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

Student's Name: A.K.

Date of Birth: [redacted]

ODR No. 2591-11-12-AS

CLOSED HEARING

Parties to the Hearing:	Representative:
[redacted]	Phillip A. Drumheiser, Esquire 2202 Circle road Carlisle, PA 17013-1009
Shenandoah Valley School District 805 West Centre Street Shenandoah PA 17976	Angela J. Evans, Esquire Sweet, Stevens, Katz & Williams,LLP 2 South Main Street, Suite 303 Pittston, PA 18640
Dates of Hearing:	January 30, 2012, February 23, 2012
Record Closed:	March 13, 2012
Date of Decision:	March 27, 2012
Hearing Officer:	William F. Culleton, Jr., Esq., CHO

INTRODUCTION AND PROCEDURAL HISTORY

The Student named in the title page of this decision (Student) is a resident of the school district named in the title page of this decision (District). Student suffered a brain injury in 2006, and Student is eligible for special education under the exceptionality of Traumatic Brain Injury. (P-6.) Parent asserts that the District has failed to perform its obligations under the Individuals with Disabilities Education Act, 20 U.S.C. §1401 et seq. (IDEA), by failing to evaluate and provide special education services to Student from February 5, 2007, when Student was discharged from a long term rehabilitation facility, to August 1, 2010, when Student was disenrolled from the District. Parent requests compensatory education for Student. The District raises two defenses: first, that the IDEA statutory limitation of actions (SOL) bars Parent from raising Parent's claims for most of the period claimed; second, that the Student was not a resident of the District during any time for which Parent's claims are not barred by the IDEA's SOL.

The hearing was concluded in two sessions. The parties submitted written summations, and the record closed upon receipt of those summations. I conclude that the IDEA SOL bars relief from February 2007 until November 28, 2009, and that District was obligated to – and failed to - provide a FAPE to Student from November 28, 2009 until August 1, 2010.

ISSUES

1. Does the IDEA SOL permit the hearing officer to decide any issue in this matter regarding an act or omission to act by the District that occurred or should have occurred prior to November 28, 2009?[1]

[1] This is the date that is two years prior to the date on which Parent filed this request for due process. The Parent's Complaint Notice is dated November 28, 2011, and the evidence is preponderant that it was filed on that date. (S-1.)

2. Did the District fail to identify Student as a child with a disability and evaluate Student in a timely manner, during any time not barred from consideration by the IDEA SOL, from February 5, 2007 until August 1, 2010?

3. Did the District fail to provide a free appropriate public education (FAPE) to Student, during any time not barred from consideration by the IDEA SOL, from February 5, 2007 until August 1, 2010?

4. Should the hearing officer order the District to provide compensatory education, during any time not barred from consideration by the IDEA SOL, from February 5, 2007 until August 1, 2010?

FINDINGS OF FACT

1. Student suffered brain damage in 2006 that disabled Student both physically and cognitively. Student's abilities to move physically, communicate and perform academic tasks were seriously compromised due to the brain injury, requiring speech and language, occupational therapy, and physical therapy services, as well as specially designed instruction. (P-4, 5, 6.)

2. Student's parents were divorced and living in separate residences within the District. Parents had joint custody of Student until June 2, 2010, when a court appointed Parent as Student's guardian. (NT 102, 109-111, 116-117, 159; P-3, 4.)

3. In January, 2007, Parent signed a Permission to Evaluate form that was customarily accompanied by a Procedural Safeguards notice when the form was given to a parent. (P-3.)

4. Student was discharged from long term rehabilitation to Student's grandparents' home on February 5, 2007. Student went to grandparents' home because it was accessible physically, whereas the homes of Student's parents were not accessible. The grandparents' home was not within the District. Student continued to live at the grandparents' home until Student moved into the Parent's home outside the District on June 7, 2010. (NT 117-118, 123-125, 174-176, 222-226, 228; P-4, 5, 7, 9.)

5. Parent and Student's Mother disagreed on what was the best approach to providing Student with educational services. Parent favored a full time center-based location at the IU; Student's Mother preferred to keep Student at the grandparents' home and to stay there herself in order to provide educational services at that location, similar to home schooling. (NT 160-162, 165-169, 233-236, 252-253, 261-264; S-23.)

