

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

Pennsylvania

## Special Education Hearing Officer

### DECISION

ODR No. 01449-1011KE

Child's Name: B.C.

Date of Birth: [redacted]

Date of Hearing: 10/4/10

### CLOSED HEARING

Parties to the Hearing:

Parents  
Parent[s]

School District  
Pocono Mountain  
P.O. Box 200  
Swiftwater, PA 18370

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney  
None

School District Attorney  
Rebecca A. Young, Esq.  
King, Spry, LLC  
1 West Broad Street, Suite 700,  
Bethlehem PA 18018

October 9, 2010

October 24, 2010

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

The due process complaint and hearing in this case concerned the proper use of compensatory education awarded a number of years ago to [name redacted] (Student), a 2010 graduate of Pocono Mountain School District. In August 2010, Parent demanded reimbursement for college expenses incurred by Student, including textbooks, and for the purchase price of a car Student intends to use as transportation to college. After refusing Parent's payment requests, the District filed a due process complaint in accordance with the portion of a March 2004 order issued by a different hearing officer that provided directions for resolving disputes between the parties over use of the compensatory education awarded to Student in due process hearing decisions issued in 2003 and 2004.

During the due process hearing in this case, the District also requested to be released from the obligations imposed by ¶4 of the March 29, 2004 order requiring the District to immediately remit payment for all of Parent's properly documented requests for expenditures from the monetary value of the compensatory education award, and then initiate a due process hearing if the District contends that the equipment and/or services selected by Parents constituted an invalid use of compensatory education.

The hearing in this case was conducted in a single session on October 4, 2010, with only the District participating. Parent did not call or otherwise communicate with the hearing officer, the Office for Dispute Resolution (ODR) or the School District at any time after the hearing date was scheduled, including the day of the hearing, to indicate that she could not attend, or to request a continuance or a change in the start time of the hearing.

Based upon the evidence placed in the record at the hearing, the changed circumstances occasioned by the Student's graduation from high school in June 2010, and for the reasons explained below, the District's requested relief will be granted in all respects but one.

## ISSUE

Is the School District required to reimburse [Student] and/or [Student's] Mother for college textbooks and/or other ordinary college expenses, and/or a car, from the remaining monetary value of compensatory education awarded by due process hearing decisions issued in 2003 and 2004?

## FINDINGS OF FACT

1. [Name redacted] (Student) is a [teenaged] child, born [redacted]. [Student] is a resident of the School District and was eligible for special education services until [Student's] June 20, 2010 graduation from high school. (N.T. pp. 12, 14; S-3, p. 1, S-4, p. 1)
2. At an IEP meeting held prior to June 20, 2010, and in conversations with Student's special education case manager, Student and Parent discussed their mutual desire that Student graduate from high school at the end of the 2009/2010 school year. (N.T. pp. 12, 13)
3. During the 2009/2010 school year, Student completed all regular education requirements for high school graduation. (N.T. pp. 10, 11; S-3, p. 2, S-4)
4. The District issued a graduation NOREP dated June 10, 2010 which was both mailed and hand delivered to Parent. Parent never returned a signed NOREP either approving or disapproving the District's proposed change of placement, *i.e.*, exiting Student from special education by reason of high school graduation. (N.T. pp. 14, 15; S-3, p. 1, 4)
5. Student has been the subject of previous due process hearings, leading to two hearing officer orders, issued in 2003 and 2004, awarding compensatory education in the form of services and/or equipment to be selected by Parents, but not to exceed a specific monetary amount derived from the value of the services that Student was denied. (N.T. p. 17; S-2, p. 5)
6. The District continues to maintain a fund derived from the monetary value of the compensatory education awarded to Student, which is to be used to provide compensatory education to Student pursuant to the 2003 and 2004 hearing officer orders. (N.T. p. 17; S-1, S-2)
7. By letter and accompanying documents dated August 9, 2010 Parent requested reimbursement for tuition and textbooks for college classes, and for a car to be used by Student for transportation to college. (N.T. pp. 20, 21; S-5, S-6)
8. The District investigated the college classes in which Student is enrolled and determined that they are regular, not remedial classes, based upon the course numbers and descriptions, as well as the college brochure detailing remedial courses and pre-requisites for enrolling in regular college classes. (N.T. pp. 22—26; S-5, p. 1, S-7, p. 2, S-8, p. 1, S-9, p. 1, S-10, S-11)

