

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. EDS 16735-12
AGENCY DKT. NO. 2013 19066

S.T. AND S.T. ON BEHALF OF P.T.,

Petitioners,

v.

**MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION,**

Respondent.

Hillary D. Freeman, Esq., for petitioner (Freeman, Carolla, Reisman, Gran, LLC,
attorneys)

David B. Rubin, Esq., for respondent (David B. Rubin, P.C., attorneys)

Record Closed: February 14, 2014

Decided: December 19, 2014

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This special education case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1401 to 1484(a). In this case, S.T. and S.T. filed a petition for due process on behalf of their son P.T. seeking an order that the Matawan-Aberdeen Regional Board of Education (the District) failed to provide P.T. with a Free and Appropriate Public Education (FAPE) in accordance with the requirements of the IDEA, particularly with respect to the provision of transition assessments, planning and services, for the 2010-2011, 2011-2012, and 2012-2013 school years. The District contends that P.T. was provided with FAPE at all times throughout that period. On December 20, 2012, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law for final determination, and in accordance with 20 U.S.C.A. § 1415 and 34 C.F.R. §§ 300.500 to 300.587, at which time it was requested that an administrative law judge be assigned to conduct a hearing.

Hearing dates were held on January 24, April 9, May 2, May 8, May 12, July 3, July 12, July 26, August 1, August 19 and November 18, 2013. After hearing all of the testimony and considering all of the evidence presented in that regard, as well as the parties' written summations, the record was closed on February 14, 2014 when the parties advised the undersigned that a hearing scheduled for that date was no longer needed.

FINDINGS OF FACT AND SUMMARY OF TESTIMONY

The following is undisputed and is **FOUND** as **FACT**. P.T., who was born on June 19, 1992, is the twenty-two-year-old male child of petitioners. They reside in Matawan, Monmouth County, New Jersey. At the time of the hearing P.T. attended Matawan Regional High School. While the hearing was proceeding, he attained the age of twenty-one and concluded his attendance at the end of the 2012-2013 school year.

P.T.'s most recent IEP was drafted on June 13, 2012 (R-1). It included consideration of an occupational therapy evaluation dated May 7, 2012 and a psychological evaluation dated May 10, 2012. He has been receiving special education services since preschool. P.T. was in-patient at Kennedy-Krieger Institute in Baltimore, MD from June 2008-January 2009. He then attended the Lindens Program of Bancroft Neurohealth in Haddonfield, NJ before returning to the District for the 2009-2010 school year. His current setting is self-contained. P.T.'s classification was noted in the IEP as "autistic" and his program was Autistic Class.

The following is a summary of the witness testimony in this matter:

Andrea Trezza

Trezza has been employed as a behavior consultant by the District since the end of the 2010-2011 school year. As a behavior consultant, she works with teachers and parents to develop behavior improvement plans. She holds an instructional certificate with elementary and special education endorsements and an administrative certificate with supervisor and principal endorsements. She has a master's degree in educational administration. Prior to her employment with the District, Trezza worked with autistic children in classrooms at the Bayshore Jointure Commission for seven years. She helped develop behavior plans for the students there. At the time of her first testimony in this matter, she had completed the coursework and field work for her Applied Behavior Analysis (ABA)/Board Certified Behavior Analyst (BCBA) certification. She failed the final exam on the first try, but by the last day of her testimony she had taken the test again and passed. Trezza testified that the only difference between her former status (having completed all of the coursework and field work for a BCBA certificate, but not having sat for the final exam) and actually being a BCBA was that she could not supervise other professionals trying to obtain a BCBA certificate.

She testified that she believed she was hired by the District because of her experience with autistic students at her previous job and because the District was trying to start its own program for autistic students in order to decrease the number of

students sent out of district. When she was hired by the District, P.T. was the only student in his classroom. She was already familiar with P.T. because they were both at the Bayshore Jointure Commission for a period of time. She did not work with him personally at Bayshore, but she was aware of the severity of P.T.'s behavioral issues while at Bayshore.

Trezza was not entirely aware of P.T.'s placement history between Bayshore and the time he returned to the District. She knew some of the places he had been. She knew he had been at Bancroft and Woods Services, but was not familiar with the circumstances of his departure from various placements prior to his return to the District.

Trezza was asked if she knew the impetus for the provision of assistance for P.T.'s morning routine upon his return to the District. Trezza had heard that P.T.'s mother was concerned about being home alone with P.T. in the morning because of his behavioral issues. Trezza did not regularly go to P.T.'s home for his morning routine, but did go to P.T.'s home on a few occasions when school staff was trying to phase out P.T.'s teacher from the morning routine. She also consulted with P.T.'s personal assistant to see how things were going with the morning routine. According to Trezza, P.T.'s behavior during the morning routine improved over time, and the staff wanted to transition the morning home routine away from P.T.'s teacher and try to get P.T.'s mother more involved.

According to Trezza, in the summer months before she started in 2010, P.T. had about 900 to 1,000 disruptions and that there was improvement over the 2009-2010 school year. However, in February [2010], she estimated that there were still approximately ten to twenty, sometimes a couple days a week. She noted that compared to prior experience, this represented a significant reduction in incidents. Trezza stated that P.T. had made significant improvement from when he started in July 2009 throughout the entire school year. According to Trezza, his aggressive behaviors, his self-injurious behaviors, and his tantrums had nearly been eliminated, but the data

she reviewed illustrated that some disruptions and some perseveration behaviors persisted.

According to Trezza, when she started, she was in P.T.'s classroom approximately three days a week and then slowly started phasing out to the point where she would be in there one to two days a week. She was not present all day every day.

April 2010 IEP

P.T. has a history of behavioral problems and was placed in his own classroom with a teacher and a one-to-one assistant, who would go to P.T.'s home in the morning to help him get ready for school. The teacher and assistant would help P.T. with such routines as brushing his teeth, getting dressed, making his bed, and folding his pajamas. In the afternoon, P.T. would attend an afterschool program at New Horizons. Trezza stated that she had gone to New Horizons twice since she began her employment with the District. She said that she worked with staff at New Horizons with respect to P.T. Her understanding of New Horizons was that it was not academic-intensive, and involved more leisurely activities than the school program, focusing more on skills, working on the students being exposed to the community. It was Trezza's understanding that the District paid for P.T.'s enrollment at New Horizons. She was not aware that the Division of Developmental Disabilities (DDD) was involved in some funding.

January 2011 IEP

Trezza testified that there were no substantial changes to P.T.'s previous IEP, and that the fact that P.T.'s mother signed the 2010 IEP indicated to Trezza that she was satisfied with its content. Trezza stated that P.T.'s behavior was improving and the child study team wanted P.T. to have more experience in the community. For example, Trezza and P.T.'s teacher and assistant arranged for P.T. to work in a pizzeria before the start of school. They worked with P.T. in the classroom setting to prepare him for such tasks as putting pizza boxes together. P.T. would also go food shopping at the

grocery store every week. Once or twice a week P.T. would sit and eat lunch with his peers in the school cafeteria.

The IEP provided for a Board Certified Behavior Analyst (BCBA) to work with P.T. for at least two hours per week. There was not a BCBA on staff at that time. Trezza was not sure why the IEP said “BCBA,” because she was not yet a BCBA, but she would have been the one to provide those services. She thought the inclusion of the term “BCBA” was merely an error.

During the 2010-2011 school year, school staff worked with P.T. on using his language skills to ask for things he needed or wanted. Typically, P.T. would start his day in the classroom by eating his breakfast. After breakfast he would work with staff on calendar skills and talking about personal information, such as things he did at home or his name and birthday. Two other special education students would come to the classroom for a period to play a game with P.T. Staff would work with P.T. on reinforcing his acquired skills and developing new skills. For P.T., mathematics typically involved counting and identifying numbers and language arts involved identifying letters and his name, and working on adjectives like “Which cat is the small cat?” P.T. could not complete a sentence or carry on a conversation without prompting. P.T. worked on patterns and picture sequences, and he was good at matching pictures and following patterns. P.T. also worked on daily living skills such as sweeping the floor, washing windows, washing and drying his hands, and food preparation.