6. In May 2007, the District provided to Parent an Evaluation Report which referenced the availability of the Procedural Safeguards Notice. (NT 125; P-6.)

7. The District recommended that Student be enrolled in a center based physical support classroom at the Intermediate Unit, and issued a NOREP for such services on November 1, 2007. The District considered but rejected full time multiple disabilities support with related services. (NT 261; S-11 p. 5, P-12, 13.)

8. Student's Mother acknowledged on the November 1, 2007 IEP form that the District had provided the Mother with the Procedural Safeguards Notice. (P-12.)

9. The District did not provide educational services to Student from August 2006 until the date of Student's withdrawal from the District in August 2010. The District at times sent transportation to pick up Student to transport Student to the center based physical support classroom that the District had recommended. (NT 86, 88, 99, 100-101, 104, 146, 151; S-11 p. 2.)

10. On November 16, 2007, at the Student's Mother's request, Student's physician sent a note to the school that Student could not be educated outside of the home and recommended in home schooling. (NT 134, 257; S-12 p. 2, P-15.)

11. In November 2007, Student's Mother did not think Student was ready to go to a school setting; Student's Mother believed that it was better for Student to be educated in the home setting. (S-11.)

12. In December 2007, Student was receiving medical care consisting of occupational therapy and physical therapy. Student's family was trying to provide Student with educational services. All services were provided at the grandparents' home. At an IEP meeting, there was discussion of whether or not Student would need to be transported to a center based service provider due to the cost of the services to the family. (S-13, P-17.)

13. On December 21, 2007, after an IEP team meeting attended by the Student's Mother and Parent, the District issued an IEP recommending special education services to be provided in the home. The student's Mother and Parent approved these services and the Mother signed the NOREP. The NOREP references the Procedural Safeguards Notice. (NT 132, 250; S-13 p. 3-4, P-18.)

14. In December 2007, District personnel advised Student's Mother to enroll Student in the school district where the grandparents' home was located, due to Student's alleged non-residency in the District. (NT 105-107, 137-138; S-11.)

15. Student's Mother withdrew Student from the District on December 21, 2007. At that time, the Mother did not want the Student to attend any public or private school, but the Mother withdrew Student from the District pursuant to a plan to enroll Student at the neighboring district in which Student was living at the time, so that services could be provided. (NT 252-253, 257-259; S-13.)

16. The District contacted the school district in which Student resided to have Student enrolled there for purposes of receiving special education services. The District was under the impression that the neighboring District was willing to provide services; however, Parents did not enroll Student in that district. At that time, the Mother did not want the Student to go to any school setting. (NT 105-108, 252-255, 262-264; S-11.)

17. From December 2007 until January 2009, Student was receiving medical services including speech, occupational and physical therapy, but no educational services. After January 2009, Student was not receiving therapy services. (NT 159-160; S-21.)

18. In April 2008, Student's Mother attempted to re-enroll Student in the District, but the District did not allow Student's Mother to re-enroll Student, because the Student was residing outside the District. (NT 90, 92-99, 103; P-20, 21.)

19. In April 2008, Parent sought advice as to how to appeal the District's action in refusing Student's re-enrollment. Parent filed a request for investigation by the Department of Education, but the final investigation report did not resolve the question of residence. (NT 144, 183; P-20, 22.)

20. Parent filed a court action in 2008, seeking full custody of Student, which did not resolve custody by the time that Student was of full age; thereafter, in 2009, Parent sought a guardianship for Student. (NT 158-161, 191; S-23.)

21. At the District's request, Parent re-enrolled Student in the District on November 26, 2008, while Student was living outside the District. (NT 67, 146, 177-179, 180, 184, 203-204; S-14, 15, P-19.)

22. In December 2008, at Parent's request, the Student's physician modified his recommendation to allow Student to attend a center based educational unit at the Intermediate Unit (IU). (NT 149-150, 237; S-18, P-24.)

23. In December 2008, the District scheduled an IEP meeting for January 5, 2009. Parent attended the meeting. (NT 149-S-15, 17, 19.)