9. The District denied Parent's August 9 requests for payments from the compensatory education award because Parent was not seeking funding for remedial services or equipment. (N.T. pp. 21, 22)
10. After refusing reimbursement, the District filed a due process complaint on August 11, 2010. (N.T. p. 22; S-12)
11. In the past, while Student was still enrolled in the District, the District questioned the need for or efficacy of some of the compensatory services requests Parents made pursuant to the 2003 order. The order issued in March 2004 required the District to pay for all compensatory services requested by Parents provided that Parents provide the District with the following information: a) name and address of the service provider; b) exact services provided; c) duration of the services; d) dates of the services; e) cost of the services; f) a request that the service provider be paid directly or a request for reimbursement accompanied by sufficient proof of any expenditures for which they sought reimbursement. (S-2, p. 5)
12. The March 2004 order also required the District to request a due process hearing to challenge any parental request it declines to fulfill. (S-2, p. 5)
13. In February 2010, Parent filed a due process complaint alleging that Student was denied FAPE due to the absence of a behavior plan until the second half of the 2009/2010 school year and challenging, among other things, the District's refusal to pay for a computer system and a fitness center membership as reimbursable expenses from the monetary value of the compensatory education awarded to Student in the 2003 and 2004 orders. (N.T. p. 18; S-1, S-2)
14. After a due process hearing held on April 12, 2010 a decision and order was issued on May 1, 2010 ordering the District to provide the computer system and denying Parent's claims in all other respects. (S-2, pp. 6—13, 16)
15. The May 1, 2010 decision and order also required that all compensatory education requests on behalf of Student be received no later than the close of business on Student's 21<sup>st</sup> birthday. (S-2, pp. 14, 16)
16. Prior to the April 12, 2010 due process hearing session, the District filed a motion to dismiss certain claims asserted in Parent's complaint and thereby to limit the scope of the hearing. (S-1, p. 1)
17. The District's motion was granted in several respects, resulting in precluding any evidence concerning use of the compensatory education to fund ordinary college expenses, such as tuition for regular college courses, room and board, books and transportation, since such ordinary expenses do not, as a matter of law, constitute compensatory services. (S-1, p. 2)

18. In response to the District's August 11, 2010 due process complaint, Parent submitted a document to the School District responding to the complaint and asking to include the following additional matters in the due process hearing:

The deletion of 350.00 dollars from the compensation fund by [a District representative] to cover up a perjury testimony during another due process.

The request for a fitness program dated April 2009.

For compensatory Education to be extended beyond 21 or be given directly to Student. The School District delaying, ignoring has put the Burden on me to file for due process. Therefore the School District has failed to issue on a timely manner making it extraordinary circumstances.

(S-13, p. 3, HO-1, p. 1)

19. Parent included "odr@pattan.net" as a recipient on "To:" line of the email message, but it never directly reached either the case manager or the hearing officer (N.T. pp. 28, 32; HO-1, p. 2)
20. After the case manager and the hearing officer received a document from the District designated "Motion to Dismiss Parent's Counterclaim," the District was asked to forward Parent's email message, which the District was treating as Parent's counterclaim. (N.T. p. 28; HO-1, p. 2)
21. By email message dated September 29, 2010, the parties were informed that neither evidence nor argument concerning the issues identified by Parent in response to the District's complaint would be permitted during the October 4, 2010 due process hearing, and the reasons for that ruling were placed on the record during the hearing. (N.T. pp. 29, 30; HO-2, p. 1)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **I. District's Denial of Parent's August 9, 2010 Compensatory Education Requests**

Parent's August 9, 2010 request to the District for disbursement of compensatory education funds to reimburse ordinary college expenses and the purchase price of a car were clearly improper. As the Court of Appeals recently noted,

Compensatory education...is a judicially created remedy...“intended... to compensate [the student] for rights the district already denied ... because the School District violated [the] statutory rights while [the student] was still entitled to them.” *Lester H. [v. Gilhool]*, 916 F.2d [865]...872 [3<sup>rd</sup> Cir. 1990]. The Court of Appeals for the District of Columbia has

stated that compensatory education serves to “replace[ ] educational services the child should have received in the first place” and that such awards “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C.Cir.2005).

