year for fifteen years. He is currently the executive director of Balaban and Associates.

Dr Plasner evaluated T.D. to assess his cognitive, emotional, social, behavioral, and executive functioning. At the time of the evaluation T.D. was at Bonnie Brae. Dr Plasner reviewed T.D.'s history, records and prior evaluations. At the time of the evaluation, T.D.'s demeanor was serious, quiet, motivated and cooperative. T.D. was asked to draw a human figure. He was asked what the figure needed most, and his answer was confidence. The human figure T.D. drew had no face which is rare.

T.D. has school, academic, learning and processing issues. He also has difficulty with impulsivity. He does not believe that he can affect the outcome of what he does and that the things that he does, does not count.

T.D. meets the criteria for special education under the classification of multiple disabled, other health impaired, specific learning disabled and emotional regulation impairment. One program could not address all of T.D.'S needs. T.D. needs direct services with monitoring and intervention. He needs close monitoring in an educational placement with a minimal teacher to student ratio. He needs teachers who are experienced in working with students like him. He also needs basic skill instruction in a multisensory setting.

T.D.'s placement should be in a school where he can maximize his skills in the day, afternoon and evening. Psychiatric intervention and counseling should be part of his program. He should have social skills and individual skills counselling to remain substance free. He also needs medication. T.D. needs special education services. He has significant problems in all areas of functioning, which needs to be addressed with an IEP.

Dr. Plasner reviewed the Phillipsburg psychological evaluation. He has problems with the report. His verbal comprehension score was ninety-eight which was average, his Fluid Reasoning Index score was 103. T.D.'s processing speed was seventy-five, which is significantly below the fluid reasoning index and verbal comprehension score. Students with lower processing speed have attention deficits. The Phillipsburg psychological report does not have a social, emotional, or executive function components. Dr. Plasner did not test T.D.'s processing speed. He wanted to take processing speed out of the equation.

The Warren Hills 504-Plan is not adequate to address T.D.'s needs. He would not be successful in a general education with a 504-Plan. The 504-Plan did not include counseling or in class support. A student with ADHD and ODD should not have a 504-plan. They need a program with social, emotional, behavioral, and basic skills goals and objectives are required. The discharge from Daytop is a red flag that T.D needed evaluations.

Students with ODD and Dysregulation disorder would be resistant to education. That student may need to be in a self-contained class.

T.D.'s discharge from Bonnie Brae list his diagnosis as Disruptive Mood Dysregulation Disorder, Severe Cannabis use Disorder and Unspecified Disruptive Impulse -control and conduct disorder. They recommended continued therapy, employment, and an appropriate academic setting. Dr. Plasner approves these recommendations. Counseling in an IEP is the responsibility of the District. T.D. going to Warren Hills as a general education student after his discharge from Bonnie Brae is inappropriate.

Hybrid education is not appropriate for T.D. He needs to be in class every day. Dr Plasner did an updated psychological report on T.D. The updated report included social, emotional, and behavioral evaluations. These evaluations were done on August 31, 2020, after he was discharged from Bonnie Brae. T.D. was not attending school at the time of the evaluation. T.D. had made progress. He was not overly agitated and had no overt resistance. T.D. rated his anger and anxiety as less than five.

Dr. Plasner researched New Dawn Academy and spoke to its Assistant Principal. He believes that New Dawn would meet T.D.'s needs. It has counseling, it is a small program with eleven students with students with IEP's.

While he was conducting his initial evaluation, Dr Plasner sent a rating scale of T.D. for the teacher to complete. It was never returned. T.D.'s parent provided answers to several of the tests that he did. Dr. Plasner relied on information from the parents and Bonnie Brae.

T.D.'s difficulties can be from lack of instruction during home schooling, but there were other indications that T.D. had disabilities prior to the home schooling.

Chris Vella

Chris Vella (Vella) is a licensed professional counselor and licensed clinical alcohol and substance abuse counselor. He is a certified school psychologist. Vella worked at Bonnie Brae for eighteen years as the coordinator of substance abuse policy. He did individual, group and family therapy. He was the chair of the rehab program at Bonnie Brae. He now owns his own company, Warren Center for Wellness and Therapy.

Vella began working with T.D. in August 2020. He was asked by T.D.'s CMO case manager to provide individual and family counseling for T.D. Vella was involved in the school component at Bonnie Brae while he worked there. The school at Bonnie Brae worked closely with the clinical department at Bonnie Brae. Vella would spend six hours a day at the school at Bonnie Brae. It is rare that students at Bonnie Brae are not involved with the school component. He knows of only two to three students at Bonnie Brae who did not go to the school component of Bonnie Brae. Clinical staff were in the school at Bonnie Brae because many students had behavioral issues. Social skills and social development were part of the classroom component at Bonnie Brae. Bonnie Brae had clubs in sports, art, and music that the students in the school component could participate in. If someone was not in the school component of Bonnie Brae, he could not participate in those programs.

It was detrimental for T.D. not be in the school program at Bonnie Brae. The school component at Bonnie Brae worked in conjunction with the clinical program. T.D.'s discharge summary from Bonnie Brae recommended that he receive counseling twice a week, seek part-time employment continue with CMO services and continue extracurricular activities. Vella provided the counselling to T.D. The CMO services are continuing. T.D. had two part time jobs but they did not work out.