By the end of the 2010-2011 school year, Trezza testified that P.T. had made progress. He still had behavioral issues at home, but he was behaving well at school. Trezza attributed the reduction in behavioral issues at school to the fact that staff followed his behavior plan and presented him with choices in his academics, such as asking him what math work he would like to do first.

She stated that he was doing well in the community, such as at the grocery store and the pizzeria. The only staff member who then helped with P.T.’s morning routine was the personal aide.

Either at the end of the 2010-2011 school year or over the summer, certain items were added to P.T.'s classroom, such as a washer and dryer, a bed, and other items designed to assist in encouraging development of life skills. There was an oven, refrigerator, and microwave in the classroom for students to prepare their meals.

She described the relationship between P.T.'s parents and the school by the end of the school year as "collaborative" and free of any major conflicts.

During the 2011-2012 school year, P.T. began volunteering at a dry cleaner in town, and some new reading programs were introduced into his program. He worked on life skills such making a bed and sorting laundry both at school and at home.

The vocational activities for P.T. were geared toward his anticipated graduation at the end of the 2012-2013 school year. His program was designed to give P.T. exposure to being in the community and deemphasize presence in the school building working to minimize his behaviors while out in the community and for him to be able to transfer the skills he learned in the classroom to the community setting.

P.H's mother did express certain concerns regarding P.T.'s community experiences and his reading program. P.T.'s mother was also concerned about phasing out the one-to-one assistant from helping P.T. with his morning routine, and the school accommodated her concern by continuing to send the assistant to help with the morning routine.

Trezza agreed that P.T.'s behavior was generally improving at the time of the January 2011 IEP. Trezza also agreed that the IEP provided that a vocational assessment was to be completed by February 15, 2011, that P.T. would sample a minimum of four jobs per year, that P.T. would receive instruction in pre-vocational and vocational skills by a job coach and school staff, and that he would receive instruction in adult independent living skills. Trezza stated that P.T. was placed in two job sites—the pizzeria and cleaners—between January 2011 and June 2012. Trezza did not know whether a formal vocational assessment was completed by February 2011, but thought

that the case manager conducted “some type” of vocational assessment. She was not sure when that assessment was completed. She stated that there was no job coach instructing P.T. between January 2011 and June 2012. She stated that she and staff worked with P.T. on job appropriate skills such as eye contact, requesting, interactions with adults, and his responsibilities when he was out in public.

Trezza agreed that P.T. was not receiving consultation services from a BCBA even though that was a provision of the IEP. Trezza agreed that the IEP provided for a reading program, but she was not sure when the District received the necessary reading materials or began the program. According to Trezza, P.T. was using the reading materials provided by his mother rather than those purchased by the District. He was however, participating in the same reading program that was agreed upon.

June 2012 IEP

Although P.T.’s behavior had improved for quite some time, he regressed toward the end of the 2011-2012 school year. He would punch tables, hit his legs, and engage in other disruptive behaviors he exhibited in the past. He was also engaging again in more frequent perseveration. Trezza started to collect more data regarding the timing and frequency of his behavioral issues. The data revealed that some of these behaviors would occur when he was interrupted from doing something or transitioning from one matter to another, specifically when he was involved with something that he enjoyed and then have to transition to something he preferred less. In response, staff used more reinforcements to reward P.T. for good behavior. This strategy worked to reduce behavioral incidents, and at the June 2012 IEP meeting, P.T.’s mother seemed to be satisfied with the strategy.

The IEP indicated that P.T.’s mother would be meeting with the District’s job coach in September, and suggested three jobs for P.T.: continued work at the cleaners he currently goes to, vocational sheltered workshop and Sunrise Assisted Living. Trezza recalled that P.T.’s mother voiced her desire for a formal functional vocational assessment. She stated that she believed that the parents requested that the

assessment be done by someone outside the District to evaluate P.T.'s interests and abilities, but that the case manager conducted his own vocational assessment.

Since P.T. would turn twenty-one years old in June 2013, it was understood at the June 2012 IEP meeting that the 2012-2013 school year would be his last. The child study team discussed vocational skills for the 2012-2013 school year. P.T. was folding pizza boxes at a pizzeria and working at a cleaners. The staff worked with P.T. on folding pizza boxes for a long time in the classroom before he went to the pizzeria. The staff asked the pizzeria owner if P.T. could perform some other tasks, but the owner was hesitant. The staff spoke with another pizzeria owner who was willing to let P.T. perform additional tasks. Trezza stated that P.T. went there only one or two times and then stopped going. She thought this was because the 2012 summer program started, and then in September, learned that P.T. wasn't going out to any of the sites until a vocational assessment was performed.

Trezza testified that the goals for the 2012-2013 school year were focused on increasing his communication skills and working on getting him to ask questions and to improve upon conversational skills. P.T. took a physical education class in which special education students were paired with volunteer general education students. Trezza could not recall any concerns the parents had about P.T.'s academic program. However, she noted that the parents were more concerned with increasing P.T.'s vocational opportunities. She acknowledged that the June 2012 IEP did not include specific goals with respect to his work at the pizzeria and other sites.

P.T. worked in the school library, organizing magazines and stamping books. He was supposed to do this on a weekly basis, but it did not always work out that way. He also delivered mail and sorted mail in the school. He would also go to the YMCA to work at the snack counter, wiping down tables and arranging snacks. He also assisted in an in-school bake shop, sorting ingredients and adding ingredients with supervision. His June 2012 IEP also listed "Fun Time America" as a possible job opportunity, but that never materialized.

In terms of P.T.'s pizzeria experience, Trezza explained that the purpose was more than just constructing boxes, is to demonstrate the skills that go into him going out in the community and working or volunteering. It was about responsibility and interacting with adults. The staff also tried to teach P.T. how to ask for things, like the waxed paper that goes in pizza boxes, when they ran out. She testified that once P.T. mastered a skill, he would be taught another one and that these skills would be taught first in the classroom and then he would apply them in the work setting.

Trezza continued to work with P.T. during the extended school year, or the summer of 2012. His daily routine was very similar to what it was during the regular school year. The personal aide continued to help P.T. with his morning routine, but P.T. was becoming more independent. The goal was to lessen his dependence on the personal aide and to get P.T.'s mother more involved in the morning. His routine at school during ESY was similar to the regular school year, but on an abbreviated schedule. After school, he would go to New Horizons. During the gap between ESY and the regular school year, the personal aide continued to help P.T. with his morning routine and P.T. continued to attend New Horizons.

The reference to a BCBA in previous IEPs was not present in the June 2012 IEP.

Vocational and Transition Assessments

Trezza testified about her knowledge of vocational and transition assessments that were done for P.T. For an assessment commissioned by the school, an evaluator, Nancy DelPapa, came to P.T.'s classroom for three days in September 2012 to observe and interact with him. Trezza reviewed the vocational assessment report, and thought the evaluator really captured P.T.'s strengths and weaknesses. The report included certain jobs that P.T. could perform, including sorting mail, sorting and folding laundry, food tray assembly, simple cleaning tasks, copying, and collating. The report also recommended that the academic requirements of any job should be limited, that P.T. should be able to complete certain tasks through demonstration and hands-on

instruction, and that he should avoid any jobs that require extensive social interaction due to his limited communication skills.

Trezza also discussed a separate transition assessment commissioned by the parents. The evaluator, Domenico Cavaiuolo, observed P.T. during ESY, and not the regular school year. She did not regard the Cavaiuolo report as a vocational assessment. On the day of the observation, P.T.'s personal assistant was absent, so P.T.'s teacher went to his house that day to help him get ready. Trezza could not recall any substantive interaction between the evaluator and P.T. Trezza thought the report was inaccurate and misleading in several respects. The report noted that P.T. had limited opportunities for an inclusive education, but this was not, according to Trezza, due to P.T.'s behavioral and communication issues. The school tried to expose him to mainstream opportunities as much as possible, like in the lunchroom and gym. Trezza also thought it was misleading that the evaluator relied on a five-year-old report regarding P.T.'s intellectual and communicative abilities. Trezza noted that the evaluator did not ask to review P.T.'s behavior plan or his behavior data, but suggested in his report that there was not an appropriate behavior plan in place. Trezza disagreed with the evaluator's assessment that staff did not place too many demands on P.T. because of the behavioral consequences. She noted that, on the day of the observation, there were substitutes in the classroom and P.T.'s personal assistant was absent. Nonetheless, there was nothing that should have given the evaluator the impression that staff shied away from placing demands on P.T. due to his behavioral issues.