*Ferren C. v. School District of Philadelphia*, 612 F.3d 712, 717-718 (3<sup>rd</sup> Cir. 2010). As established by the School District’s investigation, the payments Parent requested are for expenses she and/or Student incurred for tuition and textbooks for Student to attend regular college classes. (FF. 8) Neither such expenses nor ordinary transportation costs, represented by the car Student purchased, would serve to place the Student in the same position [Student] would have occupied had Student received from the District the services the 2003 and 2004 compensatory education awards were designed to replace. Since Parent’s requests for reimbursement in August 2010 were not for any proper use of compensatory education, as described by the court in *Ferren C.*, the District was completely justified in denying Parent’s request for reimbursement of such expenses from the 2003/2004 compensatory education awards.

In addition, use of compensatory education funds for ordinary college expenses was previously decided against Parent in a February 26, 2010 letter ruling on the District’s partial motion to dismiss the Parent’s due process complaint filed early in 2010. (FF 16, 17; S-1)

## **II. Parent’s Proposed Issues**

### **A. Previously Decided Issues**

As noted in a pre-hearing ruling and on the record at the October 4, 2010 due process hearing, two of the additional issues Parent wanted to include in the record, payment for a health club membership for Student, and permitting use of the compensatory education award beyond Student’s 21<sup>st</sup> birthday, were fully discussed and decided in the May 1, 2010 due process hearing

decision. (FF 18, 21; N.T. pp. 29, 30; HO-2; S-2, pp. 11, 12) Although there is no need to revisit the issue of the health club membership in any respect, the Court of Appeals decision in *Ferren C.* requires some additional discussion of the decision to require Student to use the compensatory education award by age 21. In *Ferren C.*, the court re-affirmed the principle that compensatory education may extend beyond age 21, and also affirmed a district court decision that the school district was required to continue serving as the LEA for the student in that case, as well as to administer her compensatory education award. 612 F.3d at 718. The court noted, however, that the decision was an appropriate exercise of equitable powers based upon the specific and unique facts of that case.

In this case, there is no question of the District continuing to serve as LEA, since Student fulfilled all regular high school graduation requirements, and, therefore, is already ineligible for IDEA services. (FF 3, 4) Such circumstances are far different from the situation of the student in *Ferren C.* Here, there is no equitable basis for the District to maintain any kind of direct services to Student, either at present or after age 21, in order to assure that Student can benefit from use of the compensatory education award.

In addition, there is no equitable reason in this case for extending the use of the compensatory education award beyond age 21. As noted in the May 1, 2010 decision, compensatory education has been available to this Student since 2003, 7 years before [Student] graduated from high school in June 2010. (S-2, p. 14) Moreover, Student has [several] more years in which to use the remaining compensatory education before turning 21. In the absence of any circumstances suggesting that Student should be permitted additional time to use the compensatory education award, a full 10 years in which Parent could select compensatory

services is more than sufficient time to make full use of the award to remedy the programming deficits identified by prior hearing officer decisions.

### B. Other Issues

Parent also sought to raise two additional matters, 1) turning over the remaining monetary of value of the 2003/2004 compensatory education awards to Student for unlimited, discretionary use; 2) a payment to cover prior “perjury” by a District official. (F.F. 18) For the reasons stated above in connection with the District’s denial of Parent’s August 9, 2010 improper requests for reimbursement, there is no basis in the law for turning over the remaining monetary value of the compensatory education award to Parent for entirely discretionary use. As well-illustrated by Parent’s improper reimbursement requests, it is obvious that Parent would not use the compensatory education for the remedial purposes for which it is intended.