After leaving Bonnie Brae T.D. had challenges with depression, anxiety, and impulsive behavior. He feels isolated, and not protected because he is not at school. T.D.'s emotions can be amplified during normal interactions which can result in explosive

outbursts or feelings of helplessness. This is connected to T.D.'s problem maintaining a job. The Adjustment Disorder occurs when he must be resilient or use adaptive behavior. There was no indication that T.D. had a current substance abuse problem when Vella was treating him.

Vella is familiar with Warren Hills general education. T.D.'s mental health challenges would not allow T.D. to be successful in a general education program. T.D. needs an educational program connected to his mental health diagnosis, with small classes and a staff that understands his mental health conditions.

Since leaving Bonnie Brae, T.D.'s mental health has deteriorated due to stagnation in his life, failed work opportunities and lack of education prohibiting him from making progress. Vella did not work with T.D. at Bonnie Brae. T.D. was placed at Bonnie Brae for substance abuse and mental health issues. He was not placed at Bonnie Brae for academic issues.

T.D. had difficulty with jobs because he struggles with authority. He had difficulty respecting the boss and the customer. He had two jobs during September 2020. Disruptive mood disorder can be exacerbated by substance abuse. Substance abuse can lead to mental health problems. All forms of mental health problems can be worsened by drug abuse.

T.D. is not currently being educated in any capacity. Vella was not aware that T.D. was offered virtual classes. T.D. would have difficulty with virtual classes. T.D. has a history of difficulty in school settings.

C.D.

C.D. is the mother of T.D. T.D. was home schooled from third grade to seventh grade. In the seventh grade, he refused to do schoolwork and was not compliant. She enrolled T.D. at Saints Phillip and James School (SPJS) for the eighth grade. He had

academic problems at SPJS. He was not doing the schoolwork or the homework, he used improper language and had an in-school suspension. T.D. received Title One services through the District. His Title One teacher was Ms. Spencer. T.D. had reading, writing, math, and behavior issues. Most of T.D.'s behavior problems were at home. At SPJS he was in danger of failing history and language arts. T.D. was evaluated by the District and it was determined that he was not eligible for services. He did however receive accommodations at SPJS which allowed him to graduate. He took a High School entrance exam and was below average in all areas. C.M. suspected that T.D. had ADHD.

T.D. went to Gregory the Great School for the ninth grade. He had problems immediately. He left the campus, did not do schoolwork, did not pay attention, and did not turn in schoolwork. He was expelled in January 2019. He was diagnosed with ODD and ADHD. She next enrolled T.D. in Warren Hills. She told the District that T.D. had previously been suspended. She signed the release of records on January 29, 2019.

C.M. wanted a CST meeting. A 504- plan was put in place while she waited for the CST which would take forty-five days. A 504-planning meeting was held on February 21, 2019. After that meeting, the 504 was revised to include the diagnosis of ODD. In February 2019, T.D. was not making progress at Warren Hills. On February 21, 2019, C.M. wrote the CST that she wanted evaluations for T.D. One of the evaluations she wanted was a behavioral evaluation.

The CST planning meeting was held on March 13, 2019. Prior to this there was an incident where T.D. drew a stick figure blowing the head off of another stick figure on his desk. C.M. provided the Iowa state test of T.D. and his entrance exam both of which reflect he was low average or below average in many areas. T.D. was not present at the meeting, he had been suspended two days before for being under the influence of drugs. The District determined that T.D. was not eligible for an evaluation. The focus of the meeting was the drug related suspension. His failing classes and inappropriate drawing should have been the focus. Prior to this meeting T.D. did little schoolwork or homework.

T.D. was placed on home instruction due to the suspension. He went to a counselor twice a week and had drug screenings. T.D. was again suspended on April 2, 2019. He had to be drug tested before he could return to school.

T.D. entered Daytop on April 13, 2019, the CMO and Carrier Clinic worked to get T.D. into Daytop. Daytop is a residential placement for drug abuse and mental health. C.M. contacted the District to inform them that T.D. was at Daytop. T.D. did not have academic issues at Daytop. The District provided educational services at Daytop. He was kicked out of Daytop on June 13, 2019 for leaving, sexual misconduct and refusal to attend group counseling.

After T.D. left Daytop, he took medicine that belonged to his father and sister. He stayed at St Luke's hospital for three days waiting for a bed at the Carrier Clinic. He was in the Carrier Clinic for ten days. He then went to New Hope, where he was kicked out after 20 days. T.D. was court mandated to Bonnie Brae on July 31, 2019. C.M. notified the District that T.D. was being placed at Bonnie Brae in July 26, 2019. She provided the District with information regarding Bonnie Brae including tuition.

After C.M. informed the District that T.D. would be at Bonnie Brae, she requested evaluations for T.D. She provided tests that were done by at Children's Specialized Hospital which was a neurodevelopmental evaluation, a neurological evaluation and other testing of T.D. A representative from the CMO attended the meeting. The meeting was held in August 2019. The District told her that they would not do evaluations of T.D.