24. On January 5, 2009, Parent approved the District's offer to place Student in a full time physical support classroom at the IU, with no inclusion in general education. This was recommended as the least restrictive environment that would provide a meaningful opportunity for Student to make educational progress. (NT 150-152; P-25, 26, 27, 28.)

25. The District's Notice of Recommended Educational Program (NOREP) listed two alternatives that had been considered but not recommended by the District: general education with supportive services and itinerant or supplemental physical support services. (P-28.)

26. The January 5, 2009 NOREP and IEP both referenced the availability of the Procedural Safeguards Notice. (P-25, 28.)

27. At the January 5, 2009 meeting, the IEP team including Parent agreed upon an IEP that placed Student in full time physical support at the IU, with related services including speech therapy. The District did not raise any question as to the Student's residence, and it knew that Student was living outside the District. (NT 149-151, 203, 251; P-19.)

28. At the January 5, 2009 IEP meeting, the District provided Procedural Safeguards or notified Parent as to where Parent could obtain them. Parent signed a certification indicating receipt of Procedural Safeguards within one year of the meeting. (P-25.)

29. On January 5, 2009, Parent signed Permission to Evaluate forms. Procedural Safeguards were referenced. (P-26, 27.)

30. On January 8, 2009, the District requested Student's Mother's signature on the NOREP and IEP as a condition of receiving the services offered in the January 2009 IEP. Student's Mother never signed the documents, and the services were not provided. (NT 101-102, 152-154, 160-163, 191-193, 252; S-20.)

31. The District offered to transport Student from either the Parent's home or the Student's Mother's home, both in the District, to the IU; however, Student was residing outside the District at Student's grandparents' home and the District restricted its offer of transportation to points originating within the District's boundaries. (NT 184-186, 203-204; S-24.)

32. The District in January 2009 was providing transportation routes that were close to where the Student was living. (NT 203-205.)

33. On July 30, 2009, Parent requested a re-evaluation of Student by delivering to the District a signed Permission to Evaluate form. The form references the Procedural Safeguards Notice. (NT 186-188; S-21, P-29.)

34. The District did not evaluate the Student pursuant to the Parent's July 2009 request. (NT 155; S-20.)

35. Parent sought advice from a disabilities advocacy organization and communicated that organization's opinion to the District. The organization advised that the law does not require both parents' signatures for special education services when two parents share custody. (NT 155-156.)

36. In August, 2009, the District's solicitor raised Student's non-residence and the District's request for two signatures as a basis for not providing further educational services to Student. (NT 155-S-24.)

37. Parent tried to arrange for the District's solicitor to speak with the disabilities advocacy organization's representative, but was unsuccessful in getting a resolution of the impasse over signatures. (NT 195-196, 199-200.)

38. Student moved to live with Student's father outside the District on June 7, 2010 and disenrolled from the District in August 2010. (NT 117-120.)

DISCUSSION AND CONCLUSIONS OF LAW

The burden of proof is composed of two considerations, the burden of going forward and the burden of persuasion. Of these, the more essential consideration is the burden of persuasion, which determines which of two contending parties must bear the risk of failing to convince the finder of fact.[2] In Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005), the United States Supreme Court held that the burden of persuasion is on the party that requests relief in an IDEA case. Thus, the moving party must produce a preponderance of evidence[3] that the moving party is entitled to the relief requested in the Complaint Notice. L.E. v. Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006)

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in Schaffer called "equipoise". On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See Schaffer, above.

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[2] The other consideration, the burden of going forward, simply determines which party must present its evidence first, a matter that is within the discretion of the tribunal or finder of fact (which in this matter is the hearing officer).

[3] A "preponderance" of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. Dispute Resolution Manual §810.

In the present matter, based upon the above rules, the burden of persuasion rests upon the Parent, who initiated the due process proceeding. If the Parent fails to produce a preponderance of the evidence in support of Parent's claim, or if the evidence is in "equipoise", the Parent cannot prevail.

LEGAL STANDARD FOR APPLICATION OF THE IDEA STATUTORY LIMITATION OF ACTIONS

The IDEA, 20 U.S.C. 1415(f)(3)(C), provides for limitation of actions as follows:

> A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint … .

This section provides a two year "look forward" limitations period for filing a due process complaint notice, which accrues from the time the filing party "knew or should have known" of the events giving rise to the claim asserted in the complaint notice. In other words, once the Parent knows or should know of certain events, the Parent has two years in order to file a complaint requesting due process about those events. If the Parent waits more than two years, the IDEA bars Parent from filing and therefore the hearing officer may not hear the claim.

WHAT CONSTITUTES THE ALLEGED ACTION THAT FORMS THE BASIS OF THE COMPLAINT

The IDEA is specific as to what events the Parent must know about or have reason to know before the two year limitation period begins to run. The statute uses the word "action". 20 U.S.C. 1415(f)(3)(C). In particular, this is the "action" which "forms the basis of the complaint". Ibid. Reading this language in context with the operative subsections of

IDEA procedural safeguards provision, 20 U.S.C. 1415, I conclude that this word "action" refers to the statutory clause found in the provisions for prior written notice: "initiate or change … the identification, evaluation, or educational placement, or the provision of a free appropriate public education to the child." 20 U.S.C. §1415(b)(3)(agency initiation or change requiring written prior notice); 20 U.S.C. §1415(c)(1)(A), (B)(characterizing agency initiations or changes as "action[s]"); 20 U.S.C. §1415(b)(6)(A)(agency actions subject to complaint and request for due process); 20 U.S.C. §1415(b)(6)(B)("alleged action" subject to due process as read in pari materia with 20 U.S.C. §1415(b)(6)(A)). Thus, the "action that forms the basis of the complaint" refers to an agency's action or inaction with regard to "initiat[ion] or change [of]… the identification, evaluation, or educational placement, or the provision of a free appropriate public education to the child."

Once the parent knows or should know that the agency has initiated or changed the student's identification, evaluation, or educational placement, or the services offered or provided to the student, - or refused to do so - the two years start to run within which the parent must file a complaint for due process to challenge such action. See also, 34 C.F.R. §300.503, 34 C.F.R. §300.507 (equating initiation or change with "action"); Hall v. Knott County Bd. Of Educ., 941 F.2d 402, (6th Cir. 1991)(applying common law "notice" rule to special education limitations case, court found that parental knowledge or notice that the educational agency was not providing certain educational services constituted notice tolling the limitation period, even where record showed that parents were unaware of their rights); Cf. James v. Upper Arlington City Sch. Dist., 228 F. 3d 764, 771 (6th Cir. 2000) (Guy, U.S.C.J., concurring), cert. den., 532 U.S. 995, 121 S.Ct. 1655, 149 L.Ed.2d 637 (2001) (parental notice that services were not being provided).

In the present matter, I find no basis to conclude that the "knew or should have known date" (the date on which Parent knew or should have known of a District "action"), occurred after the dates of the District "actions" (or omissions) that are the subject of this due process matter. (S-5.)[4] In other words, the Parent knew of all District actions and inactions as of the date on which they occurred or should have occurred. Therefore, unless one of the two IDEA exceptions to the SOL applies, I cannot decide the appropriateness of those actions or inactions as to which Parent delayed filing for due process for more than two years after the dates on which Parent knew of the District actions that occurred or should have occurred.

IDEA MISREPRESENTATION AND WITHOLDING OF INFORMATION EXCEPTIONS

The IDEA at 20 U.S.C. 1415(f)(3)(C) is subject to only two explicit exceptions, set forth at 20 U.S.C. §1415(f)(3)(D):

> The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—
>
> (i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
>
> (ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

Parent, seeking the application of these statutory exceptions, is required to prove such misrepresentations and withholding. Parent must also show that such behavior "prevented" the Parent from filing for due process. School District of Philadelphia v. Deborah A., 2009 WL 778321 at *4. The plain language of the IDEA indicates that

[4] I ruled on this aspect of the IDEA SOL prior to the hearing and my ruling is set forth at S-5.

misrepresentations and withholding of information alone are not sufficient without proving their causal relationship to the failure to timely file for due process.