As noted on the record of this hearing, and as previously explained in the May 1, 2010 decision, giving any consideration to Parent’s claim that compensatory education funds can/should be used to compensate Parent for alleged wrongdoing by a District official is not within the jurisdiction of a special education due process hearing officer. (F.F. 21; N.T. p. 29; S-2, pp. 12, 13)<sup>1</sup> In addition, use of compensatory education for such purposes would be an

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<sup>1</sup> See S-2, May 1, 2010 Due Process Hearing Decision at 13:

The IDEA statute and regulations provide that,

A parent or a public agency may file a due process complaint...[when a public educational agency]... [p]roposes to initiate or change the identification, evaluation, or educational placement of..a child with a disability...or the provision of FAPE to the child; or [r]efuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. §§300.507(a)(1), 503(a)(1), based upon 20 U.S.C. §1415(b)(6).

All IDEA due process complaints, therefore, must “relat[e] to the identification, evaluation or educational placement of, or the provision of FAPE to the child.” 20 U.S.C. §1415(b)(6); 34 C.F.R. §507(a)(1).



improper use of the compensatory education award, since it would do nothing to place Student in the same position [Student] would have occupied absent the program deficiencies for which compensatory education was awarded in 2003 and 2004.

**III. School District's Request for Relief from ¶4 of the 2004 Hearing Officer Order**

In the May 1, 2010 due process hearing decision and order, the provision of the March 29, 2004 order requiring the District to 1) immediately reimburse Parent for any requests for reimbursement from the compensatory education award and 2) initiate a due process hearing to obtain reimbursement for any services the District considers improper was left intact and no constraints were placed upon use of the award. *See* S-2, p. 15:

It is impossible, of course, to anticipate all of the potential requests Parents may make for compensatory services, and as noted, it is sometimes unclear whether Mother is referring to services fairly encompassed within the compensatory education order or not when she mentions possible uses for the compensatory education award. Consequently, no attempt will be made to further describe limits on Parents' requests for compensatory services. Except as provided in this decision, and in the interim ruling dated February 26, 2010, the parties will continue to be guided by the terms of the compensatory education orders issued in 2003 and 2004, including the provision in the 2004 order specifying how the District may challenge a parental request for payment/reimbursement of compensatory services.

Subsequently, however, in a blatant attempt to take advantage of the 2004 order circumvent subsequent rulings on the appropriate use of the compensatory education award, Parent submitted reimbursement requests for expenditures that were obviously and entirely improper uses of compensatory education. Under the terms of the March 2004 order, the District was required to incur the expenses associated with preparing and filing a due process complaint, and a hearing was held, and now a decision will be issued, in order to make a record and to explain matters that are not only obvious, but were previously decided. Such an exercise is a waste of resources. Moreover, under the explicit terms of the March 2004 order, the District was

required to actually make the clearly improper payments, with no realistic hope of reimbursement. In light of the prior ruling explicitly precluding payments for ordinary college expenses, however, the District was justified in refusing such reimbursement requests before filing its due process complaint.

Given Parent's ongoing animosity to the District and its counsel as disclosed by the tone of her communications, and her refusal to abide by prior rulings and decisions, this situation is quite likely to recur, possibly numerous times, before Student reaches age 21 and all claims for compensatory education payments will terminate. Consequently, both the District and the due process hearing system face an unwarranted and unnecessary burden of recurrent due process hearings for the next three years due to Parent's hostility to the District and her refusal to abide by prior decisions on the same issues.

At the time the March 29, 2004 decision and order was issued, Student had at least 6 more school years to complete, and the hearing officer was seeking to defuse further controversy over use of the compensatory education award to assure that Student received all services required to make up for the District's program deficiencies and assure Student's academic success. Now that Student has graduated from the District with a regular diploma and began college without requiring remedial classes, however, the situation is completely different. Based upon the changed circumstances and Parent's improper reimbursement requests in August 2010, after a hearing officer ruling precluding such use of compensatory education, there is ample justification for altering the provision of the March 29, 2004 order concerning how disputes over the compensatory education award will be resolved, and for explicit provisions concerning proper use of the compensatory education award.<sup>2</sup>

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<sup>2</sup> Under other circumstances a request to alter the 2004 order would likely have been addressed to the hearing officer who rendered the decision. That, however, is no longer possible.

Accordingly, in the order that follows, proper uses for the compensatory education award will be described, and the burden will be placed on Parent to challenge District denials of payment/reimbursement requests.