C.M. believed that the 504-plan was not adequate of affective and did not address his behavioral needs. On September 1, 2019, C.M. found out that the District would not pay for the educational component of Bonnie Brae. They would send a home instructor to him. C.M. again requested T.D. have evaluations on September 11, 2019.

C.M. met with the District on January 13, 2020. At that meeting the District agreed to evaluations. C.M. had previously provided the District with the evaluations that she

had done for T.D. At that meeting C.M. requested an eligibility meeting to have T.D. classified.

C.M. had issued with the authorization that Dr. Fennelly wanted her to sign before the psychiatric evaluation. The consent allowed Dr. Fennelly to have access to all of T.D.'s records for a year. She was concerned with the documents that he wanted. Petitioners' prior attorney sent a letter to the District to address the issue with the authorizations. The District scheduled the evaluations with Dr. Fennelly for March 30, 2020. The evaluation was cancelled by Dr. Fennelly because C.M. did not sign the authorization.

C.M. was never told that the Social History evaluation would include an interview with T.D. As part of his evaluation, Dr. Plasner gave C.M. forms for the home instructor to complete. C.M., emailed the forms to the District but did not receive a reply. C.M. tried to schedule an observation of T.D.'s home instruction at Bonnie Brae but the District cancelled the home instruction on the day of the observation.

T.D. was discharged from Bonnie Brae on August 3, 2020. Bonnie Brae recommended that T.D. attend school, work and become involved in the community. C.M. did not inform the District that T.D. had been discharged at that time. She informed Tomasino of the discharge on August 7, 2010. There was no transition meeting for T.D. to go back to Warren Hills. In March 2020, C.M. received a list of the proposed classes for T.D. in his junior year. She was not informed that T.D. was to be a virtual student. She was told upon T.D.'s return to the District, she would be contacted to set up a 504 meeting. She has not reached out to the District about T.D.'s lack of instruction. She has not given T.D. at home drug testing.

C.M. and T.D. went to see New Dawn Academy to discuss the program and tour the school. The District needed to authorize payment to New Dawn Academy before T.D. would be accepted.

T.D. is having difficulty at home. His condition is deteriorating. He has depression and anxiety.

FACTUAL DISCUSSION

I **FIND** the following **FACTS**:

T.D. was home schooled from the third grade through the seventh grade. In the seventh grade he refused to do schoolwork and became non-compliant. He was enrolled in SPJS school for the eighth grade. While he was a student at SPJS, T.D. received Title One (Basic Skills) services in reading, writing and math twice a week. T.D. was evaluated by Children's Specialized Hospital in June 2018. The Vanderbilt Ratings Scale was administered at that time. It showed that T.D. had difficulty with reading and written expression. He did not give attention to detail or sustain attention. T.D. had academic problems at SPJS. T.D. was evaluated by the District of Phillipsburg while he was at SPJS. The educational evaluation done by Phillipsburg stated that T.D. completed little independent work, did not turn in his homework, struggled with class skills. Reading comprehension and writing was a challenge for T.D. It stated that his ability to listen and learn was limited, which could be due to auditory processing difficulties. T.D.'s computational skills are limited, his ability to solve basic math facts is limited. His expression ability is limited as is his ability to quickly read and write. The Phillipsburg educational evaluation recommended T.D. have lower grade level reading, reading guide, graphic organizer, assistance with spelling. His math should be systematic and explicit. It also found that T.D. was average in most areas.

Phillipsburg also did a psychological evaluation. T.D.'s verbal comprehension score was ninety-eight which was average, his Fluid Reasoning Index score was 103. His processing speed was seventy-five, which is significantly below the fluid reasoning index and Verbal Comprehension score. The Phillipsburg psychological report does not have a social, emotional, or executive function components. Phillipsburg found that T.D. was not eligible for special education services.

T.D. was enrolled in Gregory the Great for the ninth grade. While there he did not do his schoolwork, homework or turn in assignments. T.D. was expelled from Gregory the Great in January 2019. At that time, he was diagnosed with ODD. T.D. was then enrolled in Warren Hills on or about January 29, 2019. He had been diagnosed with ADHD at that time.

C.M. wanted a CST meeting. A 504-Plan was put in place. On February 21, 2019, a 504-planning meeting was held. Petitioner asked for a behavioral assessment which the CST declined. The 504-plan accommodations were preferential seating, provide a second set of books, provide a copy of classroom notes write down homework assignments in an agenda book that the teachers will initial, cue T.D. to stay on task with nonverbal signals, have T.D. repeat directions back to teachers, break down larger tasks into smaller units, fifty percent extended time on tests and quizzes and standardized testing in small groups. The 504-plan was based on T.D.'s ADHD diagnosis. It was later amended in March 2019 to add the diagnosis of ODD. The 504-plan did not include a behavior plan or one to one assistance. The 504-plan of Warren Hills did not address spelling, grammar, punctuation, or math. In addition, the 504-Plan did not address the recommendations of the Phillipsburg educational evaluation which included T.D. have lower grade level reading, reading guide, graphic organizer, assistance with spelling. His math being systematic and explicit.

T.D.'s Warren Hills report card for the second marking period had many incompletes. At that time T.D. was failing Algebra 1, CP Env Sci and Sales and Marketing.