I find no evidence in this record that the District either misled Parent through a misrepresentation of fact, (NT 64), or withheld information required under Part B of the IDEA to be provided to Parent. I find no evidence that the District by any withholding of information caused Parent to not file for due process on any claim that Parent has alleged.

Parent argues that the District failed to inform Parent of the District's obligations to report Student's home-based education as required under Pennsylvania rules that created certain reporting requirements in the wake of the Cordero settlement, see Cordero v. Commonwealth of Pa. and Pa. Dept. of Ed., 792 F. Supp. 1352 (E.D. Pa. 1992); Basic Education circular, Intensive Interagency Coordination (12-16-02). However, nothing in the IDEA explicitly requires any such reporting. On the contrary, any such reporting obligations[5] are the creation of state rules governing local educational agencies. The exception to the IDEA is explicit: it arises only based upon failures to provide information "that was required under this subchapter to be provided to the parent." The term "this subchapter" refers to Subchapter B of the IDEA, which is found entirely in federal law. State laws and regulations cannot be said to be part of Subchapter B, and I find no authority or logical basis to expand the exception by invoking it on a failure to provide information required "under state law" to be provided to the parent.

Parent also argued originally – though Parent appears to withdraw the argument in Parent's written summation – that similar reporting obligations exist under the federal

[5] I find no requirement in the Cordero decision that a local education agency should notify parents of its obligations under that case.

statutory rules applying to homeless children, the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 et seq. For the reasons set forth above, this alone would not invoke the "withholding" exception to the IDEA SOL. The McKinney-Vento Act is not part of the IDEA, and only disclosure requirements set forth in Part B of the IDEA can trigger this exception.

While the IDEA and its regulations do not explicitly require that the district provide notice of Cordero or McKinney-Vento obligations to the Parent, they do clearly require the District to disclose to Parent all special education placement options available to the Student. The regulations require the District to obtain informed consent from Parent before initial provision of special education services. 34 C.F.R. §300.300(b)(1). Consent is broadly defined to require that the parent be "fully informed of all information relevant to" a district action such as placement. 34 C.F.R. §300.9(a). Thus, these subsections of Part B of the IDEA create a duty to disclose information, and a failure to make such disclosure could activate the "withholding" exception in the IDEA.

In this matter, however, the record is preponderant that the District did not fail to provide disclosure as to available options for Student's placement. On the contrary, the District's NOREPs expressly identified all available special education options for Student. (FF 7, 12, 13, 24, 25.) Thus, the Parent has failed to produce preponderant evidence that the District withheld information required to be provided to Parent under Part B of the IDEA. Moreover, the evidence is preponderant that the Parents were well aware of their rights to file for due process – or at least were fairly on notice of such rights – and that any withholding of information could not have caused them to fail to file for due process within

two years of their knowledge of the District's omission to provide services to Student. (FF 3, 6, 8, 13, 26, 28, 29, 33.)

I conclude that the withholding exception of the IDEA SOL does not apply in this matter. Therefore, I will not decide any matter involving District action or inaction allegedly occurring prior to November 28, 2009, which is two years prior to the filing date of the present matter.[6]

THE DISTRICT'S RE-ENROLLMENT OF STUDENT, FAILURE TO PROVIDE A FAPE, AND SUBSEQUENT INVOCATION OF THE RESIDENCY DEFENSE

This leaves for consideration the period of time from November 28, 2009, when the bar of the IDEA SOL ceased to apply, and August 1, 2010, which is approximately when[7] Parent removed Student from the District. By the beginning of this period, the District had again enrolled Student in the District, in spite of the fact that the District knew that Student continued to live outside of the District. (FF 21.) In fact, the evidence is preponderant that the District encouraged Parent to re-enroll Student in November 2008, and Parent did so in hopes of obtaining educational services for Student. Ibid. From the time of enrollment until August 1, 2010, Parent cooperated with all District requests and the District both evaluated Student and offered an IEP to Student. (FF 21-29.) Yet the District now claims that it was not obligated to provide any educational services due to Student's non-residence. I have difficulty with the logic and fairness of the District's position.