The report also stated that the classroom had several age-inappropriate games and puzzles. However, according to Trezza, many of those games and puzzles were for other students.

Trezza disagreed with the evaluator's statement that "[i]t is unclear if a formal systemic instructional plan is being implemented to teach specific skills and collect data." According to Trezza, there was a formal plan in place, such that staff would break down an activity, like hand washing or putting a pizza box together, to teach him

in smaller steps and reviewing data on those steps. The next step is not introduced until the learner demonstrates mastery of the criteria for those steps. The report also indicated that P.T.'s mother was concerned that P.T.'s communication skills had regressed, but according to Trezza, P.T. was as verbal at the beginning of the 2012-2013 school year as he was when she started her employment at the school and P.T. was not as dependent on prompts as he was when she started.

Trezza disagreed with the evaluator's conclusion that P.T.'s behavioral issues were decreasing because the staff was not placing sufficient demands on him. According to Trezza, the staff placed many demands on P.T., but was able to decrease his behavioral episodes by pinpointing the triggers and using reinforcement procedures. According to Trezza, the staff always tried to figure out how to improve P.T.'s behavior and support him. The staff followed the recommendations of an assistive technology assessment and downloaded iPad applications for eye contact, social skills, math, handwriting, and food shopping.

Trezza created a new behavior plan in December 2012. The December 2012 behavioral intervention plan that Trezza created reflected improved behavior by P.T. He had a spike in behavior the prior spring, and staff collected additional data to determine the function of that behavior. The new plan captured the procedures that had helped improve P.T.'s behavior. The plan was not intended to be a functional behavioral analysis. It covered data from September 2012.

In her testimony, Trezza responded to the criticism of her plan in a report by Bobbie Gallagher, a consultant hired by the parents. Trezza grouped all of P.T.'s behaviors together, because P.T.'s kicking, hitting, and perseveration behaviors did not occur in isolation. Rather, these behaviors occurred often at the same time.

According to Trezza, because the incidents of behaviors were less frequent at the time of the plan, she looked at the first thirty-day span wherein three episodes of problem behavior occurred. She collected data every day for P.T. A behavior data sheet was utilized that logged all of the behaviors and the time of day they occurred.

There was a corresponding ABC [Antecedent, Behavior, Consequence] data sheet. Trezza did a “pattern analysis” that looked at the time of the day, what was he doing, how long an incident lasted, and what behavior occurred. She stressed the importance of the why, the function behind what happened, and worked to identify antecedent that triggered a specific behavior.

At the time of the plan, a lot of P.T.’s behaviors were due to interruptions or transitions. These fell under the “escape maintained” behavior function. There were three such episodes documented. Two of those episodes were behaviors as a result of transitioning from breakfast to morning meeting. Thus, he had behaviors when he was asked to leave something and go somewhere else. Trezza found a token board was very effective in reducing P.T.’s behaviors. The token system would reward him for complying with a transition and not engaging in behaviors. She decreased breakfast time instead of increasing it, because she found that P.T. had a harder time transitioning the longer he continued one activity. The other episode involved aggressive, disruptive, and self-injurious behavior.

She disagreed with Gallagher’s opinion that three behavior episodes were insufficient data to put a plan together and that Trezza should have conducted behavior experiments to determine the functions of his behaviors. However, Trezza stated that the behavior rates were so low and gave her opinion that it’s potentially unethical to try to provoke behavior in a school setting, and that such is usually done in a clinical setting. Also, Trezza did not think this was necessary because she had identified the function of his behavior at that time.

In response to Gallagher’s criticism that P.T. had the same goals in the first marking period of the 2012-2013 school year as the fourth marking period of the 2011-2012 school year, Trezza stated that P.T.’s IEP was issued in June 2012 and ran until June 2013, so that is why the goals were the same. If a goal was achieved it, would be noted in a progress report.

She also disagreed with Gallagher with respect to the fact that Trezza collected data and looked at the antecedent, behavior, and consequence. If Gallagher thought she was not collecting thorough data, it was probably because she was looking at only the summary data sheets, and not the more extensive data Trezza collected and analyzed. Trezza stated that when she sent the sheets to S.T., who forwarded them to Gallagher, she should have indicated that it was a summary of her ABC data. When S.T. asked for further data, Trezza gave it to her. Trezza explained that P.T. was escaping the transition, which is why she concluded that he would engage in behavior due to transitions. She clarified that the interruption or transition was the antecedent, and the function was the escape maintained behavior. Gallagher had opined that if the transition was really the function, P.T. would have had many more than three episodes because he is constantly transitioning.

If Gallagher was implying in her report that the school was not using functional communication training with P.T., she was incorrect, because that was the essence of P.T.'s program. He was taught how to communicate about the things he wanted and needed. They taught him replacement behaviors in the school and work settings if he did something inappropriate. They varied the reinforcement token system to reward P.T. at different rates in response to good behavior. She did note that the behavior plan should reference "continuous" rather than "constant" praise.

In response to Gallagher's criticism that P.T. was working on skills that he mastered between 2002 and 2005, Trezza stated that P.T. had forgotten some of those skills during his residential treatment and had to relearn them.

She agreed with Gallagher's conclusions that P.T. required a full-day intensive ABA program with highly proficient staff and that he needed vocational opportunities, but did not agree that the school did not prepare P.T. for life after graduation.

There was a spike in P.T.'s perseveration behaviors in the beginning of 2013. The school would try to do a crisis intervention procedure, and if that did not work, he might engage in behaviors that required physical restraint. The perseveration behaviors

were happening at home, school, and at New Horizons. Trezza collected more data to try to understand the behaviors. She found that he perseverated on a DVD called "Daddy and Me" that had been broken. He would keep asking for it even though staff told him it was not available. She found that when she gave P.T. an iPad to play with, it helped with his perseveration. The iPad was a productive reinforcement for P.T. Grapes were another reinforcement for good behavior. Trezza tried to mix up the reinforcements so that one did not become ineffective due to overuse. The data also indicated that P.T. had fewer behaviors if he was able to get out of the classroom more often.

The behavior plan included both what to do before a behavior and what to do in response to a behavior or an absence of a behavior. The staff was trained in how to implement these strategies when transitioning P.T. from one activity to another. The plan included behavior reduction procedures for interruption/transition, three-step prompt procedure, positive reinforcement, crisis prevention, and token economy system. They were not meant to be followed in sequential order, but to explain what to do in particular circumstances.

Trezza visited P.T.'s home in May 2013 because S.T. had expressed concerns about his behavior at home. At that point, the personal aide was there more for support and S.T. was really running the morning routine. When there was a spike in behavior in the spring of 2013, the aide took the lead role again. Trezza tried to help correct the behavioral issues with reinforcements. The school worked with S.T. and DDD toward the end of the 2012-2013 school year to help S.T. with P.T.'s morning routine once P.T. graduated.

She also talked with staff at New Horizons about how to improve P.T.'s behavior. The token system seemed to really work. If any particular strategy was not working, Trezza would try something else.

In May 2013, S.T. requested a functional behavior assessment from an outside person with a BCBA. The District agreed to hire Nina Finkler at Eden Autism Services

for that purpose. The school got the report on July 30, 2013. Finkler recommended a token reinforcement system for appropriate behavior. This is exactly what Trezza had been doing.

Weslee Sernitsky

Sernitsky is employed by Educational Based Services (EBS), which is a nonprofit organization that provides structured learning experiences for children and young adults. She has experience working with students with autism spectrum disorder. She is not employed directly by the school district; she works on a contractual basis through EBS. She has a B.A. in psychology and a master's degree in special education. She has New Jersey teaching certifications with endorsements in special education and elementary education.

The school district first contacted Sernitsky in the spring of 2012 about the possibility of working with P.T. and other students. Before she met P.T., Sernitsky met with P.T.'s teacher, Edward Barrett, and personal assistant, Latifah Mackey, Trezza, and Christina Olsen, the District's assistant director of special education, and reviewed P.T.'s IEP to determine what jobs would be appropriate for him. It was Sernitsky's understanding that P.T.'s final year in the District would be the 2012-2013 school year. Sernitsky testified that someone in P.T.'s condition could not be expected to work independently, that he would need support to work in the community.