In March 2019, there was an incident where T.D. drew one stick figures shooting the head from another stick figure on the desk. On March 11, 2019 T.D. was suspended from school for being under the influence of drugs. A CST meeting was held on March 13, 2019. At that time, the CST determined that evaluations were not warranted because of the prior Phillipsburg evaluations. The CST wanted to monitor T.D. in general education classes since he had not been in the school for a long period of time. The CST

believed that T.D.'s ADHD and ODD were addressed in the 504-Plan. T.D. did little schoolwork or homework at that time.

The Student Assistance Counsel (SAC) does interventions and gets assistance for students with substance abuse issues. There is no indication that SAC was involved with T.D.

T.D. was placed on home instruction as a result of the suspension. He went to counseling twice a week and had drug screenings. On April 2, 2019, T.D. was again suspended due to drugs. T.D. did not return to Warren Hills. He was physically at Warren Hills from January 29, 2019 to April 2, 2019. On April 13, 2019 T.D. entered Daytop with the help of the CMO and the Carrier Clinic. The District provided educational services to T.D. while he was at Daytop. On June 13, 2019, T.D. was kicked out of Daytop for leaving the campus, sexual misconduct and refused to attend group counselling among other things.

After leaving Daytop, T.D. stayed at St Luke's hospital for three days, the Carrier Clinic for ten days then he was admitted to the New Dawn Program which he was kicked out after twenty days. On July 31, 2019, T.D. was Court mandated by Judge Haek Young Suh, J.S.C. to enter Bonnie Brae. Petitioner informed the District that T.D. was in Bonnie Brae.

A CST meeting was held on August 1, 2019. A representative of Bonnie Brae as well as a representative from CMO was present. C.D. requested evaluations for T.D. She provided the CST with a neurodevelopmental evaluation of T.D. from Children's Specialized Hospital and a neurological evaluation of T.D. The District declined to evaluate T.D. The District wanted to determine if T.D.'s behaviors were drug related.

On September 1, 2019, C.M. became aware that the District would not pay T.D.'s tuition at Bonnie Brae. The District's offered to have T.D. transported from Bonnie Brae to Warren Hills and back where T.D. would be in a general education program with a 504-

Plan. This plan was rejected. The District propose T.D. use a Chromebook, but Bonnie Brae does not allow Chromebooks. The district agreed to provided home instruction for T.D. at Bonnie Brae for three hours per day five days per week. On September 11, 2019, C.D. again requested evaluations for C.M.

On September 17, 2019, Judge Haek Young Suh, J.S.C. amended his order placing T.D. at Bonnie Brae to include that since T.D. is a flight risk and there is a substantial risk of substance abuse, two hours of home instruction is inadequate and T.D. should attend the school program provided at Bonnie Brae. The District did not comply with the Judges' Order. The District agreed to provided home instruction to T.D. at Bonnie Brae for three hours per day. The 504-Plan accommodations would be implemented in the home instruction. T.D., in the beginning, would rarely comply with home instruction. He refused to attend the home instruction at Bonnie Brae specifically September 2019 and October 2019. He appeared more regularly for home instruction at Bonnie Brae in mid-November 2019. Although the District agreed to provide T.D. with home instruction three hours per day five days per week, on the days that he participated he never received three hours of home instruction. On the days he complied, he did not ever receive two hours per day of home instruction at Bonnie Brae. According to the tutoring log the longest time that T.D. received home instruction at Bonnie Brae on any given day was one hour and thirty-five minutes.

Another meeting was held on November 18, 2019 with C.M., a representative from Bonnie Brae, a representative from the CMO, and the District. The discussion included the fact that T.D. did not have a Chromebook, he was isolated, why he should not be bussed to Warren Hills from Bonnie Brae. C.M. again asked that T.D. be evaluated. The home instruction was not effective. T.D. was behind on the home instruction, he did not always attend, and he did not do many of the assignments. He had multiple incompletes on his second period report card. The report card shows that he was exempted from forty-four of forty-nine assignments.

Weyland is a LDTC. She interviewed T.D. at Bonnie Brae. He first scheduled interview was cancelled because T.D. had been found with cocaine. When she interviewed T.D. he declined to participate, but he later came in and spoke to her. He was laid back in speaking to her. He would zone out.

She administered the Weschsler Individual Achievement Test- third edition (WIAT-III) which focuses on performance academically compared to students his age and grade. The average range on this test is 85-115. This is a very broad average range. In Oral Language T.D.'s composite score was 85 which was average. His oral expression is below average. His score was 83 in the thirteenth percentile. His expressive vocabulary was also below average. His oral word fluency responses were very slow. When sentences were more complex, T.D.'s ability to recall sentences decreased. His total reading score was in the lower average range. His total reading score 88 is in the lower range of average. Basic reading is a strength for T.D. He has difficulty decoding unfamiliar words. His word reading score was average. T.D.'s reading comprehension score was average. His oral reading fluency, the speed of his reading, was below average. It is six years below age expectation. It takes him longer to read tasks.

T.D. in written expression has consonant and vowel omissions. The more he writes, it is difficult to determine what he is trying to say. He does not always capitalize the first word of a sentence and he has difficulty with punctuation. His essay composition was good but not expansive.

Math is T.D.'s greatest area of weakness. His composite score was below average. He has difficulty using zero, division and multiplication. His math problem solving is five years below grade level. His math fluency is below average.