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[6] As noted above, the IDEA's limitation of actions is a "look forward" limitation; that is, the claim must be made within two years going forward from the date of knowledge or notice of the act or omission of the district that is the subject of the complaint. Nevertheless, in this matter, the provision operates as a practical matter to bar all claims for actions or omissions that allegedly occurred or did not occur more than two years before the filing date in this action.

[7] The record does not preponderantly specify the exact date of withdrawal from the District.

The record does not reveal why the District seems to have reversed itself on the Student's eligibility to enroll in the District.[8] However, the record is preponderant that the District's encouragement to enroll Student, identification of Student and issuance of an IEP served to confuse Parent on the question of the Student's eligibility to claim services from the District. I conclude that the District's actions, perhaps inadvertently, clouded an already muddy situation, and misled Parent into failing to enroll Student elsewhere in order to obtain educational services.[9] (FF 30-37.) After essentially recommitting itself to provide FAPE, the District reversed itself again, suddenly pulling the rug from under Parent by disclaiming any obligation to do what it had offered most recently to do, requiring both parents' signatures on both the IEP and the NOREP[10], and then failing to take further action. (FF 29-34.) Parent sought advice, and tried to resolve the matter by relying on an advocacy agency, to no avail. (FF 35, 36.) Meanwhile, the Student completed a span of nearly four years without receiving a public education, or any public special educational services. (FF

[8] My findings that the District identified Student are sufficient to answer the second issue in this matter in the negative (i.e., the District did not fail in its Child Find obligations), as reflected in the order below.

[9] Although the record does not reveal why the District re-offered to help Student in spite of non-residency, I am inclined to presume that District officials' intent in doing so was generous - in order to address the egregious lack of educational services for this child extending over a protracted period and in order to do all they could to comply with the law. However, the perhaps unintended consequence of this action was to lead Parent to believe that Parent was dealing with the correct school district. While I do not criticize the District's generous re-enrollment of Student regardless of residency, I find its subsequent reversal of position over the next weeks to be inequitable in effect – although I make no finding that such effect was intended.

[10] I conclude by a preponderance of the evidence that the District failed to comply with the IDEA by requiring two signatures under the circumstances existing at the time, insofar as that requirement extended into the period of time for which the parent's claim is not barred by the IDEA SOL. (FF 30, 35-37.) The IDEA definition of "Parent" requires a local education agency to presume that a biological parent is authorized to make educational decisions, where two parents have such authority and there is no contrary judicial order. 34 C.F.R. §300.30(b). Here, Parent had made educational decisions throughout the time after Student's injury, and Student's Mother was unresponsive for years. (FF 2, 3, 5, 6, 13, 15, 19, 20, 21-24, 27-29, 33, 37.) The District should not have required two signatures under these circumstances, especially since this decision deprived Student of an education for a protracted period.

9.) Eventually, Parent resolved matters by withdrawing Student from the District, moving to a new district, and enrolling Student there. (FF 38.)

The District now asserts the Student's non-residence as a defense to its refusal to evaluate when requested in July 2009, or to provide a FAPE after having encouraged parent to re-enroll Student in 2008, having issued an evaluation report identifying Student as a child with a disability that year, and having offered an IEP and placement in 2009, which Parent had accepted. I conclude that it is unnecessary to reach the issue of residency, because the District assumed the obligation to provide a FAPE when it allowed Student to re-enroll in the District in November 2008, knowing that Student was living in another district at the time of re-enrollment. Having assumed that obligation voluntarily and with full knowledge of the circumstances, the District cannot now be heard to disavow all responsibility for providing a FAPE to Student. Therefore, I conclude that the District was obligated to provide a FAPE to student and failed to do so for the actionable period of November 28, 2009 to August 1, 2010.

The District is correct that, under Pennsylvania law, a school district is obligated to identify and provide special education services only to children within its geographical borders. 22 Pa. Code §14.104(c)(special education plan must provide for children who are residents of the district), 22 Pa. Code §14.121(a)(Child Find obligation to children within the district's jurisdiction). See generally, 24 PS 13-1301(every child of eligible age may attend public school in his or her district of residence); 22 Pa. Code §11.11(same, defining residence). However, school districts are authorized to accept enrollment of students who are non-residents. 24 PS 13-1316. I conclude by a preponderance of the evidence that the District exercised this authority in the present matter.