The June 2012 IEP included three vocational recommendations: the cleaners, the Center for Vocational Rehabilitation (CVR), and an assisted living facility. She met with P.T. three times in June 2012. She said his head was usually down. He would respond to her questions with "yes" or "no." There were some questions about work that P.T. was unable to answer. Sernitsky determined through conversations with P.T.'s personal assistant and the owners of the cleaners and pizzeria that P.T. enjoyed working at those places and was a good worker. Sernitsky visited the cleaners and asked if P.T. could continue to work there during the 2012-2013 school year and whether P.T.'s tasks could be expanded. She determined that P.T. would be

comfortable at the cleaners, but she wanted him to expand his knowledge of the business.

CVR had a school-to-work program for sixteen to twenty-one year olds, and Sernitsky stated that it was not a sheltered workshop. P.T. would have worked on assembling items and also worked on his social skills. She thought CVR was a good placement to see how P.T. was doing and then gradually transition to other sites. The third recommendation was an assisted living facility in which P.T. would set up the dining room area by sorting and filling condiments, cleaning the tables, and vacuuming. Sernitsky thought this would be a good fit for P.T. based on her conversations with Barrett.

She met P.T.'s mother during a job coaching meeting in June 2012. Sernitsky remembers that P.T.'s mother expressed concern that there was no vocational assessment done for P.T. In the summer, she took P.T.'s mother to various worksites, including CVR. P.T.'s mother stated that she was not interested in CVR, but did not say why. Sernitsky and P.T.'s mother also took a tour of the assisted living facility, a pizzeria, and a grocery store. P.T.'s mother did not express any positive or negative opinions about these possible placements. However, she again stated her desire for a vocational assessment.

In September 2012, Sernitsky and P.T.'s mother exchanged emails about the work programs. P.T.'s mother wanted to know what each job would entail, which Sernitsky explained. Sernitsky also explained to P.T.'s mother that jobs change over time in accordance with students' abilities and interests.

The District could not send P.T. to any vocational assignment in the community because P.T.'s mother would not consent. P.T.'s mother wanted to see a vocational assessment first. Sernitsky testified that the offered job programs were not mandatory, that P.T.'s mother could have suggested another placement. P.T.'s case manager asked Sernitsky to see if a grocery store would have a place for P.T. There was a spot available. Sernitsky learned in October 2012 that P.T.'s mother would not agree to the

grocery store placement unless he was also placed in a program called Impact Oasis, which is a working farm for autistic people. Sernitsky, the director and assistant director of the District's special education program, and Trezza visited Impact Oasis in December 2012. The owner told them that there was nothing available at that time.

Sernitsky testified she is OSHA-certified and that there is certain work that students cannot perform. She stated that a hospital job assignment could have fulfilled the recommendations of the school-commissioned vocational assessment, but there would be certain documents that P.T. could not file because of privacy concerns; that he could fold only clean linens at the cleaners; that he probably could not change a tire at a garage because of safety concerns. Sernitsky acknowledged that a position in the auto industry was never explored for P.T.

Sernitsky based her job recommendations on her knowledge and expertise. She said the recommendations coincided with the later-produced vocational assessment commissioned by the school. She thought the pizzeria was an appropriate placement for P.T. based on his past work with pizza boxes, and she thought he could do other things there, like clean tables. She thought the grocery store was appropriate because he likes sorting items. P.T.'s teachers told her that he likes to sort. The grocery store was willing to give P.T. further duties once he mastered certain skills. She explained that the grocery store job would have involved putting items back where they belong and making sure items were properly placed on the shelves, and could have evolved to bagging groceries. She stated that P.T. was interested in stocking.

The job sampling plan for P.T. was flexible such that it would have been modified immediately in terms of hours or duties if necessary.

S.T.

S.T. is P.T.'s mother. She is involved in an organization called Parents of Autistic Children and has gained a lot of knowledge about autism through the organization and her experiences with her son.

She has tried for years to get the District to offer P.T. community experiences that take into account his strengths, weaknesses, interests, and parental input so that he could find a job and independence upon graduation. P.T. is good with crafts, like making jewelry, and he was able to learn how to change a tire with very little instruction. If you show him how to do something a few times, he gets it. P.T. helped her husband disassemble an above-ground pool using screwdrivers. Determining whether P.T. likes something or not is not limited to whether there are behavioral issues or not. Sometimes he can say “no like” if asked “like or no like,” and sometimes you can tell he likes something because he laughs.

For the April 2010 IEP, P.T. was in a self-contained autism class. There was maybe one other student in his classroom. P.T. was the first autistic student taught in the high school. Previously, autistic students were placed in out-of-district programs. When P.T. returned to the District for the 2009-2010 school year, he was the only student in his classroom.

Prior to his return to the District, P.T. was placed in several out-of-district programs to address his behavioral problems. He engaged in self-injurious behavior and property destruction. He was aggressive toward other people, especially his mother. P.T. had several out-of-district residential placements prior to returning to the District for the 2009-2010 school year. He had an unpleasant experience at one of the placements, but at the last two placements before his return, the intensity and frequency of his aggressive behaviors lessened.

In 2009, she began discussions with the District about an in-district program for P.T. At the time of P.T.’s return to the District, the superintendent was directly involved in setting P.T. up in a program. A program was created specifically for P.T. While S.T. expressed some concerns about the staff hired to handle P.T., she testified that it turned out that she was very pleased with P.T.’s personal aide and his teacher. She was still concerned, however, whether Edward Barrett was qualified to handle P.T.’s educational program.

She was most concerned about P.T.'s safety and his education. The District hired a consultation team from Verbal Behavior Network to run P.T.'s program. She said that P.T.'s teachers were certified behavioral analysts, and in her experience, P.T. made progress academically and behaviorally when working with people with such credentials. Eventually, the District hired Barrett and Latifa Mackey to run P.T.'s program. During the 2009-2010 school year, P.T. had some vocational experience shredding paper in the school setting. The school staff selected the task, and P.T.'s mother did not object. P.T. would also shop for food once a week at a local grocery store. When Trezza was hired, she suggested that P.T. fold boxes at a pizzeria. S.T. had hoped for a more social experience at the pizzeria, so that when P.T. would come in during business hours people would say hello to him, but that did not happen. The owner was reluctant to let P.T. do any other tasks other than fold pizza boxes. During this time, P.T. was also doing office-type work at the school such as delivering mail.

When the April 2010 IEP was issued, the school staff did not really try to gauge P.T.'s interests and preferences. The staff would merely assign P.T. to vocational activities without first determining if he would like a particular activity. There were no vocational goals listed in the IEP. There were academic goals. His behavioral issues at this time were relatively low.

The April 2010 IEP was supposed to run until the next April, but an IEP meeting was convened in January 2011 to address some of P.T.'s mother's concerns with the program. S.T. really wanted a transition program that would lead to opportunities after graduation. The IEP called for a vocational assessment by February 2011, which was not done, and provided for a sampling of four jobs per year, which was also not done. He only worked at the pizzeria and cleaners. She thought that the transition services would take into account P.T.'s interests and preferences. The IEP provided for social skills and instruction on post-secondary education training, but these services did not materialize. A job coach was not provided in accordance with the IEP. S.T. signed that IEP.

P.T.'s mother had hoped P.T. could work at a YMCA, which he eventually did in 2012, but there was not a lot of consistency and he mostly exercised while he was there. In 2011, he began working at a different pizzeria, where he continued to fold pizza boxes. S.T. wanted P.T. to have more opportunities at the pizzeria and at other places in the community. She reached out to P.T.'s case manager in the beginning of 2012 to voice her concerns about the implementation of P.T.'s IEP, including the lack of a vocational assessment and job sampling, and speech and behavior issues. The case manager did not respond, so she reached out to other staff, and an IEP meeting was scheduled in March. The vocational assessment was discussed again, and was apparently subsequently done by the case manager. S.T. was under the impression that someone from outside the school was going to do the assessment and that the assessment would figure out where P.T. could work. She brought this up at the June 2012 IEP meeting, and the school said they would arrange for an independent evaluation.