A Key Math Diagnostic test was administered to T.D. This was done to get information on his problem-solving ability. His score of eighty-nine was in the lower range of average. Computational problem solving is a weakness for T.D.

T.D. was also given a written language test. His score was in the low range of average. He had weakness with capitalization of the first word of sentences, punctuation, spelling and near point copying. In the spontaneous writing test, he was shown two detailed pictures and asked to write about the picture. T.D. did not use the detail that was offered by the picture. His score was below average. Weyland would not evaluate a student that was actively using drugs.

Weyland's diagnostic impression was that T.D. receive special education services under the classification as multiple handicapped. He has a language-based disability in reading rate, reading fluency, math fluency, math calculation and math composition. Many of Phillipsburg's educational evaluation recommendation for T.D. were similar to Weyland's recommendations.

A private evaluation of T.D. was done by Metha Meenal on May 1, 2019. A Wide Range Achievement Test (WRAT) test was done on T.D. at that time. His spelling was at a third-grade level, his math was at a fourth-grade level. In reading comprehension, T.D. failed at levels seven, eight and nine.

Dr. Plasner is a Licensed Psychologist. Dr. Plasner evaluated T.D. to assess his cognitive, emotional, social, behavioral, and executive functioning. His evaluation T.D. was at Bonnie Brae. Dr. Plasner reviewed T.D.'s history, records and prior evaluations.

The Bender Visual-Motor Gestalt II test showed T.D. had average motor skills but was impulsive. The Stanford-Binet test showed T.D. had average IQ. Fluid reasoning and visual spatial test results were average. The Behavior Evaluation Scale-4 (BES-4) assesses the frequency of behaviors, the appropriateness of behaviors. He had significant problems in all areas of the BES-4. T.D. has a short attention span makes inappropriate comments, responds inappropriately, is easily frustrated and has extreme mood changes. He is unhappy in his interaction with his peers. T.D.'s Social Responsiveness scale- 2nd edition (SRS2) was completed by C.D. His score was high on the social communication index. He avoids group activity and gets frustrated when he

cannot get his point across. He avoids social interaction with adults and peers. The SRS-2 was given to T.D. at Bonnie Brae. His results were a mild social communication disorder. Cognitive regulation, ability to initiate is a problem for T.D.

The Personal Inventory for Children 2nd edition (PIC-2) provides estimates of current problems in behavioral and emotional adjustment. T.D.'s score was high in emotional and behavioral regulation. T.D. was given the Reynolds Adolescent Depression scale 2nd edition (RADS-2) and the Revised Children's Manifest Anxiety Scale 2nd edition which self-disclose his level of depression and anxiety. T.D.'s responses were not consistent with the diagnosis. He said that he was always kind and nice which is not consistent with other observations. He did not feel depressed or unhappy. When asked to self-rate his anxiety on a scale of one to ten, he stated that his score was a two and occasionally a five when he was angry. T.D. is vulnerable to substance abuse.

T.D.'s evaluation at Children's Specialized Hospital of May 22, 2019, is consistent with Dr. Plasner's observations of T.D.'s executive function and working memory problems. It shows that T.D.'s adaptive skills score is low. Philipsburg's psychological evaluation of T.D. did not have a social, emotional, or executive function component. The tests that were administered show T.D.'s verbal comprehension score was ninety-eight which was average, his fluid reasoning index score was 103. His processing speed was seventy-five, which is significantly below the fluid reasoning index and verbal comprehension score.

Dr. Plasner's diagnostic impression of T.D. was Social Communication Disorder, which has to do with his lack of self-esteem, which impacts his ability to understand emotions. His social awareness is problematic and problem solving is also an issue. He has intellectual and language impairment. He also has ADHD disorder, Adjustment Disorder with mixed disturbance of emotions and conduct, and specific learning disorder with impairment in reading and math.

Students with ODD and Dysregulation Disorder would be resistant to education. These students may need to be in a self-contained class. Dr. Plasner believes that T.D. meets the criteria for special education under the classification of multiple disabled, other health impaired, specific learning disabled and emotional regulation impairment.

T.D.'s discharge from Bonnie Brae lists his diagnosis as Disruptive Mood Dysregulation Disorder, Severe Cannabis Use Disorder and Unspecified Disruptive. T.D. had made progress and was not attending school at that time.

In January 2020, an identification and planning meeting was held for T.D. prior to the meeting, C.D. provided the District with the evaluations of Dr Weyland and Dr. Plasner and Noha Soliman, a speech language pathologist. C.M. informed the District that T.D. had been drug free since October 2019, the parties agreed to a psychiatric evaluation and social history assessment.

The psychiatric evaluation was to be done by Dr. Fennelly. C.M. believed that the authorization that Dr Fennelly required to be signed was over broad. A portion of the authorization states "I further authorize the release of information in these categories for co-ordination of care and the ongoing evaluation and treatment of myself or the above named individual if under the age of consent." It also states "I the undersigned understand a full report including full disclosure of all information gained during the interview including possibly protected health information pertaining to any of us will be sent to the school..." The evaluation was scheduled for March 2020. Dr. Fennelly canceled the evaluation because the authorization was not signed. On March 9, 2020, petitioner informed the District of the problem with Dr. Fennelly's authorization form. On May 13, 2020, petitioner sent the District a letter requesting an appropriate authorization form that Dr. Fennelly would accept. On June 3, 2020, petitioner sent the District's attorney a follow up letter again requesting an appropriate authorization form from Dr. Fennelly. The District tried to resolve the authorization issue in June and July of 2020. The District lost contact with Dr. Fennelly. From June 2020 to August 2020, the District had no contact with petitioner. In August 2020, the District proposed that T.D. be evaluated by another psychiatrist.