Having taken Student in, as it were, in November 2008, the District then tried to disavow its commitment to provide a FAPE, raising a series of obstacles to provision of a FAPE that the Parent found insurmountable. (FF 30-37.) Meanwhile, the Student's federally guaranteed right to a FAPE was denied until Parent finally obtained legal authority to move Student to a different school district regardless of Student's Mother's wishes. (FF 20, 38.) Clearly, this turn of events contravened the basic rights of the Student under the IDEA. I conclude that the District violated those rights, and that its present claim of non-residency is belied by its own previous actions in allowing a non-resident to enroll.

I will award compensatory education to Student.[11] Parent asks that I measure the compensatory education according to what would be needed to make Student whole if FAPE had not been denied in the first place. B.C. v. Penn Manor School District, 906 A.2d 642 (Pa. Cmwlth. 2006); however, the record is inadequate to support such an award, and the B.C. case was decided under the state law for gifted students, not the IDEA. Even if I were convinced to apply the B.C. standard to this IDEA matter, the paucity of the record as it relates to remedy leaves me no choice but to order hour for hour compensatory education. M.C. v. Central Regional School Dist., 81 F.3d 389, 397 (3d Cir. 1996).[12]

In this matter, the Student received no public education, despite the fact that the parties had agreed upon a placement in full time physical support, with related services. (FF 24-27.) Therefore, I will order the District to provide Student with appropriate

[11] This will not include ESY services. There was nothing in the record to justify such an award.

[12] Although the award usually is offset equitably for a reasonable period of discovery and rectification, the present situation is not amenable to such an analysis. Here, the problem of the child – need for special education services – was resolved and a rectification plan was offered as of January 2009, well before the beginning of the period for which the award will be ordered. Thus, there is no need for or equity in offsetting the award for a discovery and rectification period, and I will not offset the award for that purpose.

compensatory education on an hour for hour basis, to restore what was offered and not provided.

CONCLUSION

I conclude that the Parent's action is barred by the IDEA SOL for all claims up to November 28, 2009. From that day forward, I conclude that the District was obligated to provide and failed to provide a FAPE to the Student, in the form of a full time physical support placement at the IU and speech therapy as offered in the January 2009 IEP. I will award appropriate compensatory education for that period of time. Any claims regarding issues that are not specifically addressed by this decision and order are denied and dismissed.

ORDER

1. The IDEA SOL does not permit the hearing officer to decide any issue in this matter regarding an act or omission to act by the District that occurred or should have occurred prior to November 28, 2009.

2. The hearing officer will not decide whether or not the District failed to identify Student as a child with a disability and evaluate Student in a timely manner during the period barred by the IDEA SOL. From November 28, 2009 until August 1, 2010, the District did not fail to identify Student as a child with a disability and evaluate Student in a timely manner.

3. The District failed to provide a free appropriate public education (FAPE) to Student from November 28, 2009 until August 1, 2010.

4. The District is hereby ordered to provide compensatory education to Student in the form of hours of remedial or enriching educational services that further the goals of the January 2009 IEP or the Student's current or future IEPs and/or will otherwise assist Student in overcoming the effects of Student's disabilities.

5. The number of hours of such compensatory services will be the equivalent of the number of hours of educational services that Student would have received if placed

according to the January 2009 IEP: full school days for every day on which the IU physical support classroom was open from November 28, 2009 to August 1, 2010 (not including any ESY services), in addition to one and one half hours of speech therapy services per week for every week that the IU was open from November 28, 2009 to August 1, 2010.

6. Selection of compensatory education services shall be at Parent's sole discretion. Compensatory services may occur after school hours, on weekends and/or during the summer months when convenient for Student and Parent. The hours of compensatory education, or fund for compensatory education services/products/devices, should the District choose to create such fund, may be used at any time from the present to Student's 26th birthday.

William F. Culleton, Jr. Esq.

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WILLIAM F. CULLETON, JR., ESQ., CHO
HEARING OFFICER

March 27, 2012