S.T. had also requested an assistive technology evaluation because she thought iPad applications could help with P.T.'s language skills. An assistive technology assessment was done that recommended specific iPad applications that could help P.T. The IEP was not amended as a result of the vocational assessments and assistive technology assessment, but the iPad applications were incorporated in P.T.'s program in early 2013.

Right before the IEP meeting in June 2012, S.T. met with Weslee Sernitsky. Sernitsky had three job placements that she wanted S.T. to sign off on: the Center for Vocational Rehabilitation (CVR), which is a sheltered workshop where work is brought to the facility, the cleaners, and an assisted living facility. S.T. said she could not sign off on anything without a vocational assessment. However, S.T. visited various worksites with Sernitsky. P.T.'s mother was not comfortable with some of the activities P.T. would be engaged in at the assisted living facility. She was also concerned with the number of glass windows there, because P.T. could try to jump through them. She felt like Sernitsky made certain suggestions without P.T.'s particular capabilities and behavioral issues in mind. With the CVR placement, she got the sense that Sernitsky

was dictating what P.T. would do rather than presenting options from which to choose. S.T. also did not see any work opportunities there that she thought would interest P.T. She could gauge P.T.'s interest based on his behavior—the more he liked something, the less he acted out. And, she knew that P.T. liked to work with tools and assemble and disassemble things. She also would have preferred that P.T. work in the community, not in a sheltered environment.

They also visited the pizzeria where P.T. had been working and a grocery store. S.T. did not think the pizzeria was appropriate because he had been folding boxes for so long and there were no further work opportunities there. S.T. also thought that the grocery store would not offer enough meaningful work, that P.T. would be limited to turning food items on the shelves so that they faced forward.

S.T. liked the idea of P.T. working at Impact Oasis. She took P.T. there a couple of times and got the sense that he liked the idea of working there too. She discussed with Sernitsky this program and a program at Arc of Monmouth. S.T. thought Impact Oasis was going to work out in January 2013, but the program told her it was not a good fit. S.T. denied that she refused to let P.T. work anywhere if Impact Oasis was not one of his placements. Her understanding was that the District was not open to Impact Oasis. He did a trial run at the program, but he was not accepted to the program. P.T.'s mother said he was not accepted by Impact Oasis until around June 2013, to begin in September 2013.

She denied that she believed, at the time she filed this due process petition, that the District was arbitrarily denying P.T. the opportunity to go to Impact Oasis, and acknowledged that at some point after October 2012 she learned that there was not a spot available for P.T. in January 2013.

After P.T.'s mother could not find a job placement she liked and thought P.T. would like, P.T. stopped going to the pizzeria and the cleaners. He continued to go to the YMCA and food shopping once a week. She did not consent to the offered placements because she did not think they were appropriate. She denied that

Sernitsky offered her placements beyond the grocery store, the cleaners, pizzeria, and assisted living facility, and CVR. S.T. felt like the District was being close-minded in its offer of placements.

P.T.'s behavioral issues at school got worse in January 2013, and P.T., on average, had to be physically restrained three days a week. P.T. would hit himself or kick furniture or try to kick staff members. The behavioral issues were not restricted to school; he acted out in other environments too. S.T. requested a meeting with school staff in March. Trezza recommended implementing a token system for reinforcement at home, but it did not improve P.T.'s behavior. S.T. asked for a functional behavioral assessment, but she never saw the results of that assessment because P.T. had graduated. Once P.T. graduated, the District stopped all of his programs. At the time of her testimony, P.T. was at a day program at New Horizons, funded by DDD. S.T. had hoped that P.T. would find competitive employment after graduation.

She understood that the District's obligation for special education services would end when P.T. turned twenty-one years old, and that P.T. would require supports thereafter.

Bobbie Gallagher

Gallagher is a board certified behavior analyst, or BCBA. She owns her own company, the Autism Center for Educational Services. Her company consults with districts and families on how to cope with autism. She received a B.A. from Monmouth University, a master's degree from New Jersey City University, and a BCBA from the Florida Institute of Technology. She was admitted as an expert witness in applied behavioral analysis.

Applied behavioral analysis (ABA) utilizes reinforcement, consequences, and antecedent manipulation in order to change behaviors in, for example, people with autism. Antecedent manipulation addresses the triggers before a behavioral episode.

ABA has a different philosophy from the field of special education. For example, special education teachers may use a trial and error technique by which a child is taught something, allowed to make errors, and figure it out for himself. ABA uses an errorless approach whereby you do not allow the child to make errors when teaching something.

Gallagher does three or four functional behavioral assessments a year. She has been hired by school districts to evaluate IEPs or help devise goals and objectives for them.

The former District's superintendent Richard O'Malley contacted Gallagher in 2010 for consultation regarding vocational programming for autistic students. He asked for her help in designing a program for P.T. She confirmed that O'Malley, and not S.T., contacted her. However, she stated that it would not have surprised her if S.T. had given her name to O'Malley before she was hired by the District.

When hired, Gallagher was not directly involved with P.T., but wrote the vocational component—statement of transition services, coordinated activities and strategies—of his January 2011 IEP. She reviewed P.T.'s documents to do this. She suggested four job sites per year to determine his preferences. She suggested job coaching as a related service for P.T. to be successful in a job setting. P.T. would learn a job step-by-step in the school setting so that he could apply it to the job setting. This would allow the staff to determine if P.T. had any behaviors in doing the job so that they could be modified before going into the job setting. She did not observe P.T. or talk about the documents with P.T.'s child study team. She conceded that this was unusual in light of the fact that she helped write part of P.T.'s IEP. The documents she reviewed were supplied by S.T., not the District. However, she felt that the District did a good job conveying how P.T. presented at that particular time and that there was no need to for her to perform an observation. She found the District's data was extensive. If she needed more documents for her January 2013 report, she would have asked for them.

His transition should have been started in an earlier school year to allow him to really learn how to do jobs and to determine his preferences. In the ABA field, you would design an analysis for each job step to see how P.T. behaves at each step required for a job. One school year should be focused on job skills and job sampling; the next school year should involve more job sampling. So, generally, with autistic students, it would take two years to get to the point at which they are independently completing tasks and going to the job site.

She conceded that there is no legal requirement in New Jersey to be a BCBA in order to provide ABA to public school children, and that someone who has completed all of the education and training requirements for a BCBA, but has not sat for the final test for BCBA designation, is not necessarily less qualified than someone who has taken and passed the test.

Gallagher provides workshops and presentations through POAC (Parents of Autistic Children), a non-profit of which S.T. is program director. S.T. assigns Gallagher's engagements through POAC. Gallagher receives payment for these engagements. S.T. contacted her in January 2013 to review certain documents and determine whether P.T. was making appropriate progress and working under an appropriate behavior intervention plan. Gallagher wrote a report on P.T. dated January 16, 2013. It was based on certain documents, including the January 2011 IEP, a March 2012 present level of education plan from Edward Barrett, progress reports from the 2011-2012 and 2012-2013 school years, behavioral data and daily notes, a functional assessment from the school psychologist dated May 2012, and Del Papa's October 2012 vocational assessment.

To determine progress, Gallagher looked at whether P.T.'s goals and objectives were met and whether his behavior decreased or increased or impeded his education. Based on the limited information she had, P.T.'s behaviors were not necessarily frequent, but they were explosive. She noted that he had a history of extreme behavioral issues. She concluded that the then-current functional behavior assessment was not sufficient because it did not determine an actual function to his behaviors and

that a new one was needed. For example, P.T.'s behavior plan lumped all of his behaviors (e.g., aggression, perseveration, non-compliance) together and should have separated them to determine the function or antecedent of each behavior, like perseveration. In the ABA field, you want to manipulate the antecedent in order to change the behavior. If P.T. gets aggressive because of a demand, you may want to offer reinforcement and change the way the staff presents the demand. She said that his plan was also missing what to do in the aftermath of a behavior in order to make changes to the teaching or the strategies for him.

According to Gallagher, there are four different functions to behaviors: escape maintained behaviors, which is usually trying to get out of a demand; attention seeking; access or denied access to tangibles; and self-stimulation. A behavior plan should always be based on the functions of the particular child.