Petitioner agreed to a Social History evaluation. She did not realize at the time she agreed that she and T.D. would both be interviewed. Petitioner was interviewed but refused to allow T.D. to be interviewed.

T.D. was released from Bonnie Brae on August 3, 2020. The District was not aware that he had been released until August 7, 2020. In March 2020, petitioner had received a list of proposed classes for T.D. for the upcoming school year. She was not informed that T.D. would be a virtual student. She was not contacted about the 504-Plan after T.D.'s release from Bonnie Brae. T.D. is not presently in school.

Once he was discharged from Bonnie Brae, T.D. began seeing Chris Vella, a professional counselor and licensed clinical alcohol and substance abuse counselor. Vella was asked by T.D.'s CMO case manager to provide individual and family counseling for T.D. after he left Bonnie Brae. Vella diagnosed T.D. with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Inhalant Abuse with Intoxication, Cannabis Dependence and Disruptive Mood Deregulation Disorder which is manifested in a person who has difficulty regulation moods. Since leaving Bonnie Brae, T.D.'s mental health has deteriorated due to stagnation in his life, failed work opportunities and lack of education prohibiting him from making progress.

T.D. had jobs at McDonalds and Donkin Donuts. He was fired from McDonalds after two to three weeks because of arguing with the manager. He was fired from Dunkin Donuts after one and a half weeks after an altercation with another staff member.

Mary Louise Rowlin is an expert Special Education teacher. Kimberly Tomasino is an expert in school psychology. Noha Soliman is an expert in Speech and Language Pathology. Deborah Weyland is an expert in Special Education, LDTC and case manager for Special Education. Dr Joseph Plasner is an expert in School Psychology, Clinical Psychology, Case Management, and placement of students with disabilities. Chris Vella is an expert in family, individual and substance abuse counseling.

LEGAL ANALYSIS AND CONCLUSION

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

A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below, the disability adversely affects the student's educational performance, and the student is in need of special education and related services. Classification shall be based on all assessments conducted, including assessment by child study team members, and assessment by other specialists as specified below.

1. "Auditory impairment" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing impairment. "Auditory impairment" means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

- i. "Deafness"-The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and the student's educational performance is adversely affected.

- ii. "Hearing impairment"-An impairment in hearing, whether permanent or fluctuating, that adversely affects the student's educational performance.

2. "Autism" means a pervasive developmental disability that 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 an emotional regulation impairment 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.

3. "Intellectual disability" means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:

i. "Mild intellectual disability" means a level of cognitive development and adaptive behavior in home, school, and community settings that are mildly below age expectations with respect to all of the following:

(1) The quality and rate of learning;

(2) The use of symbols for the interpretation of information and the solution of problems; and

(3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.

ii. "Moderate intellectual disability" means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:

(1) The ability to use symbols in the solution of problems of low complexity;

(2) The ability to function socially without direct and close supervision in home, school, and community settings; and

(3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.

iii. "Severe intellectual disability" means a level of functioning severely below age expectations whereby, on a consistent basis, the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and cannot in some manner express basic wants and needs.

4. "Communication impairment" means a language disorder in the areas of morphology, syntax, semantics, and/or pragmatics/discourse that adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact

are required. The speech-language specialist shall be considered a child study team member.

i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.

ii. When the area of suspected disability is a disorder of articulation, voice, or fluency, the student shall be evaluated pursuant to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services pursuant to N.J.A.C. 6A:14-3.6(a).

5. "Emotional regulation impairment" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

i. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

iii. Inappropriate types of behaviors or feelings under normal circumstances;

iv. A general pervasive mood of unhappiness or depression; or

v. A tendency to develop physical symptoms or fears associated with personal or school problems.

6. "Multiple disabilities" means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities include intellectual disability-blindness and intellectual disability-orthopedic impairment. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiple disabilities. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiple disabilities." Multiple disabilities does not include deaf-blindness.

7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.

8. "Orthopedic impairment" means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term includes

malformation, malfunction, or loss of bones, muscle, or tissue. A medical assessment documenting the orthopedic condition is required.

9. "Other health impairment" means a disability characterized by having limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.

10. "Preschool child with a disability" means a child between the ages of three and five who either:

i. Is experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i(1) through (5) below, and requires special education and related services. As measured by a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.

(1) Physical, including gross motor, fine motor, and sensory (vision and hearing);

(2) Intellectual;

(3) Communication;

(4) Social and emotional; and

(5) Adaptive; or

ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.

11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to an emotional regulation impairment as defined in (c)5 above.

12. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:

- (1) Basic reading skills;
- (2) Reading comprehension;
- (3) Oral expression;
- (4) Listening comprehension;
- (5) Mathematical calculation;
- (6) Mathematical problem solving;
- (7) Written expression; and
- (8) Reading fluency.

ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.

iii. The term "severe discrepancy" does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general intellectual deficits, emotional regulation impairment, or environmental, cultural, or economic disadvantage.

iv. If the district board of education utilizes the severe discrepancy methodology, the district board of education shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.

13. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.

14. "Visual impairment" means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the New Jersey Commission for the Blind and Visually Impaired.

The District failed to do any evaluations of T.D. Instead, it relied on the Phillipsburg evaluations. Weyland administered an educational evaluation to T.D. The WIAT-111 test found that T.D. was below average in expressive vocabulary, oral word fluency, oral reading fluency, oral reading rate, word count, numerical math operations, math fluency multiplication. His oral reading fluency was more than six years below grade expectations. His numerical math operations score was significantly below age level expectations. T.D.'s math fluency multiplication score was more than six years below age level expectations.

The psychological evaluations determined that T.D. has a Social communication Disorder, impacting his ability to understand his emotions, ADHD as well as adjustment disorder.

These tests show that T.D. has specific learning disability in oral reading and math. As well as multiple disabilities of social communication disorder, ADHD and adjustment disorder.

I **CONCLUDE** that T.D. is eligible for special education and related services under the classification of specific learning impaired in oral reading and math and multiple disabilities of social communication disorder, ADHD and adjustment disorder.

Petitioner requested the T.D. be placed in an out of district placement. There was no testimony as to the special education programs in Warren Hills and if they are appropriate for T.D. There was no testimony from anyone from any out of district program about why their program would be appropriate for T.D. Petitioner and Dr Plasner testified regarding New Day school, but no one from New Day School testified. In his report, Dr. Plasner did not recommend an out of District placement for T.D.

I **CONCLUDE** that there was not enough testimony to determine if T.D. should be placed in the special education at Warren Hills or if he should be placed out of district.

The next issue is whether T.D. is entitled to compensatory education. Compensatory education is a remedy not specifically provided for in the IDEA. However, the courts have recognized that "Congress expressly contemplated that the courts would fashion remedies not specifically enumerated in IDEA." *W.B. v. Matula*, 67 F.3d 484, 494-95 (3d Cir. 1995). Thus, a student deprived of a FAPE may be entitled to an award of compensatory education, which is an available remedy even after the student has reached age twenty-one. *Ridgewood*, supra, 172 F.3d at 249; *M.C. v. Central Reg. Sch. Dist.*, 81 F.3d 389, 395 (3d Cir. 1996); *Carlisle Area Sch. Dist. v. Scott P.*, 62 F.3d 520, 536 (3d Cir. 1995); *Lester H. v. Gilhool*, 916 F.2d 865, 873 (3d Cir. 1990), cert. denied, 499 U.S. 923, 111 S. Ct. 1317, 113 L. Ed.2d 250 (1991).

The legal standard for the granting of such relief is summarized by the Third Circuit as follows:

[A] school district that knows or should know that a child has an inappropriate IEP or is not receiving more than a de minimis educational benefit must correct the situation. If it fails to do so, a disabled child is entitled to compensatory education for a period equal to the period of deprivation but excluding the time reasonable required for the school district to rectify the problem.

[*M.C.*, supra, 81 F. 3d at 397.]

Awards of compensatory education have included an additional two and one-half years of special education where the school district had been lax in its efforts to provide a proper placement, *Lester H.*, supra, 916 F. 2d at 873, and payment of college tuition where the disabled student would apply credits obtained toward acquisition of a high school diploma. *Sabatini v. Corning-Painted Post Area Sch. Dist.*, 78 F.Supp.2d 138, 145-146 (W.D.N.Y. 1999).

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T.D. was court ordered into the educational component of Bonnie Brae on September 17, 2019, by Judge Haek Young Suh, J.S.C. The District did not pay T.D.'s tuition at Bonnie Brae. Instead, it elected to provide home schooling at Bonnie Brae for T.D. The District knew that T.D. was not complying with home schooling at Bonnie Brae initially and when he did comply, he never received the full three hours per day that the District agreed to provide. The District made no attempt to change, modify or adjust the home instruction at Bonnie Brae.

I **CONCLUDE** T.D. is entitled to compensatory education from September 17, 2019 until the present.

ORDER

Based on the above, it is **ORDERED** that T.D. is eligible for special education and related services under the classification of specific learning impaired in oral reading and math and multiple disabilities of social communication disorder, ADHD, and adjustment disorder.

It is further **ORDERED** that an IEP meeting be held as soon as practicable to determine an appropriate program and placement for T.D. and that T.D. be given compensatory education that he is entitled, from September 17, 2019 until the present

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.