Finally, the District requested that the order in this case include reimbursement from Parent for the District's costs associated with the due process hearing, including attorneys fees. That request will be denied, since the District provided no legal authority for the proposition that imposing attorneys fees and costs on a parent is a matter properly within the jurisdiction of the hearing officer.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law,

1. It is hereby **ORDERED** that the School District is not required to reimburse [Student] or either of [Student's] Parents for:
  - a. The purchase price of a car as requested on August 9, 2010 or at any time in the future;
  - b. Tuition and/or textbooks for regular college courses as requested on August 9, 2010 or at any time in the future;
  - c. Other ordinary expenses arising from or associated with attending college, or with working or with living expenses, such as food, clothing, shelter, public transportation, etc.,
  - d. Any claims of wrongdoing by the District and/or any current, former or future District employee, insofar as Parents, or either of them, requests payment for alleged wrongdoing from

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In 2004, when the hearing that resulted in the order from which the District now seeks relief was held, most IDEA administrative hearings were conducted by part-time hearing officers under contract with the Office for Dispute Resolution (ODR). In 2008, however, Pennsylvania adopted a new hearing system in which the contract hearing officers were almost entirely replaced with full-time hearing officers. Consequently, the contract hearing officer who entered the March 2004 order no longer has the capacity to conduct hearings and render decisions in special education due process cases, including reconsidering/revising the March 29, 2004 order.

the remaining monetary value of the compensatory education awarded to Student pursuant to hearing officer decisions/orders entered in 2003 and 2004.

2. It is **FURTHER ORDERED** that the School District is not required to remit to [Student], or to either of [Student's] Parents, the remaining monetary value of the compensatory education awarded to [Student] in the 2003 and 2004 hearing officer orders, either at present or at any time in the future.

3. It is **FURTHER ORDERED** that all requests for payment/reimbursement for compensatory education services/equipment sought from the School District pursuant to the 2003/2004 hearing officer orders must serve a remedial purpose. Proper requests for payment/reimbursement from the remaining value of the compensatory education award include:

a. remedial courses Student is required to take because of deficits in reading, math or writing skill, along with textbooks or other materials needed to complete any such remedial courses;

b. in-person or computer-assisted tutoring required for success in college courses due to deficits in reading, math or writing skills;

c. non-credit courses/services directed toward career development and transition to adult life;

d. psychological or other inter-personal counseling services;

e. any other similar services/equipment that can reasonably be deemed to serve a remedial purpose.

4. It is **FURTHER ORDERED** that all requests for payment/reimbursement for compensatory education services/equipment addressed to the School District pursuant to the 2003/2004 hearing officer orders must be properly documented with the following information:

- a) The name and address of the service provider;
- b) the exact services provided;
- c) duration of the services;
- d) dates of the services;
- e) cost of the services;
- f) a request that the service provider be paid directly, or a request for reimbursement accompanied by sufficient proof of any expenditures for which Parents, or either of them, seeks payment.

5. It is **FURTHER ORDERED** that the School District is not required to pay/reimburse expenditures that do not conform to the terms of this order. If any requests for payment/reimbursement from the compensatory education award are denied by the District, the District shall provide a detailed written explanation of the reason(s) for the denial to the Parent who requested payment/reimbursement.

6. It is **FURTHER ORDERED** that Parents may challenge any denial of payment/reimbursement from the monetary value of the compensatory education award by filing a complaint with the Bureau of Special Education, Division of Compliance or by filing a due process complaint.

7. It is **FURTHER ORDERED** that all requests for payment/reimbursement for compensatory education services/equipment addressed to the School District must be received by the District no later than 5:00 p.m. on [redacted date]. Any compensatory education request submitted subsequent to that date need not be considered by the District and may be summarily denied without the explanation required in ¶5, above.

8. It is **FURTHER ORDERED** that the matters Parent requested to include in the October 4, 2010 due process hearing are **DENIED** in all respects.

9. It is **FURTHER ORDERED** that the School District's request for an award of costs and attorneys fees is **DENIED**.

10. It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are **DENIED** and **DISMISSED**.

October 24, 2010

*Anne L. Carroll*

Anne L. Carroll, Esq.  
HEARING OFFICER