A functional behavior assessment is conducted before designing a behavior improvement plan. A functional assessment should be the result of controlled data collection, such that you test antecedents, behaviors, and consequences in a safe setting to see how P.T. responds. This functional analysis should only be done by BCBA's or psychologists in order to ensure the child's safety. A functional behavior assessment may be done by other people if you use the right tools like interviews and screening tools and data collection.

In the ABA field, you identify a function, research the interventions that have been suggested for a child with similar difficulties and apply those strategies in the behavior plan. Gallagher felt that the school's plan did not employ this and noted that identifying the wrong function, could result in increased behaviors.

The only function that Gallagher saw listed was "interruption" or "transition," and Gallagher thought that there were relatively few behaviors caused by transition because P.T. transitioned so much. If transitions were a real issue, he would have had more behaviors as a result of the transitions. The data showed he had behaviors during "transition" or "interruption," but Gallagher stated her misgiving that interruption or

transition is not a function of behavior; it's the antecedent to behavior. The plan lacked true functions of P.T.'s behaviors, like escape, attention-getting, or self-stimulation. She also thought that there was no relationship between the behavior plan and his vocational programming. The behavior plan only included three behavioral episodes, so there was not enough data to determine an appropriate intervention. While not suggesting that a plan shouldn't be designed for P.T., she felt there wasn't enough documentation to design a plan yet for him.

Gallagher testified that the behavior intervention plan was not reflective of P.T.'s actual behaviors and what appropriate replacement behaviors should have been included in it.

For the 2012-2013 school year, what Gallagher would have done differently from the school is seek additional analysis of P.T.'s behaviors. The data was not inaccurate, just not thorough. Gallagher would have done a functional behavior assessment and then requested a functional analysis.

Gallagher concluded that P.T. required an intensive ABA program by highly proficient individuals who could determine his present level of performance in order to assess possible vocational opportunities, teach the skills necessary for those jobs, and decrease maladaptive behaviors in order to increase independence and social engagement necessary for P.T.'s adult life.

If the vocational component of the January 2011 IEP had been implemented as written, P.T. would have visited four sites per year and he would have had exposure that would have helped determined his proficiency and preferences. Her review of the March 2012 IEP led her to conclude that this had not been done. At the time of her January 2013 report, there was no task analysis regarding vocational training for P.T. and there was no focus in his plans for an intended job after graduation. There was some task analysis in the documents she reviewed regarding his morning routine and folding pizza boxes, but there should have been more analysis that would have led to his independence, more vocational skill task analysis. She thought that the pizzeria

and cleaners placements were not really jobs, because he was doing so little at those places. At the time of her January 2013 report, she was not aware of the various job sites S.T. had visited with Sernitsky, the vocational opportunities the District had offered for the 2012-2013 school year, or the opportunities turned down by the parents.

During her testimony, she reviewed Sernitsky's vocational recommendations. She stated that some of the activities involved piecework that one would perform as part of a job. For example, for the assisted living facility, there was not a description of a job for potential employment for P.T. All of his proposed tasks were subsets of a job. She stated that P.T. was not exhibiting behaviors that would have impeded working in the community for the 2011-2012 and 2012-2013 school years.

Gallagher opined that the goals in the June 2012 IEP were just carried forward to the first marking period of the 2012-2013 school year such that goals that had been achieved already were not taken out and no new goals were added. As an example of IEP goals that were maintained for P.T. but not expanded upon she cited block design. He was doing patterning based on colors, but there were no goals that built on his mastery of patterning and that could be applied to the job setting. She thought that there was an indication that P.T. could achieve more than the goals listed in his IEPs. This indication was based in part on his low level of behaviors and how they were not impeding his education. She reviewed other data and information after her January 2013 report that confirmed that her conclusions in the report were accurate.

Domenico Cavaiuolo

Cavaiuolo is a professor at East Stroudsburg University in the Department of Special Education and Rehabilitation. He teaches the foundation of special education courses and applied behavior analysis (ABA). He has been at the university for seventeen years. He also runs a recreational camp for autistic children and a program that provides off-campus support for college students with intellectual disabilities. He has a B.A. in elementary education and psychology and a master's degree in rehabilitation counseling and special education. He also has a doctorate in special

education. He has written a book on transition in the field of special education. He has also written several articles on transition. He was admitted as an expert in special education and the development of transitional programs.

He testified that the absence of a BCBA certification does not affect your ability to give opinions on a transition program for a severely autistic child.

He describes transition programming as a process in which a curriculum and a program are developed that will allow the student to learn sequentially in a manner that will lead to [post-school] outcomes when the student eventually does leave school and graduates from the school. You need to determine the child's interests and his strengths and weaknesses for post-school placement, and then develop the program to teach the skills necessary to meet that outcome. And, depending on the severity of the student's disability, it is very important to identify necessary support levels for the student. He believes in "ecological inventories," which involve figuring out what supports and skills a person will need in order to participate in a particular setting or environment. Transitioning is a process that must be thought about early. It involves task analysis, a step-by-step process of what it takes for a particular student to perform a skill. This determines what method of teaching to use for the student.

His approach for transitioning involves understanding all of the characteristics of a job and matching a student based on his skills and abilities. A student may not be able to do all of the job requirements based on behaviors or another reason, but Cavaiuolo would then negotiate with an employer to allow the student to do the particular things within his abilities.

He stated that although it would be a desired outcome to have a student finish school directly into employment, such is rarely the case. You want to collect a lot of data on the student and close the gap between education and employment as much as possible.

In 2012, he was asked by S.T. to conduct a transition evaluation for P.T. He believed S.T. did not ask him to conduct a vocational assessment, and he did not conduct one. When presented during his testimony with an email from S.T. to him asking for his services, he acknowledged that S.T. asked for a vocational assessment, but stated that if the intent was for him to perform one, he would have informed S.T. that he could not. He assumed he was hired because there was a dispute over the current program.

He reviewed several documents, including IEPs, behavior plans, and evaluations. He interviewed P.T.'s family for background information. On July 1, 2012, he observed P.T. at home, at school, and at his after-school program. His impression of P.T. is that he is very much challenged behaviorally by autism spectrum disorders. With someone like P.T., the earlier, the better for transition programming. He noted that the most challenging part of working with P.T. is addressing behavioral challenges to a point where they're manageable and have him understand what is expected of him in his environment.

Cavaiuolo interviewed Edward Barrett, who told him that the token system he was using seemed to be effective in managing P.T.'s behaviors. Barrett did not seem to have a systematic instruction plan, which is important because people like P.T. need consistency in their instruction. Barrett also did not have any data to show P.T.'s worksite progress.

Cavaiuolo observed P.T. in the classroom and concluded that the classroom looked like an elementary-level classroom, with books that were age-inappropriate for P.T. He thought P.T. was doing activities that were for younger people. His observation of P.T. at New Horizons led him to conclude that P.T. was not doing anything functionally relevant to vocations. It seemed like P.T. was doing "busy work." He did not personally interact with P.T. because it was not required of his functional transition assessment.

Based on his review, Cavaiuolo concluded that P.T. lacked an appropriate transition program. He stated that he could not determine from his review of P.T.'s documents what P.T.'s post-secondary goals were when he was fourteen years old. The February 2009 IEP did not include any specific interests and preferences under the transition services section. For someone like P.T., you need to talk to his relatives and teachers to figure out his preferences. The IEP also was not clear on the connection between academic and vocational skills and post-school goals. The lack of an appropriate transition plan can impede a student's progress.

The April 2010 IEP included the same transition services statement as the prior IEP regarding exposure to a variety of prevocational tasks and also lacked his interests and preferences. In his opinion, the IEP was not written to provide an appropriate outcome for P.T.

The January 2011 IEP did not enable Cavaiuolo to determine how P.T.'s academic goals were related to what he would be doing in the community. He could not tell what P.T.'s interests and preferences were for vocation, and the IEP just states what they were doing, what was done and what they will continue to do. He did not think that P.T. was receiving a functionally relevant transition program. He did not think that folding pizza boxes was appropriate because P.T. had mastered that skill and should have moved on to a different or additional task. He opined that pizza places will not hire a person just to fold boxes. He thought that P.T. should have started job sampling much earlier.