March 31, 2021



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

March 31, 2021

Date Mailed to Parties:
ljb

March 31, 2021

WITNESSES

For Petitioner

Noha Soliman
Deborah Weyland
Dr. Joseph Plasner
Chris Vella

For Respondent

Mary Louise Rowlin
Earl Clymer
Kimberly Tomasino

EXHIBITS

For Petitioner

- P-1 Children's Specialized Hospital Report Dated June 4, 2018
- P-2 Counseling Report of Peter Kleponis Ph.D Dated February 25, 2019
- P-3 Bonnie Brae Admission Evaluation Dated September 2, 2019
- P-4 Psychological report of Dr Joseph Plasner of Balaban and Associates Dated October 22, 2019
- P-5 Report Card of T.D.
- P-6 Report of Rose Marie Spencer of Saint Phillip and James School Dated May 15, 2018
- P-7 Educational and psychological evaluations from Phillipsburg School District
- P-8 Warren Hills 504 -plan for T.D. Dated February 21, 2019
- P-9 Email from Deana Marie Turner of Warren Hills to petitioner Dated February 26, 2019
- P-10 T.D.'s Genesis Third Marking Period Report Dated March 4, 2019
- P-11 Out of School Suspension Notice dated March 13, 2019
- P 12 Notice of Identification Meeting Dated March 13, 2019

- P-13 Revised 504-Plan Dated March 22, 2019
- P-14 Daytop School Discharge Summary
- P-15 Letter from TriCity County Care management Dated March 10, 2019
- P-16 Court Order Dated July 31, 2019
- P-17 Children's Specialized Hospital Report Dated May 22, 2019
- P-18 St Peter's Hospital Evaluation Dated June 13, 2018
- P-19 Letter from Dr. Puja Joshi Dated July 15, 2019
- P-20 Identification and Planning Results Letter of Warren Hills Dated August 26, 2019
- P-21 Email requesting T.D. be Evaluated Dated September 11, 2019 and Rejection of that Request Dated September 12, 2019
- P-22 Letter from Bonnie Brae Regarding T.D. 's attendance Dated September 13, 2019
- P-23 Family Court Order Dated September 17, 2019
- P-24 Emails between petitioner and Clymer Dated September 2, 2019 and September 26, 2019
- P-25 Letter to Bonnie Brae from Clymer and Response Dated November 11, 2019
- P-26 Letter between the Parties Dated November 19, 2019
- P-27 Letter between the Parties Dated October 14, 2019
- P-28 Due Process Complaint and Motion for Summary Decision
- P-29 Speech and Language Evaluation of Noha Soliman of Balaban and Associates Dated November 11, 2019 with CV
- P-30 Educational Evaluation of Deborah Weyland of Balaban and Associates Dated October 25, 2019
- P-31 Final Decision Regarding Independent Evaluations Dated March 2, 2020
- P-32 Decision of District Regarding Independent Evaluations Dated January 15, 2020
- P-33 Tutoring Logs Dated September 2019 to March 2020
- P-34 Teacher emails January 2020
- P-35 Genesis Updates Reassignment
- P-36 Emails January 2020
- P-37 Report Card January 2020
- P-38 Genesis Updates Assignments English 2019-2020
- P-39 Bonnie Brae Discharge Dated August 3,2020

- P-40 Report of Chris Vella Dated September 9, 2020
- P-41 Letter from Bonnie Brae to New Dawn Academy Dated July 31, 2020
- P-42 New Day Academy Description
- P-43 Bonnie Brae Report Dated June 26, 2020
- P-44 Updated Report of Dr Plasner of Balaban and Associates Dated August 31, 2020
- P-45 Certification of Dr Plasner Dated February 19, 2020
- P-46 Certification of Dr Plasner Dated May 15, 2020
- P-47 Certification of Dr Plasner Dated September 21, 2020
- P-48 Certification of C.D Dated February 7, 2020
- P-49 Letters regarding programs, Placement and Evaluations of T.D.

For Respondents

- R-1 Phillipsburg Board of Education Educational Evaluation
- R-2 Phillipsburg Board of Education Psychological Evaluation
- R-3 District Enrollment Information
- R-4 February 2019 504 Documents
- R-5 February 25, 2019 letter from Dr Peter Kleponis Dated February 25, 2019
- R-6 March 13, 2019 Identification Meeting Documentation
- R-7 May 1, 2019 Evaluation of Meenal Metha
- R-8 Children's Specialized Hospital Report Dated May 23, 2019
- R-9 BASC 3 Results
- R-10 ABAS 3 Results
- R-11 March 5, 2020 Correspondence from Petitioner's Prior Attorney
- R-12 April 16, 2020 Correspondence from Petitioner's Prior Attorney
- R-13 Gregory the Great Correspondence
- R-14 July 15, 2019 Letter from Dr. Puja Joshi
- R-15 Correspondence from Bonnie Brae
- R-16 August 1, 2019 Identification Meeting Documentation
- P-17 Correspondence from Petitioners
- P-18 October 18, 2019 Correspondence from Petitioner's Prior Attorney

P-19 December 12, 2020 Correspondence from Petitioner's Prior Attorney

P-20 December 13, 2019 from Rutgers Education and Health Law Clinic

P-21 Psychological evaluation of Dr. Joseph Plasner

P-22 Educational Evaluation of Dr Deborah Weyland

P-23 Speech and Language Evaluation of Noha Soliman

P-24 Discipline File

P-25 Attendance Records

P-26 Transcript/ Report Cards

P-27 C.V. of Earl Clymer

P-28 C.V. of Mary Louise Rowlin

P-29 C.V. of Kim Tomasino

P-30 Emails between Petitioner and Tomasino

P-31 January 2020 Identification Meeting Documentation