He did not have enough information to determine whether the job sites suggested by Sernitsky were appropriate, but P.T. should have been exposed to a wider variety of vocations at an earlier age, like between sixteen and eighteen years old. In his opinion, a functional behavioral assessment should be done no later than sixteen years old. You want to gather information and data about a student's performance in vocational settings in order to determine post-school goals. According to Cavaiuolo, the main reason disabled people fail in the job market is rooted more in interpersonal skills than in inability to perform the job. Thus, even though the IDEA does

not require districts to address social skills, it is something that should be considered in a transition program.

His report did not include a review of the school-commissioned vocational assessment, but he did review it later. He would not use standardized assessment tools like the other evaluator did. He does not consider standardized to be authentic because they are based on a scale which he felt could not be applied to everyone. He would do a situational assessment to determine if a job was a good match for P.T. He would look at a variety of jobs and the tasks involved and the appropriateness of the setting. He would gather data on a student by seeing how long it took to complete a particular job, how effective the teaching strategy was, and what motivational or reinforcing components worked. Then, he would do it again in a different situation with different tasks. This would help determine the appropriate vocational placement.

His conclusion regarding the school-commissioned vocational assessment was that it did not include anything that was not already known about P.T.

Lauren Klein

Klein is manager of rehabilitation services at Jewish Vocational Service (JVS). Her duties include managing evaluations for career transition programs at schools. She has a B.A. in psychology, a master's degree in rehabilitation counseling, and she is a certified rehabilitation counselor. She did not author the October 5, 2012, vocational assessment, but she is familiar with the assessment tools typically used by JVS. Although Cavaiuolo questioned the use of the Teacch Transition Assessment Profile (TTAP), Klein noted that it was the only vocational assessment tool specifically designed for individuals on the autism spectrum. According to Klein, TTAP is not a standardized assessment; it is designed for autistic people. And, the standardized tools JVS does use are modified for the particular student when necessary.

JVS usually does vocational assessments starting when a student is eighteen years old, but may do them as early as fourteen years old. JVS uses the “direct skills” part of TTAP in order to gauge the student’s strengths and interests.

The record reflects a broad difference of opinions articulated by each party’s witnesses with respect to the provision of FAPE to P.T. I **FIND** that the expert opinion and recommendations of Dr. Cavaiuolo and Bobbie Gallagher were not entitled to great weight. Gallagher, while an accomplished and knowledgeable individual with significant experience in the field, was hampered by the limited nature of her review of the present matter. She did not observe P.T. and her opinion appeared to be derived solely from whichever documents petitioners elected to share with her. Dr. Cavaiuolo seemed to focus his opinions and recommendations on what was not done prior to P.T.’s return to the District, and the record reflects that his observation of P.T. occurred on a date where departures from P.T.’s routine occurred, and as such his observation was not representative of P.T.’s experience.

By contrast, I **FIND** that the observations, opinions and recommendations of Andrea Trezza are entitled to greater weight. Her experience, both in the field and particularly with P.T. are extensive and thorough. Her testimony was detailed, thorough and reflects significant familiarity with and knowledge of P.T.’s experience and situation.

The testimony of P.T.’s mother is also entitled to significant weight. Although it is correctly noted by respondent that she testified as a lay witness, her testimony was candid, thoughtful and demonstrated a deep commitment and attention to the details of her son’s education. As such I **FIND** her to be a critical fact witness who was more than competent to testify as to what did and what did not occur with regard to P.T.’s education. Sernistsky additionally was a credible witness who answered the questions put to her directly and honestly, and she seemed sincere in her attempts and desire to work with petitioners on behalf of P.T., although she could have benefitted from additional direct exposure to P.T.

Considering the foregoing, I **FIND** that the April 2010 IEP did not include any vocational goals and that P.T. had not yet started to work in the community. I further **FIND** that certain provisions of the 2011-2012 IEP were not implemented. Specifically, a vocational assessment was not done by February 2011; P.T. was supposed to work at four job sites, but only worked at two; and no job coach was provided until June 2012. It appears that a reading program was delayed. The District wanted to phase out the personal aide from P.T.'s morning routine, but did not because P.T.'s mother was afraid for her own safety. I further **FIND** that the 2010-2011 and 2011-2012 IEPs included the provision of a BCBA, which Trezza was not at the time.

LEGAL ANALYSIS AND CONCLUSION

The Individuals with Disability Education Act (IDEA), 20 U.S.C.A. §§ 1400 to 1487, provides federal funds to assist states in providing an education for handicapped children. Receipt of the funds is conditioned on the State's compliance with the IDEA's goals and requirements. Lascari v. Bd. of Educ. of Ramapo-Indian Hills Reg. Sch. Dist., 116 N.J. 30, 33 (1989). New Jersey assures all handicapped children the right to a FAPE under 20 U.S.C.A. § 1412(a)(1), N.J.S.A. 18A:46-1 et seq., and N.J.A.C. 6A:14-1.1. FAPE requires a school district to provide related services and supports that will enable the disabled child to benefit from the education. Hendrick Hudson Cent. Sch. Dist. Bd. of Educ. v. Rowley, 458 U.S. 176, 181, 102 S. Ct. 3034, 3038, 73 L. Ed. 2d 690, 696 (1982). Further, the IDEA mandates that the child's FAPE be "tailored to the unique needs of each handicapped child through an 'individualized education program' (IEP), which must be reviewed annually." Lascari, supra, 116 N.J. at 34. Accordingly, each New Jersey district board of education shall provide a free, appropriate public education program and related services for educationally handicapped pupils in the least restrictive environments. N.J.A.C. 6A:14-4.2(a).

Petitioners seek an order granting compensatory education for denial of FAPE occurring during the 2010-2011, 2011-2012, and 2012-2013 school years, particularly with respect to the provision of transition assessments, planning and services. Consistent with Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238 (3d Cir. 1999), wherein

the court assessed the statute of limitations governing a compensatory education claim brought in New Jersey, respondent correctly argues that such claim is limited to two years. Accordingly, only claims stemming from actions in the two years prior to petitioner's filing of this matter in November 2012, will be considered.

Part of a child with a disability's entitlement to a FAPE includes transition services. A proper IEP includes transition services "beginning at age sixteen (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages." 20 U.S.C. § 1414 (d)(1)(A)(vii)(11); N.J.A.C. 6A: 14-3.7(10). "The term transition services means a coordinated set of activities for a student with a disability that—(A) is designed within an outcome oriented process, which promotes movement from school to post school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based upon the individual student's needs, taking into account the student's preferences and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation." 20 U.S.C. § 1401 (30); N.J.A.C. 6A:14-1.3.

Transition services are important for students with disabilities to move successfully into their post-education environment. Under the IDEA, if a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with 20 U.S.C. § 1414 (d)(1)(A)(viii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the program. 20 U.S.C. § 1414(d)(5); N.J.A.C. 6A:14-3.7 (f). The federal regulations state, ". . . the fact that an agency other than the public agency does not fulfill its responsibility does not relieve the public agency of its responsibility to ensure that FAPE is available to each student with a disability. Section 300.142 (b)(2) specifically requires that if an agency other than the LEA fails to provide or pay for special education or related service (which could include

a transition service), the LEA must, without delay, provide or pay for the services, and may then claim reimbursement from the agency that failed to provide or pay for the services.” 34 C.F.R. pt. 300 App. A. (111)(12). The term educational service agency as defined by the IDEA “means a regional public multiservice agency—(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State.” 20 U.S.C. § 1401 (4). Accordingly, a denial of transition services may constitute a denial of a FAPE. Livermore Valley Joint Unified Sch. Dist., 33 IDELR 288 (SEA CA 2000).

Compensatory education has been deemed appropriate for a period of time beyond age twenty-one or the date at which the student’s entitlement to a free appropriate public education has either lapsed or will lapse. Manchester School Dist. v. Christopher B., 19 IDELR 389, 393 (D.N.J. 1992) (awarding compensatory education services by measuring the extent of the past educational deprivation). The purpose of compensatory education is to remedy past deprivations of a FAPE. There must be a finding that the child has received an inappropriate education. M.C. on Behalf of J.C. v. Central Reg. Schl. Dist., 81 F.3d 389, 397. (3d Cir.1996). The standard for an award of compensatory education, therefore, “focus[es] from the outset upon the IEP—the road map for a disabled child’s education. See 20 U.S.C. § 1414(a)(5). When an IEP fails to confer some (i.e., more than de minimis) educational benefit to a student, that student has been deprived of the appropriate education guaranteed by IDEA. It seems clear, therefore, that the right to compensatory education should accrue from the point that the school district knows or should know of the IEP’s failure.” Id. at 396. The court summarized its holding 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 reasonably required for the school district to rectify the problem. We believe that this formula harmonizes the interests of the child, who is entitled to a free appropriate education under

IDEA, with those of the school district, to whom special education and compensatory education is quite costly.
[Id. at 397.]

What must be determined is whether a denial of FAPE occurred during the two-year period prior to the filing of the present matter. The record reflects that there is no dispute that certain provisions of the January 2011 IEP were not implemented: a vocational assessment was not done by February 2011; P.T. was supposed to be provided with job sampling at a minimum of four job sites, but only worked at two; and no job coach was provided. It appears that a reading program was delayed. The District wanted to phase out the personal aide from P.T.'s morning routine, but did not because P.T.'s mother was afraid for her safety. The IEP (as did the April 2010 IEP) prescribed the provision of services by a BCBA, which Trezza was not at the time. Additionally, Trezza admitted that the June 2012 IEP did not include specific goals with respect to P.T.'s vocational placements.

Respondent suggests that P.T.'s mother's level of sophistication in Special Education matters placed an onus on her to raise concerns earlier than she did in ultimately filing the herein due process matter not required of parents not similarly conversant in such matters (while concurrently asserting that her lay testimony is worthy of little consideration or weight). While the court in M.C. noted that "the case against the school district will be stronger if the District actually knew of the educational deficiency or the parents had complained," it emphasized the point that

a child's entitlement to special education should not depend upon the vigilance of the parents (who may not be sufficiently sophisticated to comprehend the problem) nor be abridged because the district's behavior did not rise to the level of slothfulness or bad faith. Rather, it is the responsibility of the child's teachers, therapists, and administrators—and of the multi-disciplinary team that annually evaluates the student's progress—to ascertain the child's educational needs, respond to deficiencies, and place him or her accordingly.
[Id. at 397.]

While the court parenthetically hypothesizes that parents may lack specialized knowledge in special education matters, this dicta in no way abridges or modifies the

prior clause that a child's entitlement is not dependent on their parents' vigilance. The IDEA does not require that parents' familiarity with such matters be ascertained and responsibility apportioned appropriately. Accordingly, any conclusion in this decision that the District failed to offer P.T. a FAPE during the relevant time period is not automatically negated on its face by any facts demonstrated in the record that P.T.'s parents did not complain about any element or item comprising all or part of the denial of FAPE prior to bringing the herein action.

The fact that the personal aide was not phased out from P.T.'s morning routine does not lend itself to a finding that the District failed to offer P.T. a FAPE. While not consistent with the letter of the IEP it represents a modification assented to by all parties as necessary to the provision of a FAPE. The same applies to the fact that P.T. was not provided with job samplings at a minimum of four sites, but rather only worked two sites. The record reflects that the district did recommend and/or offer other sites that were not approved by petitioners. While P.T.'s mother and Gallagher made clear that they did not think the particular job samplings offered were suitable, because they offered "piece work", it cannot be overlooked that a job sampling is just that: a sample. To expect or require that a sampling mirror or recreate an entirety of the experience is probably an unrealistic expectation, as many actual jobs themselves do not present the totality of experience to a new hire right out of the gate. Rather, responsibilities grow and aspects phase in over time as employer and employee grow acclimated to the situation and to each other. That is not say that petitioners' concerns are entirely without merit or foundation, and lack of cooperation of the parents does not remove the District's obligations under IDEA. It is noted however, that the District has limited options absent parents' approval and the factual record does not support a conclusion that the District's inability to obtain parental consent constituted a failure to offer P.T. a FAPE. Rather it shows that the District was active and diligent in identifying potential appropriate job samplings to identify potential aptitudes for P.T.

The fact that Trezza was "all but certified" as a BCBA while providing services implemented in the IEP does not lend itself to a finding that the District failed to offer P.T. a FAPE. While it is true that the IEP initially required that a BCBA provided the

noted services, it appears that it was a drafting carryover as the two previous persons holding Trezza's position were certified. The services appear to have been provided without comment or note to her service and a subsequent IEP corrected her status without much pomp or circumstance at the time. More importantly, while both of petitioner's experts opined initially that an individual without board certification would not be able to handle severe behavioral issues presented by P.T., both experts declined to state that Trezza herself was not up to the task and stated, when push came to shove, that their concerns stemmed from the presumed body of experience a BCBA would possess rather than a belief that the mere act of sitting for and passing an exam would render a person more able to implement services than they were the day before. The record reflects that Trezza capably, competently, and diligently executed her duties as required by her job and the IEP and was an active and effective participant in P.T.'s educational experience.

More troubling, however, are the significant delays in implementing a vocational assessment and access to a job coach. While the District no doubt worked overtime to get up to speed in providing P.T. with transition services despite his not being in-district until 2009 and were somewhat hampered in their ability to deliver services both by P.T.'s spikes in behavioral issues and the District's inability to obtain parental consent, no obstacle is cited nor is good cause offered as to why these services were so delayed. Accordingly, I **CONCLUDE**, that while the District did demonstrate that the 2010-2011, 2011-2012, and 2012-2013 IEP's were designed to offer P.T. a FAPE, its failure to implement certain services which the IEPs called for to be provided served to deny P.T. that same FAPE.

The District knew or should have known that it was not providing these services and therefore failing to provide P.T. with a FAPE. Accordingly, I **CONCLUDE** that petitioners are entitled to receive compensatory education to address the sixteen-month delay in providing P.T. access to a job coach.

ORDER

It is hereby **ORDERED** that the District provide P.T. with sixteen months of compensatory education for the violations set forth in this decision for not providing FAPE. The provisions of these services are to be consistent in manner and delivery with those provided once job coaching began in June 2012.

This decision is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2012) 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 C.F.R. § 300.516 (2012). 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.

December 19, 2014

DATE

ELIA A. PELIOS, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

ml/mph

LIST OF WITNESSES:

For petitioner:

S.T.
Bobbie Gallagher
Dr. Domenico Cavaiuolo

For respondent:

Andrea Trezza
Weslee Sernitsky
Lauren Klein

LIST OF EXHIBITS:

For petitioner:

P-1	Certification Letter of Amy Corolla
P-2	Agreement
P-3	Behavior Profile
P-4	Email to Micah Burge
P-5	Letter to Micah Burge
P-6	Parental Notice
P-7	Email Correspondence
P-12	Curriculum Vitae of Bobbie Gallagher
P-13	Document Review by Gallagher
P-14	Behavior Reduction Plan
P-15	IEP Goals written by Edward Barrett
P-16	Book, <u>Growing Up</u>
P-17	Curriculum Vitae of Dr. Cavaiuolo
P-18	2/12/2009 IEP

P-19 Updated Goals Dated 4/14/2011
P-20 Document from October 2011 Meeting
P-21 CVR Document, June 2012
P-22 Email between Mr. Healy and Mrs. T.
P-23 Email correspondence

For respondent:

R-1 6/13/2012 IEP
R-1(a) IEP Goals
R-2 Eligibility Conference Report
R-3 Results of Occupational Therapy Report
R-4 1/28/2011 IEP
R-5 4/23/2010 IEP
R-6 JVS Short Term Vocational Evaluation Report
R-7 Assistive Technology Assessment
R-8 Transitional/Educational Report
R-9 Email and Behavior Reduction Plan
R-10 Email correspondence
R-11 Recommendations for Work Sites
R-12 Andrea Trezza Curriculum Vitae
R-13 Augmentative Communication Assessment – 12/19/12
R-14 Curriculum Vitae of Weslee Sernitsky
R-15 Copy of diary
R-16 Decision of Judge Futey
R-17(a) Article
R-20 File of Dr. Cavaiuolo
R-20(a) Email dated 7/9/2012
R-20(b) Email string
R-20(c) Email dated 9/10/2012
R-20(d) Document Describing Impact/Oasis

R-20(e)	Dr. Cavaiuolo's Notes
R-20(f)	IHP, dated 2/12/2009
R-21	Report of Functional Behavior Analysis